



BOOSTING
INVESTMENT FOR
A GREENER AND MORE
SUSTAINABLE ECONOMY

EUROCHAM VIETNAM'S
WHITEBOOK

TRADE AND INVESTMENT ISSUES
AND RECOMMENDATIONS

2024

15th Edition
www.eurochamvn.org

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ABOUT EUROCHAM

Founded in 1998, the European Chamber of Commerce in Vietnam (EuroCham) has established itself as the unified voice of the European business community in Vietnam. With offices in Hanoi and Ho Chi Minh City, we represent a diverse spectrum of companies, ranging from small and medium-sized enterprises to multinational corporations. EuroCham plays a crucial role in shaping policy dialogues, fostering bilateral trade and investment, and fortifying economic ties between Europe and Vietnam, particularly within the framework of the EU-Vietnam Free Trade Agreement (EVFTA).

EuroCham Vietnam boasts a substantial membership base comprising over 1,400 companies, solidifying its position as one of the largest foreign chambers operating in Vietnam. We function as the "chamber of chambers," encompassing nine prominent national European business associations in Vietnam, which include:

- Belgian-Luxembourg Chamber of Commerce (Beluxcham)
- Central and Eastern European Chamber of Commerce in Vietnam (CEEC)
- Chamber of Commerce and Industry Portugal-Vietnam (CCIPV)
- Dutch Business Association Vietnam (DBAV)
- French Chamber of Commerce and Industry Vietnam (CCIFV)
- German Business Association (GBA)
- Italian Chamber of Commerce in Vietnam (ICHAM)
- Nordic Chamber of Commerce Vietnam (Nordcham)
- Spanish Chamber of Commerce in Vietnam (SCCV)

EuroCham's diversified influence is underpinned by our extensive network of 20 specialised Sector Committees. Serving as think tanks within their respective industries, these committees provide invaluable expertise, steer policy recommendations, and stimulate industry-specific dialogues. This organisational framework guarantees that the concerns and viewpoints of diverse sectors are actively considered, thereby moulding EuroCham's cross-sectoral agenda and magnifying its overall influence.

EuroCham played a significant role in the negotiation of the historic EVFTA, staunchly championing European interests throughout the intricate process. In a culmination of nearly a decade of effort, EuroCham had the privilege of participating in the signing ceremony for this groundbreaking agreement in 2019. This event marked the realisation of an ambitious vision for fostering a more profound partnership between Europe and Vietnam.

EuroCham Vietnam has effectively established a rotating annual sequence between two major sustainability events: the Green Economy Forum & Exhibition (GEFE) and the Green Economy Forum (GEF). The inaugural GEFE, held in 2022, was a resounding success, attracting nearly 6,000 attendees and featuring an exhibition, high-level dialogues, and comprehensive conference sessions focused on green technologies and sustainable innovations. Following this, the first GEF in 2023 maintained the momentum with a strong emphasis on high-level policy discussions and in-depth conference sessions, aimed at propelling sustainable initiatives and environmental



policies forward. GEF and GEFE have attracted robust participation from high-level officials. Vietnamese Prime Minister Pham Minh Chinh and a range of Vietnamese ministers attended both forums. Other notable guests included Dutch Prime Minister Mark Rutte; European Commission Executive Vice President Valdis Dombrovskis; and European Commissioner for the Environment, Oceans and Fisheries Virginijus Sinkevičius each attending one of the two events.

EuroCham Vietnam also holds a significant role as a founding member of the Vietnam Business Forum (VBF). This influential consortium is dedicated to enhancing Vietnam's business environment, serving as a crucial platform for dialogue between public and private sectors. Its mission revolves around promoting sustainable economic development through regular high-level forums and specialised working groups. Notably, EuroCham Vietnam has co-chaired the VBF in 2012, 2013, 2018, and 2022, significantly impacting policy reforms and improving Vietnam's business climate.

On a regional scale, EuroCham Vietnam is a founding member of the EU-ASEAN Business Council (EU-ABC). This council, officially endorsed by both the European Commission and the ASEAN Secretariat, stands as the definitive voice representing European businesses in the ASEAN region. It is steadfastly committed to advancing the interests of European companies, influencing trade and investment policies, and amplifying their presence through strategic events and high-level dialogues.

Furthermore, on a global scale, EuroCham Vietnam plays a substantial role through its membership in the European Business Organisation Worldwide Network (EBOWWN). This unique entity represents the interests of European businesses beyond the borders of the European Union, boasting an active network comprising European chambers of commerce and European business associations across more than 50 international markets.

Since late 2015, EuroCham Vietnam has served as the implementing partner of the South-East Asia IP SME Helpdesk. This initiative offers invaluable, free-of-charge guidance and support on intellectual property protection to European SMEs venturing into or scaling up within the ASEAN market.

EuroCham Vietnam's impact and excellence have been consistently recognised. The organisation received the 'Best Large Chamber of the Year' award at the Asia Pacific International Chambers of Commerce Awards in 2017 and has been commended by the Vietnamese Prime Minister for its contributions to national development. In 2019, we were awarded a certificate of merit from the Prime Minister's Advisory Council for Administrative Procedure Reform (ACAPR), and in 2022, we were honoured by the Chairman of the People's Committee of Ho Chi Minh City for its active role in the city's business-government dialogue system.

For more information about EuroCham, visit this link: www.eurochamvn.org

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Gabor Fluit

*Chairman of the European
Chamber of Commerce in
Vietnam*

MESSAGE FROM THE CHAIRMAN

As Chairman of the European Chamber of Commerce in Vietnam, I am honoured to present this 15th edition of our annual Whitebook - published right after a landmark year where we celebrated both EuroCham's 25th anniversary and 35 years since Vietnam first opened its doors to foreign direct investment.

This double anniversary was a perfect time to look back at how much Vietnam's economy has grown. Since allowing foreign investment for the first time over three decades ago, the country has worked diligently to develop its economy – generating new jobs, developing new industries, and improving livelihoods nationwide.

The EU-Vietnam Trade Agreement (EVFTA), which celebrated its third year in August 2023, has been especially important. The results speak for themselves. In 2019, before the EVFTA took effect, total trade volume between the EU and Vietnam stood at US\$57.81 billion. By the end of 2022, just two years after implementation, this figure jumped to US\$66.78 billion – a 15 per cent increase.

Investors from European companies are also more confident about doing business in Vietnam now. According to the EuroCham Business Confidence Index, 31 per cent of EuroCham members now rank Vietnam among their top three global investment destinations. This is clearly a vote of confidence in the Vietnamese economy.

While celebrating the impressive progress achieved, we as an organisation have a very firm belief in Vietnam's continued potential. And as a trusted, longstanding partner along this journey, Team Europe remains as committed as ever in supporting Vietnam's transformation towards a sustainable, innovation-driven future.

With this goal in mind, this Whitebook provides a comprehensive set of recommendations under the theme "Boosting the investment of Vietnam toward a Green and Sustainable Economy." Even though environmental sustainability is a main goal, the Whitebook takes a broader by focusing on four key areas: business environment improvement, consumer choice discussion, health and beauty industry advancement, and sharing best practises for green and sustainable development. Through these pillars, businesses can enhance their capabilities, revamp their operations, and strengthen their social responsibility.

By gathering insights from all of EuroCham's 20 Sector Committees, including our newly formed Construction Sector Committee and Sustainable Finance Sector Committee, the Whitebook offers a multi-industry perspective on

how to promote sustainable development across the country. By making use of EuroCham's combined expertise gained from our experiences in both Europe and Vietnam, we have identified priority areas and proposed actions to align stakeholders with Vietnam's national goals. Taken together, these perspectives lay out the pressing challenges and exciting opportunities for Vietnam in the days, months and years ahead.

For over two decades, EuroCham has facilitated constructive public-private sector dialogues in Vietnam. By continuing this proud legacy of engagement through this Whitebook, we aim to encourage even more meaningful collaboration among stakeholders. Open and sincere conversation truly serves as the foundation for realising ambitious shared goals between partners.

The Green Economy Forum (GEF) 2023 in Hanoi demonstrated the power of such an open dialogue to partner with Vietnam to go green. By bringing together 500+ participants, GEF marked an impactful milestone in our collective journey towards a greener future. The presence of figures like Prime Minister Pham Minh Chinh, Dutch Prime Minister Mark Rutte, European Commission Executive Vice President Valdis Dombrovskis and other decision-makers from across Europe and Vietnam underscored the determination of our shared Team Europe-Vietnam mission and the belief in our joint ability to achieve the ambitious. For that, we offer our biggest thanks to all GEF participants for making it such a productive experience.

Using GEF as a platform, and the Green Economy Forum & Exhibition (GEFE) at the end of 2024 as another opportunity to drive the conversation forward, we are confident that this Whitebook will also be essential in developing a future where responsible business fuels innovation while simultaneously contributing to the well-being of the Vietnamese people and our planet. Though challenges still lie ahead, Vietnam and Europe alike have never backed down from pursuing ambitious, challenging goals for positive change. And by learning from our achievements while keeping our eyes on the future, I believe our brightest days still lie ahead.

Now, more than ever, the special Europe-Vietnam partnership offers what the world needs – proof that building bridges and breaking down barriers can make the impossible possible. With continued courage and vision, many more milestones await along the sustainability journey we share.

In closing, I extend thanks to all whose teamwork drives our mission to enhance Vietnam's business environment. Our members, Sector Committees, Corporate Partners, Vietnamese government partners and the Vietnamese business community have been instrumental through their tireless dedication, and we are appreciative for every single one of you!

I would also like to thank you, valued reader, for taking time out of your busy schedule to read this Whitebook. Your willingness to dig deeper into these insights really shows your dedication to understanding and shaping the future of Vietnam's economy. And for that, we cannot thank you enough.

Happy reading!





H.E. Julien Guerrier

*Ambassador of the European Union
to Vietnam*

MESSAGE FROM THE AMBASSADOR OF THE EUROPEAN UNION TO VIETNAM

2023 is a turning point for Vietnam as the country has just stepped out of the pandemic period. Given the uncertain global outlook for 2024 and evolving social and economic challenges, Vietnam has an opportunity to develop a modern regulatory environment to consolidate the country's ambition to transform itself into a 21st-century Asian Tiger.

Throughout the years, Vietnam has been an important partner of the EU when it comes to economic issues, digital transformation and the green transition, in addition to regional security and stability. However challenging the future may be, the EU is and will remain one of Vietnam's closest partners.

In order to boost trade and economic growth, openness and transparency should be continuously improved, and public administration should be modernized. The EU - Vietnam Free Trade Agreement (EVFTA) is playing a crucial role in this process and is contributing to Vietnam's success in overcoming economic challenges arising from supply chain disruptions, rising fuel prices, and food insecurity.

The EVFTA is more than just a free trade agreement. Through the EVFTA framework, we have seen the unprecedented liberalisation of trade in goods, services, and new investment opportunities for both European and Vietnamese investors.

Chapter 13 of the EVFTA on Trade and Sustainable Development presents an opening for the advancement of sustainable development, and with the active participation of the business community, we can achieve this goal. European companies, renowned for their expertise in green technologies, are the perfect partners to support the transformation of Vietnam's economy. EU political leaders are committed to maintaining close cooperation with Vietnam, and the numerous meetings and visits over the past years have made this perfectly clear. Most notable are EuroCham's Green Economy Forum & Exhibition (GEFE) 2022, Green Economy Forum (GEF) 2023, and the upcoming GEFE 2024. By organizing these forums, Team Europe has facilitated the visit of European Commission Executive Vice-President Valdis Dombrovskis and of the EU Commissioner for the Environment, Oceans and Fisheries Virginijus Sinkevičius to Vietnam (in GEF 2023 and GEFE 2022).

respectively), enabling them to engage in dialogues with a number of Vietnam's national decision makers. Their presence in Vietnam underscores the significance of Vietnam for Europe.

I would like to express my appreciation for the active participation of EuroCham members in these fruitful discussions and my gratitude to the European business community for their continued support. This new chapter in EU-Vietnam relations, marked by GEF and GEFE, and Vietnam's shift toward a green economy, presents a multitude of opportunities for trade and investment. European investors will continue to have more opportunities to invest and establish a presence in this vibrant and dynamic market, fostering innovation and growth.

After three years of implementation, the EVFTA has facilitated Vietnam's consolidation of its development trajectory by aligning Vietnamese regulations with international standards. This has improved regulatory compatibility and reduced regulatory obstacles, creating a more favourable environment for Vietnam's growth. Through this economic progress, Vietnam will have the opportunity to further bolster its economic capacity and advance its social and labour rights. Consequently, Vietnam will continue to strengthen its position as a key hub for the EU's partnership strategy, actively engaging in initiatives such as the EU Green Deal, Global Gateway, and the EU-Vietnam Framework Participation Agreement (FPA). To achieve this, it will be essential to engage in more in-depth discussions and exchange practical insights on the business and policy environment between the EU and Vietnam.

Nowhere are these practical insights more readily available than in the Whitebook – a prestigious annual publication of EuroCham. Since its first edition, the Whitebook has served as a practical barometer and a conduit for policy dialogue between the public sector and the European business community. Through its 14 editions, it has sparked numerous discussions and facilitated the joint development of many policies by the government and the business community. Over the past 25 years, EuroCham's Whitebook has cemented its position as a vital communication channel, effectively conveying the perspectives of the business community to the Government of Vietnam. With the 15th edition now available, this valuable tradition will continue to gain strength and have an even greater impact.

By carefully considering the recommendations in this Whitebook, listening to each other's opinions, and actively engaging in the implementation of the EVFTA and other initiatives of the EU and Vietnam, we can contribute to the growth and prosperity of our economies.

I am therefore pleased to introduce the 15th edition of the Whitebook - a valuable source of inspiration and suggestions for Vietnam's efforts to boost investment and move towards a more advanced, environmentally friendly, and sustainable economy. The ideas and recommendations presented in this Whitebook have the potential to unleash the full potential of our bilateral economic and commercial ties. They deserve serious and careful consideration.



MESSAGE FROM THE BUSINESS ASSOCIATIONS



Bart Verheyen
Chairman of BeluxCham



Dear Reader,

Also, on behalf of the Belgian-Luxembourg Chamber of Commerce in Vietnam (BeluxCham), welcome to the EuroCham's Whitebook 2024 edition.

For 20 years already BeluxCham Vietnam is at the service of Belgian and Luxembourgish companies wishing to start or expand their business in or with Vietnam. For Vietnamese companies who are looking to invest or trade in Belgium or Luxembourg, we work closely together with our sister organization Belgian Vietnamese Alliance (BVA). It is an exciting journey to see how trade volumes between Belgium, Luxembourg and Vietnam increase each year and the implementation of the EVFTA has only accelerated that trend. At the same time, we help our members to ensure their business success is sustainable. Through various events and innovative (even regional) activities, we assist in implementing Environmental, Social and Governmental policies in a hands-on way.

2024 is a very special year for BeluxCham. Not only are we 20 years active in Vietnam but we also keep celebrating 50 years of bilateral relations between Belgium and Vietnam as well as between Luxembourg and Vietnam. A State visit by HRH the King and Queen of Belgium (planned for October 2024) highlights how strong trade and political ties between Belgium and Vietnam have become. BeluxCham is proud to be a strategic partner in this.

With this edition of Whitebook 2024, I believe EuroCham and BeluxCham are committed more than ever to further deepen economic ties between Europe and Vietnam and I hope you will enjoy your reading as much as it we did working on the preparation of this Whitebook 2024.



Thibaut Giroux
Chairman of CCI FV



Amidst ongoing global uncertainties, the current business landscape in Vietnam continues to hold promise. The country's economic progress is driven by a commitment to substantial reforms, fostering a significant increase in both the quality and quantity of foreign direct investment.

Given this context, the year 2024 provides a particularly favourable opportunity for undertaking business ventures within Vietnam. The positive trajectory is reinforced by the advantages of the EVFTA and Vietnam's proactive stance toward necessary transitions for sustainability.

The French Chamber of Commerce and Industry in Vietnam (CCIFV) plays a pivotal role in fostering this expansion: we are steadfast in our support for European, French, and Vietnamese enterprises, facilitating the cultivation of robust business relationships. As the sole and official representative in Vietnam for the Enterprise Europe Network (EEN), the European's most extensive support network for SMEs with international aspirations, and with a widespread network comprising 125 French Chambers in 95 countries, CCIFV serves as a gateway to global multilateral cooperation.

With a dedicated team and a multidisciplinary network, CCIFV is committed to providing operational support to companies while expediting their business development efforts. This collaborative approach underscores our commitment to mutual success within the European-Vietnamese business landscape, with a specific focus on promoting French expertise in the green economy as an integral component of our collective achievements.



Sérgio Pereira da Silva
Chairman of CCIPV



The Chamber of Commerce and Industry Portugal-Vietnam (CCIPV) is a non-profit organization and is part of a network comprising 61 Portuguese chambers. CCIPV seeks to promote and safeguard its members' interests, specifically in terms of economic and commercial links between businesses in Vietnam and Portugal.

Functioning as a leading authority on the bilateral exchanges between Portuguese and Vietnamese societies and businesses, CCIPV aims to strengthen and promote economic and commercial ties between Portugal and Vietnam. To achieve this objective, CCIPV offers tailored services to assist companies engaged in trade and investment, which include market research, macroeconomic analysis, promotion, and support of trade missions, seminar and event organization, management support, and B2B matchmaking.

In addition, CCIPV is dedicated to safeguarding and promoting its members' interests by monitoring legislation and policy updates, consulting with governmental agencies and industry associations, providing a forum for businesspersons to voice their opinions, performing activities that enhance the economic environment of Portugal and Vietnam.

CCIPV further maximizes the chamber's contact network and spirit of cooperation with government, business associations, and overall businesses. CCIPV warmly welcomes all Vietnamese and Portuguese businesses seeking to expand internationally and invest in each other's countries to visit the organization's website www.ccipv.com or contact them at info@ccipv.com.



Marko Moric
Chairman of CEEC



The Central and Eastern European Chamber of Commerce (CEEC) has proudly served as a catalyst for cooperation, economic development, and trade relations between Vietnam and the countries of Central and Eastern Europe (CEE) since its establishment in 2015. Our commitment to creating valuable opportunities for professional and social exchange is evident through our initiatives in both Hanoi and Ho Chi Minh City.

Building Partnerships: Our collaborative efforts extend to Governmental Agencies, Diplomatic Bodies, and Business Associations, formalized through Memoranda of Understanding (MoU). Furthermore, we've forged strong ties with Chambers of Commerce from the CEE region, fostering a network that transcends borders.

Empowering Our Members: CEEC offers indispensable services to our members, including the renowned "Soft-Landing" program. This initiative provides comprehensive support for market entry strategy, site selection, company formation, and business development—an invaluable resource for newcomers establishing their businesses in Vietnam.

Insights into Vietnam's Business Landscape: To deepen awareness and understanding of the Vietnamese business environment, we have introduced the "Doing Business in Vietnam" booklet. This comprehensive guide highlights market potential and focuses on specific sectors, offering vital insights for entrepreneurs and investors.

The Whitebook - Navigating Business Issues: An essential compendium, the Whitebook addresses sector and cross-sector specific business issues in Vietnam. CEEC is dedicated to enhancing the positive development of the business environment and Vietnam's economy. We eagerly anticipate the continued successful implementation of the EU-Vietnam Free Trade Agreement (EVFTA), which promises a wide array of investment and trade opportunities for our present and future members, as well as our Vietnamese partners.

For more information, please visit our website: www.ceecvn.org, or reach out to us via email at: office@ceecvn.org.



Alexander Koch
Chairman of DBAV



The Netherlands has been the biggest investor (and second biggest trading partner) from the EU in Vietnam for many years. Besides nurturing our mutual trade relationship, the Netherlands stands shoulder-to-shoulder with the Vietnamese to battle pressing issues such as climate change.

The DBAV “builds the bridge between The Netherlands and Vietnam”, to best help Dutch entrepreneurs, whether long-time members or market entrants, succeed in Vietnam.

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.

DBAV maintains close links with the Consulate General of The Netherlands in Ho Chi Minh City and The Royal Netherlands Embassy in Hanoi to help companies acquire information on the Vietnamese market and government policies.



Elmar Dutt
Co-Chairman of GBA



Welcome to the EuroCham Whitebook 2024, the ultimate guide to the business environment in Vietnam and the policy recommendations from EuroCham. As the Co-Chairs of the German Business Association (GBA), we are honoured to be the voice and advocate of German businesses in Vietnam, fostering the bilateral socio-economic ties between the two countries.

The GBA, established in 1995 and licensed by the People's Committee of Ho Chi Minh City in 1998, is one of the longest established and most influential business associations, as well as a founding member of EuroCham in Vietnam. We represent 400 corporations, from global giants to local start-ups, with a majority being SMEs. The GBA strives to create the best possible market conditions and opportunities for its members in Vietnam.

We regularly host a variety of events for professional and social networking in Hanoi, Ho Chi Minh City, and Danang, with the annual Oktoberfests being one of our landmark events. We also engage in dialogue with the local authorities of each province across the country and organise various other activities, such as monthly business meetings, workshops, excursions, sports events, and CSR initiatives, to support local talents through our annual start-up competition, the GBA Business Challenge. In 2023, we attracted 20,000 participants to 70 events.

Our key priorities, defined in 2023 are: (1) transform for excellence by enhancing the GBA's operations and communications; (2) deliver substance-driven business content by improving the quality and quantity of GBA events; and (3) promote GBA topics by working closely with GBA members to identify needs and address issues. We believe that these priorities will enable us to contribute to our members' success while doing business in Vietnam, as well as to the development of Vietnam as a competitive and attractive destination for trade and investment, and a responsible and sustainable partner for the EU and Germany. To learn more about the GBA, visit our website: www.gba-vietnam.org



Torben Minko
Co-Chairman of GBA



Michele D'Ercole
Chairman of ICHAM



The Italian Chamber of Commerce in Vietnam (ICHAM) started its activities at the end of 2008 and will be in its 16th year of operation in 2024. Since its establishment, ICHAM set its core activities to promote economic and cultural cooperation between Italy and Vietnam through business trips, business delegations and trade and cultural exchanges between the two countries.

In particular, ICHAM constantly supports Italian and Vietnamese organizations and business in finding potential partners through carry out market research, organizing B2B meetings, networking events, workshops and technical seminars which focus on specific fields in Vietnam and Italy. Since over three years of the EU-Vietnam Free Trade Agreement (EVFTA), the most ambitious and comprehensive agreement that the EU has ever concluded with a developing country, is entry to force as well as the EU-Vietnam Investment Protection Agreement (EVIPA). ICHAM is continuing to conduct a series of workshops and seminars on the advantages and benefits of EVFTA and EVIPA. The EVIPA aims to protect investors and investments in the EU and Vietnam and ensures they will be given fair treatment. Both will boost significantly the bilateral trade between the two countries and is a prominent milestone that creates a new impetus for the relations between EU and Vietnam and opens up opportunities for comprehensive and extensive cooperation.

ICHAM has a fruitful cooperation with the Italian Embassy in Hanoi and the General Consulate in Ho Chi Minh City and also interacts with local authorities, business associations and the others Italian Chambers abroad promoting "Made in Italy" to Vietnam.

To this date, ICHAM has been building a business network with over 110 members and continues to expand its network further, support and connect trade activities.

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Eva Hansen
Chairwoman of NordCham



The Nordic Chamber of Commerce in Vietnam (NordCham Vietnam) is delighted to express its support for the launch of the 15th edition of the EuroCham Whitebook. We commend The Whitebook for its role as a collective voice of foreign businesses, effectively communicating to the local government the significance of creating an attractive and favorable business environment for Nordic enterprises and international businesses at large.

The year 2023 marked a series of noteworthy developments in Vietnam, showcasing significant improvements in regulations and business practices. It is encouraging to witness Vietnam's positive strides towards a more favorable business environment and a sustainable development direction. NordCham firmly believes that this trajectory is well-suited to attract investors who share similar goals and standards.

In recent years, NordCham Vietnam has experienced rapid growth, evolving into a substantial Nordic business community with over 170 members, encompassing both long-standing companies and new investors. This diverse membership includes globally renowned companies that have made significant investments across various sectors in Vietnam. Looking forward, NordCham hopes that the government will earnestly consider the insights provided in the Whitebook to facilitate an even more favorable business landscape and attract new investors seeking to enter the Vietnamese market.

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



**Javier Méndez**

*Chairman of the Spanish
Chamber of Commerce in
Vietnam*



The Spanish Chamber of Commerce in Vietnam is honored of participating to EuroCham's Whitebook 2024. Being the most recent established chamber in Vietnam, in 2022, our community is growing fast inside the European Business community in Vietnam, representing more than 50 members and with a great potential to growth in the coming years. Our members are highly diversified, with a strong presence of sectors such as hospitality, manufacturing, renewable energies, logistics, technology, sustainability and services.

Our flagship companies are worldwide leaders in innovation, research and development. Our conviction is that the Whitebook content is an inestimable resource for the recommendations to Vietnam, and the challenges and opportunities of doing business in Vietnam. The promotion of trade and investment between Vietnam and Spain and in general with the EU has been accelerated by the EVFTA, supporting Vietnam's sustainable development. Our role as Spanish Chamber is key in promoting the Spanish investments in Vietnam, supporting the current business of our members and enhancing the relations between the two countries and broadly with all the European community.

We believe in the fruitful exchange and the utility of this 15th edition of the Whitebook. For more information, visit our website www.spanishchambervn.com.

OVERVIEW OF EUROCHAM'S ADVOCACY SERVICES



Being one of the largest foreign business associations in Vietnam, EuroCham has been 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 are committed to serving as a bridge that connects the European business community with central and provincial authorities as well as regional institutions. EuroCham engages with both local and international stakeholders at a variety of levels and through a wide range of forums. Today, the chamber is a key facilitator of enhanced cooperation and investment between the EU and Vietnam, as well as the driving force behind EU-Vietnam trade and investment cooperation.

The business environment in Vietnam has considerably improved recently. However, several constraints to business growth and potential remain, which could inhibit



Vietnam's sustainable growth and create detrimental conditions for both the local and foreign business communities.

EuroCham's core function of advocacy, dedicated to addressing unresolved issues in Vietnam's business landscape, owes its success to the commitment of our Sector Committees and diverse membership, ranging from individuals to startups and multinational corporations, all playing a significant role in improving Vietnam's business environment. We actively encourage member engagement in advocacy by providing various channels for sharing information, facilitating discussions, networking, and collectively advocating for business interests. This approach creates ample opportunities for our members to participate in chamber activities and contribute to our mission of fostering a conducive business environment in Vietnam.

SECTOR COMMITTEE	CHAIRS
Cosmetics	Ms. Tran Thi Phuong Mai; Ms. Nguyen Ngoc Tuyet Trinh
Construction	Mr. Michel Cassagnes
CropLife Vietnam	Mr. Dang Van Bao
Digital	Mr. Bruno Sivanandan; Mr. Pavel Poskakukhin
Food, Agri and Aqua Business	Mr. Jesper Clausen
Green Growth	Mr. Erik Contreras
Human Resources and Training	Mr. William Badger; Mr. Khuat Van Trung
Intellectual Property Rights	Ms. Yen Vu
International Quality Medicines – Generic and Biosimilar	Mr. Gregory Charitonos
Legal	Mr. Kent Wong
Medical Devices and Diagnostics	Mr. Qadeer Raza
Mobility	Mr. Laurent Genet
Nutritional Foods Group	Mr. Douglas Kuo
Pharma Group	Mr. Emin Turan
Sustainable Finance	Mr. Giandomenico Zappia
Taxation and Transfer Pricing	Mr. Thomas McClelland
Tourism and Hospitality	Mr. Mario Mendis
Transportation and Logistics	Mr. Juergen Weber
Wine and Spirits	Mr. Sebastien Vilmoth; Mr. Olivier Fages
Women in Business	Ms. Sarah Galeski; Ms. Zaida de Jager

EuroCham's Sector Committees, numbering 20 in total, serve as a robust advocacy platform where our diverse membership, spanning various industries, effectively engages with the Vietnamese government to address business concerns. These committees are pivotal to EuroCham's advocacy mission and have grown in both number and efficiency over the years. They encompass various functions, including discussions on shared interests, the creation of position papers guiding our Whitebook and advocacy mandate, contributions to analyses on the EU-Vietnam Free Trade Agreement (EVFTA) implementation, participation in EuroCham's meetings, advocacy events, and dialogues with government and state authorities. This comprehensive approach strengthens our ability to represent and advocate for its members. In 2023, we expanded our Sector Committees by launching two new ones: the Construction Sector Committee and the Sustainable Finance Sector Committee, further enhancing our capacity to advocate for the diverse interests of our membership across various industries.

19 In 2023, the EuroCham Advocacy Team sent 175 letters and received 253 letters from government officials¹, conducted 132 Sector Committee meetings, and held 147 meetings with government authorities, as well as many advocacy trainings, seminars, and conferences. Our members were given the opportunity to interact directly with many high-level government officials at meetings and dialogues including with the Prime Minister, the National Assembly, the Party's Central Economic Committee, the Prime Minister's Advisory Council for Administrative Procedure Reform (ACAPR), the Government Office (OOG), the Vietnam Business Forum (VBF), numerous ministries and provincial leaders, and the Vietnam Chamber of Commerce and Industry (VCCI). The meetings were held to promote the implementation of the EVFTA, raise issues outlined in our Whitebook, and assist Vietnam in developing a sustainable economy.

EuroCham has actively worked toward a green economy and sustainable development initiatives in line with the EVFTA by supporting the Vietnamese government. In our letters to the Vietnamese government, we have put forth a range of specific recommendations that encompass not only renewable energy but also broader aspects of sustainable development. These recommendations cover diverse areas, including Extended Producer Responsibility (EPR), the Power Development Plan VIII (PDP VIII), the direct power purchasing agreement (DPPA) scheme, the Just Energy Transition Partnership (JETP), all designed to foster a shared vision of the country's sustainable policy direction.

EuroCham is committed to continuing to partner with Vietnam to ensure a strong economic recovery and investment success.

The advocacy activities of EuroCham resulted in several positive outcomes in 2023:

A. BUSINESS ENVIRONMENT IMPROVEMENT

- On 24 November 2023, the National Assembly passed the amended Telecommunications Law, introducing a more "light-touch" regulatory approach for three specific areas: Over-The-Top (OTT) telecommunications services, cloud computing, and Internet Data Centers (IDC). The amendment features several significant changes:
 1. Service providers in these three categories are now exempt from certain responsibilities. This includes not having to contribute to the Public Utility Telecommunication Services Fund and being free from telecommunication operation fees.
 2. The previous requirement for these service providers to acquire a telecommunications license has been removed. Instead, they are now required to complete a more straightforward process of registration and notification.
 3. The rights and obligations of providers in these three newly defined services have been consolidated into one distinct section (Section 3 - Chapter II) of the law.

¹ The figures obtained as of December 2023.

These changes align with the recommendations and persistent engagement of the Digital Sector Committee, which contributed feedback and participated in discussions with the Drafting Committee in the Ministry of Information and Communications (MIC) throughout the regulation's drafting stage.

- On 23 August 2023, the Government promulgated Decree 65/2023/ND-CP, which provides detailed guidelines for implementing certain articles of the Law on Intellectual Property, specifically focusing on industrial property, the protection of industrial property rights, plant variety rights, and state management of intellectual property. Following this, on 30 November 2023, the Minister of Science and Technology issued Circular 23/2023/TT-BKHCN as a further guiding document. Additionally, Decree 79/2023/ND-CP was issued on 15 November 2023, to elaborate on various articles and execution measures of the Law on Intellectual Property related to plant variety rights. These legislative developments mirror the persistent advocacy efforts of the Intellectual Property Rights Sector Committee, which has been actively involved in drafting sessions and submitting letters to shape the regulatory framework guiding the amended Law on Intellectual Property.
- On 3 April 2023, the Government issued Decree 10/2023/ND-CP, which amended Article 32 of Decree 43/2014/ND-CP. This amendment introduced a new provision for the certification of ownership of non-residential building structures. As a result, properties such as condotels, officetels, and resort real estate, upon meeting all specified requirements, are now eligible to receive Land Use Rights Certificates (LURC). This regulatory change is in line with the advocacy points highlighted by the Legal Sector Committee in the Whitebook 2023.
- On 29 November 2023, the National Assembly passed a resolution with a resounding 93.5% majority of deputies in favor, to adopt the global minimum tax. This resolution is set to come into effect on 1 January 2024. This legislative move is in accordance with the continuous advocacy efforts of the Taxation and Transfer Pricing Sector Committee (TPSC) throughout 2023.

B. GREEN & SUSTAINABLE DEVELOPMENT

- On 24 June 2023, National Assembly recently passed amendments to the Law on Entry/Exit, reflecting significant changes in visa policies. This includes an extension of the visa duration for countries with visa exemption agreements to 45 days. Additionally, the duration for e-visas has been extended to 90 days. These changes are the result of prolonged engagement and advocacy efforts by the EuroCham and its Tourism & Hospitality Sector Committee.
- On 18 September 2023, Vietnam saw the issuance of Decree 70/2023/ND-CP, which significantly amended the existing Decree 152/2020/ND-CP. This new decree introduced major changes to the regulations concerning work permits and exemptions for foreign labor in Vietnam, aiming to simplify and clarify the process for both employers and foreign workers. These changes covered multiple aspects of foreign labor employment. In the lead-up to this, the Human Resources and Training Sector Committee played an active role in shaping these regulations. Key interactions included a meeting with HCMC DOLISA leaders on 20 February, co-organizing a dialogue with Human Resources and Training Sector Committee on 7 March, attending a HCMC dialogue on work permits on 6 April, and organizing a dialogue with the MOLISA on 26 May. Additionally, HRSC HR&T contributed to the legislative process by submitting various letters commenting on the draft of Decree 70. Decree 70/2023/ND-CP introduces significant changes to regulations governing work permits and work permit exemption certificates in Vietnam. These changes encompass various aspects, each of which is detailed below. These comprehensive changes in regulations and procedures aim to streamline the process for foreign labour employment in Vietnam while providing more flexibility and clarity for employers and foreign workers.



C. CONSUMER'S CHOICE

- On 28 March 2023, the Prime Minister issued Decision 300/QĐ-Ttđ, endorsing the National Action Plan for sustainable food systems to be achieved by 2030. This decision echoes the advocacy efforts of the Food and Agriculture Association of Business Sectors (FAABS). These efforts include past meetings with the Deputy Minister of the Ministry of Agriculture and Rural Development (MARD), participation in panel discussions hosted by Vietrade, and various media interviews. These interactions focused on topics such as the prospects of food exports to the EU, the influence of EU policies on Vietnam's agricultural sector, and the impact of global trends on Vietnam's agriculture.
- The Decree No. 60/2023/ND-CP, issued on 16 August 2023, addressed two key topics raised by the Mobility Sector Committee: the inspection and certification of technical safety quality and environmental protection for imported cars and components. The Mobility Sector Committee advocated for amendments in the regulations regarding technical recalls. Specifically, they suggested allowing technical recalls to be conducted at customs warehouses and proposed the potential deactivation of the Advanced Driver-Assistance Systems (ADAS). These recommendations were reflected in the newly issued Decree.

D. HEALTH AND BEAUTY

- On 16 June 2023, Vietnam's Ministry of Health announced its intention to issue a new decree regarding cosmetic management. This move is aimed at refining the legal framework governing the cosmetics industry in the country. The initiative is a culmination of discussions with the government held in 2019 and 2020, as well as persistent advocacy by the Cosmetics Sector Committee to expedite regulatory changes. These changes include eliminating the requirement for pre-approval of cosmetics advertising, currently overseen by the Ministry of Health and the Ministry of Culture, Sports and Tourism. The proposed decree is expected to supersede existing legal guidelines on cosmetic management and will incorporate provisions to remove the necessity of advertising approval, thereby harmonizing regulations across the sector.
- The revised Law on Medical Examination and Treatment was promulgated by the Vietnam National Assembly on 9 January 2023, in which borrowing instrument is regulated. This is an amazing achievement for the diagnostic industry after putting in so much effort for 5 years long.
- Decree 07/2023/ND-CP amending and supplementing a number of articles of Decree No. 98/2021/ND-CP on the management of medical equipment was issued by the Vietnam Government, which granted automatic renewal for import licenses and MA numbers until 31 December 2024 and made some changes in price listing and declaration. It helps to solve problems in importing medical devices in recent times due to expired licenses. We hope that the supply of medical devices will be resumed smoothly.
- Resolution 30/NQ-CP issued on 04 March 2023, removes some impediments to instrument placement, health insurance reimbursement and tender price for medical devices which will ease the shortage of medical supplies and interruption of testing, diagnostics and treatment at public hospitals in Vietnam.

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** At the time of publication, the Single Market Programme (SMP) countries are currently all EU member states plus Norway, Iceland, Liechtenstein, Turkey, Ukraine, North Macedonia, Kosovo and Bosnia and Herzegovina.*



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USER'S GUIDE

EuroCham's 2024 Whitebook is designed to provide a concise overview of the issues affecting European businesses in Vietnam. For each chapter, EuroCham has asked our 20 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 European business associations, an executive summary, an overview of topics per authority, one section about the EVFTA, and 24 chapters divided into five parts: seven chapters are dedicated to the business environment improvement; six chapters concerning green and sustainable development; four chapters are in the field of health and beauty; six chapters come under the heading of consumer choice; and one chapter on 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 15th edition of the EuroCham Whitebook (Whitebook) possible. The Whitebook is a collective expression of the views of EuroCham's members, represented by our 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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An aerial, top-down view of a dense forest. The image shows a thick canopy of green trees, with sunlight filtering through the leaves, creating a dappled pattern of light and shadow. The perspective is from directly above, looking down into the forest.

OVERVIEW

CONTEXTUAL INTRODUCTION

OVERVIEW

Over the past three decades, Vietnam has undergone an astonishing socioeconomic transformation. Prudent policymaking coupled with favourable demographics has positioned Vietnam as one of Asia's foremost emerging economies. Its strategic embrace of global integration, industrial upgrading, poverty alleviation investments, a dynamic private sector, and focus on human capital cultivation has paved the way for rapid, equitable and sustainable growth.

The European Union (EU) and Vietnam have cultivated a multifaceted and intricately intertwined strategic partnership anchored in robust economic and political collaboration. This relationship has substantially contributed to reciprocal growth and advancement while playing a key role in Vietnam's development trajectory. Simultaneously, it has afforded the EU a vital foothold within rapidly burgeoning Southeast Asia.

This overview chapter sets the stage by outlining Vietnam's progressive transition from an agriculture-based economy to an increasingly modern, diversified and internationally integrated industrialising economy. It summarises key socioeconomic achievements, including surging trade and investment flows with Europe and globally. Vietnam's success in forging a strategic partnership with the EU is underscored, with deepening economic and political collaboration centred around trade, aid, sustainability initiatives and more.

VIETNAM'S ECONOMIC TRANSFORMATION: THREE DECADES OF PROGRESS AND GROWTH

Over the past three decades, Vietnam has undergone an astonishing economic transformation set in motion by the Doi Moi reforms initiated in 1986. The Doi Moi reforms, meaning "renovation" or "innovation" in Vietnamese, introduced a series of bold measures aimed at liberalising the economy, encouraging foreign investment, and fostering private enterprise. These measures included decentralising economic decision-making and removing barriers to trade and investment. The impact of these reforms was swift and profound and has firmly situated Vietnam as one of the world's fastest-growing economies.

The linchpin of Vietnam's transformation has been robust economic expansion. Since Doi Moi, Vietnam has consistently achieved remarkable growth rates, exceeding 9 per cent annually prior to the 1997 Asian financial crisis and over 8 per cent before the late-2000s Great Recession.¹ Most recently, it emerged as Asia's top economic growth performer in 2022 following consecutive years of resilient growth despite the COVID-19 pandemic.² Consequently, Vietnam's GDP per capita phenomenally has surged from a modest US\$363 in 1999 to US\$4,163 by 2022.³

Bolstering economic growth—the most potent engine of poverty alleviation—has dramatically improved the wellbeing of the Vietnamese people. The percentage of Vietnamese living below the poverty line precipitously plunged from 45.1 per cent in 1993 to a mere 0.7 per cent by 2020.⁴ As extreme poverty reaches near-zero levels, around 18 per cent of Vietnamese have transitioned into the global middle class.⁵

Vietnam's remarkable progress in infrastructure and social welfare has paralleled its poverty reduction efforts.

1 Tarp, Finn, and Abbott, Philip C. (2011). Globalization Crises, Trade, and Development in Vietnam. *Journal of International Commerce, Economics and Policy* (JICEP), 03(01), 1240006-1. UNU-WIDER working paper 03/2011; 2011/20.

2 Vietnam's Economic Moment Has Arrived - Financial Times. Accessed here: <https://www.ft.com/content/fa1db5ce-8f65-4b28-ab6d-b78730f98195>. Published on 9 July 2023. Last accessed on 27 November 2023.

3 GDP per capita (current US\$) - Viet Nam. Accessed here: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=VN>. Last accessed on 22 November 2023.

4 World Bank. (2022). From the Last Mile to the Next Mile – 2022 Vietnam Poverty & Equity Assessment. Washington, DC.

5 The Next Stage of Vietnam's Development Journey. Accessed here < <https://blogs.worldbank.org/eastasiapacific/next-stage-vietnams-development-journey>>. Last accessed on 22 November 2023.

From a mere 14 per cent household electricity connectivity in 1993, the nation now boasts nearly universal access⁶, along with significant improvements in water access (from 65 per cent in 2000 to 95 per cent in 2017), and basic sanitation (from 52 per cent to 84 per cent).⁷ These advancements have notably enhanced public health, evidenced by a halving of the infant mortality rate from 32.6 to 16.7 per 1,000 live births between 1993 and 2020, and a 5-year increase in life expectancy since 1990.⁸

Health and living standards have surged alongside educational achievements. Praised for its excellence and equitable education system by the Economist, Vietnam has seen its students excel in international assessments, reflecting the effective use of social welfare policies to cultivate human capital across all societal segments.⁹

Economically, Vietnam has strategically shifted from agriculture-based economy to a diversified one focused on manufacturing, services, technology, and telecommunications. This transition, with agriculture's GDP contribution plummeting from 39 per cent in 1990 to 15 per cent in 2020¹⁰, has bolstered resilience against external shocks, generated employment, increased incomes, and elevated Vietnam into the middle-income economic bracket.

Vietnam's remarkable ascent as a regional economic force has therefore drastically recalibrated global perceptions of its growth potential. While rightly celebrating its achievements, Vietnam continually grapples with balancing rapid industrialisation and environmental sustainability—an enduring challenge key to sustaining future equitable growth.

VIETNAM'S FDI SUCCESS STORY: REFORMS, DEMOGRAPHICS, AND GROWTH

After 35 years of opening its door to foreign investments, Vietnam achieved a grandeur feast in attracting more than US\$500 billion of FDI and more than half of large enterprises in Vietnam has FDI. Vietnam's emergence as an increasingly attractive FDI destination is markedly defined by extensive post-World Trade Organisation (WTO) accession reforms. Since joining the WTO in 2007, Vietnam has implemented substantive legal realignments, harmonising its legislative and regulatory regimes with international norms to cultivate a propitious business climate and augment its appeal to foreign enterprises and investors.

Eager to entice foreign investors, Vietnam has also furnished a vast selection of incentives, including preferential tax rates and exemptions. For instance, the government extends substantial corporate income tax concessions to high-technology ventures and projects with major socioeconomic impacts. High-technology companies also enjoy import duty waivers on unproduced domestic goods like fixed assets and raw materials, accentuating Vietnam's commitment to upholding an accommodating investment landscape for global businesses.¹¹

At the same time, Vietnam's active participation in international trade agreements has considerably enhanced its investment destination appeal. With 16 ratified free trade agreements (FTAs), including pacts with several major markets such as the EU, ASEAN, Australia, China, India, Japan, Singapore, South Korea, the UK and more, coupled with three additional FTAs under negotiation, Vietnam has secured broader market access and integrated supply chains for investors.¹²

Favourable demographics additionally impel expansion. With a median age of just 33 years, Vietnam currently possesses a dynamic, youthful workforce able to energetically drive development for years to come; an opportune

6 The Next Stage of Vietnam's Development Journey. Accessed here <<https://blogs.worldbank.org/eastasiapacific/next-stage-vietnams-development-journey>>. Last accessed on 22 November 2023.

7 Water, sanitation and hygiene in Vietnam. Available at <https://www.unicef.org/vietnam/reports/water-sanitation-and-hygiene-vietnam#:~:text=Highlights,cent%20during%20the%20same%20period>, last accessed on 5 August 2022.

8 Vietnam Overview. Accessed here <<https://www.worldbank.org/en/country/vietnam/overview>>. Last accessed on 27 November 2023.

9 Why are Vietnam's schools so good? Accessed here <<https://www.economist.com/asia/2023/06/29/why-are-vietnams-schools-so-good>>. Last accessed on 21 November 2023.

10 Economic Indicators and Vietnam's GDP, FDI, and Trade Trends. Accessed here <<https://www.vietnam-briefing.com/doing-business-guide/vietnam/why-vietnam/economic-indicators-and-vietnam-s-gdp-fdi-and-trade-trend>> Last accessed on 22 November 2023.

11 Vietnam Unveils New Criteria for Hi-tech Enterprises: Decision 10. Accessed here <<https://www.vietnam-briefing.com/news/vietnam-unveils-new-criteria-hi-tech-enterprises-decision-10.html#:~:text=%23%23%20Tax%20incentives%20for%20hi,tech%20enterprises>>. Last accessed on 22 November 2023.

12 Vietnam Unveils New Criteria for Hi-tech Enterprises: Decision 10. Accessed here <<https://www.vietnam-briefing.com/news/vietnam-unveils-new-criteria-hi-tech-enterprises-decision-10.html>>. Last accessed on 22 November 2023.

moment for the country to capitalise on this golden population structure.¹³

The intersection of this burgeoning workforce with consistent economic growth has precipitated the rapid emergence of Vietnam's middle class. As income levels rise and more individuals enter the consuming class, purchasing power and consumer expenditure are markedly escalating. Over the next decade, around 36 million additional Vietnamese consumers are expected to join the country's consuming class - defined as those expending a minimum of US\$11 daily in purchasing power parity terms. Considering less than 10 per cent of Vietnam's population belonged to this category in 2000, whereas it presently stands at 40 per cent with projections of potentially reaching 75 per cent by 2030, this constitutes a monumental shift.¹⁴ This ongoing trend will likely stimulate key sector growth like services, real estate and retail, paving the way for new economic opportunities in urban centres.

Concurrent rapid urbanisation heralds further possibilities as Vietnam's urban populace is predicted to expand by 10 million within a decade. Analysts anticipate these urban hubs spearheading 90 per cent of national consumption growth in coming years, permeating beyond established epicentres like Hanoi and Ho Chi Minh City into burgeoning municipalities where middle classes are crystallising.¹⁵

The alignment of strategic policymaking and propitious demographic transformations has yielded tangible outcomes. Despite wrestling with formidable global economic adversity, Vietnam's economy has flourished in recent years. A striking manifestation of this resilience transpired in 2021 amidst the COVID-19 pandemic. Through adroit governance and advantageous demographic terrain, Vietnam effectively navigated the crisis and achieved an impressive 2.58 per cent GDP growth rate that year, positioning it among just three regional economies registering expansion amid such tumultuous conditions.¹⁶ Looking ahead, projections remain equally promising, with the Asian Development Bank forecasting further acceleration to between 6.2 per cent and 6.8 per cent GDP growth in 2024.¹⁷

Vietnam's dexterous external challenge response and sustained economic growth enabled by its sound governance and favourable demographics has elicited escalating international recognition. Specifically, Vietnam has attained remarkable progress in the Economist Intelligence Unit's rankings, vaulting 12 places from Q2 2022 to Q2 2023 and eclipsing Asian peers.¹⁸ This positive trajectory aligns with EuroCham's Q3 2023 Business Confidence Index demonstrating 63 per cent of the European business community in Vietnam placing the country among their top ten global FDI destinations. More strikingly, 31 per cent ranked Vietnam among their top three investment targets, with 16 per cent deeming it their foremost destination. This elevated confidence translates into tangible commitments, with over half the respondents planning to expand investments in Vietnam before year-end.¹⁹

Building on this momentum, the Vietnamese Government's commitment to nurturing a pro-free trade climate is coming to fruition. The Ministry of Planning and Investment's 2022 year-end FDI data testifies to sustained international interest and confidence despite a minor dip in new registrations, with reported totals approaching US\$27.72 billion and realised capital rising to US\$22.4 billion.²⁰

As Vietnam increasingly prioritises sustainable development, green investment avenues are emerging in realms like renewable energy, eco-friendly infrastructure and sustainable agriculture. This aligns with the global sustainability drive and presents unique prospects for investors to contribute to and harness green initiatives.

13 The New Faces of the Vietnamese Consumer. McKinsey & Company. Accessed here <<https://www.mckinsey.com/featured-insights/future-of-asia/the-new-faces-of-the-vietnamese-consumer>>. Last accessed on 27 November 2023.

14 The New Faces of the Vietnamese Consumer. McKinsey & Company. Accessed here <<https://www.mckinsey.com/featured-insights/future-of-asia/the-new-faces-of-the-vietnamese-consumer>>. Last accessed on 27 November 2023.

15 Delteil, Bruce, et al. "The New Faces of the Vietnamese Consumer." McKinsey & Company, 7 Dec. 2021. Accessed here <www.mckinsey.com/featured-insights/future-of-asia/the-new-faces-of-the-vietnamese-consumer>. Accessed 27 Nov. 2023.

16 The World Bank in Vietnam. Available at <<https://www.worldbank.org/en/country/vietnam/overview>>. Last accessed on 5 August 2022.

17 ADB lowers Viet Nam's 2023 GDP growth to 5.8%. Available at <<https://en.baohinhphu.vn/adb-lowers-viet-nams-2023-gdp-growth-to-58-111230720101542566.htm#:~:text=ADB%20lowers%20Viet%20Nam's%202023%20GDP%20growth%20to%205.8%25>>>. Last accessed on 20 November 2023.

18 "Assessing the Best Countries for Doing Business." Economist Intelligence Unit (EIU), The Economist, 2023, pages.eiu.com/rs/753-RIQ-438/images/Business-environment-report.pdf.

19 "Vietnam's Business Landscape is Brightening, Says EuroCham's Q3 Business Confidence Index." European Chamber of Commerce in Vietnam, <https://eurocham.vn.org/vi/vietnams-business-landscape-is-brightening-says-eurochams-q3-business-confidence-index/>. Accessed 23 November 2023.

20 Report on foreign direct investment in 2022. Available at <<https://www.mpi.gov.vn/en/Pages/2022/Report-on-foreign-direct-investment-in-2022-403479.aspx>>. Last accessed on 20 November 2023.

THE VIETNAM - EUROPEAN UNION RELATIONSHIP

In 1990, as Vietnam embarked on the formative stages of its ambitious Doi Moi slate of economic liberalisation policies, the nation arrived at a critical juncture. The Doi Moi reforms constituted a bold endeavour to integrate Vietnam into the global economy. Within this unfolding narrative, establishing diplomatic ties with the European Union emerged as a prudent, forward-looking manoeuvre. Concurrently, the European Union was avidly exploring Southeast Asia – a region rapidly ascending as a pivotal global economic anchor.

Amidst this strategic geopolitical landscape, Vietnam occupied a vital position brimming with immense potential for exponential economic growth and prosperity. It was against this promising backdrop that the European Union, propelled by its broader foreign policy objectives, sought profound engagement with Vietnam. The convergence of Vietnam's aspirations for economic transformation and the EU's regional aspirations catalysed a compelling partnership.

The 1990 formalisation of diplomatic relations served as the cornerstone for a multifaceted Vietnam-EU collaboration encompassing robust trade, investment, and cooperation across sundry domains.

In the early stages, the EU's role in Vietnam was chiefly as a developmental aid and capacity-building provider. The EU contributed extensively across various sectors, including healthcare and rural development – laying crucial groundwork for the relationship's subsequent evolution.

As the new millennium dawned, Vietnam-EU ties witnessed a major shift, pivoting from developmental assistance towards a vibrant trade and investment partnership. This transformation has helped the EU become one of Vietnam's most significant trading partners, heralding a new chapter in bilateral relations.

Vietnam's 2007 accession into the WTO, with staunch EU support, constituted a defining inflection point in this blossoming affiliation. This accession was a manifestation of shared commitments to free trade, playing an instrumental role in Vietnam's deeper global economic integration.

By 2010, the partnership's impact was clearly discernible. Substantially amplified EU-Vietnam trade encompassed European imports of diverse Vietnamese goods like textiles, footwear and agricultural produce – marking a watershed in relations now characterised by heightened economic interconnectedness and mutual benefits. By 2012, total trade turnover between Vietnam and the EU reached approximately €20.8 billion. This upward trajectory persisted unabated, with figures soaring to an impressive €64.3 billion in 2022.²¹

Political and diplomatic dimensions also progressively deepened over time, evidenced by high-level visits and strategic dialogues between EU institutions and Vietnamese counterparts. A prime example was former European Commission President José Manuel Barroso's milestone 2014 Vietnam visit.

More recent engagements centred around environmental and economic collaboration. In 2022, European Commissioner Virginijus Sinkevičius attended Vietnam's EuroCham Green Economy Forum and Exhibition (GEFE) – highlighting escalating focus on sustainability and green economic initiatives per both entities' objectives. Additionally, in 2023, European Commission Executive Vice-President Valdis Dombrovskis participated in Vietnam's EuroCham Green Economy Forum (GEF). His involvement in this significant event further underscored the EU's commitment to supporting Vietnam's green transition, showcasing an increasingly sustainability-oriented partnership mirroring their shared values and strategic vision.

Bolstered by its strategic location, stable growth, competitive costs, resilient pandemic response and investment-friendly policies, Vietnam has emerged as an appealing destination for EU firms seeking post-COVID supply chain diversification. Ongoing infrastructure upgrading and trade pacts like the EU-Vietnam Free Trade Agreement have additionally amplified its attraction. With political stability and a burgeoning consumer market, Vietnam proffers a compelling package for EU companies looking to reinforce supply chain operations.

Today, the Vietnam-EU relationship stands as a paradigm of international cooperation – transcending traditional

²¹ "Vietnam - Trade." European Commission, European Union. Accessed here <webgate.ec.europa.eu/isdb_results/factsheets/country/details_vietnam_en.pdf> Last accessed on 27 November 2023.

economic collaboration to include political, environmental and social dimensions. As both parties navigate 21st century global complexities, their partnership continues adapting, guided jointly by a vision for a prosperous, sustainable and equitable future.

RECENT EU-VIETNAM TRADE AND INVESTMENT DYNAMICS

Vietnam's trade with the EU has witnessed momentous expansion following the EU-Vietnam Free Trade Agreement's (EVFTA) 2020 implementation. This landmark deal has sparked substantial bilateral trade and investment intensification.

Between 2020 and 2021, Vietnam's exports to the EU markedly outpaced its non-EU export growth, surging 34.4 per cent compared to 25.4 per cent elsewhere.²² This spike precipitated a 14.2 per cent Vietnamese export swell to the EU, reaching US\$45.8 billion in 2021 – indicating manufacturing diversification and advancement.²³ By 2021, EU imports from Vietnam totalled €38.5 billion, further climbing 33.9 per cent in 2022 to €51.6 billion. Meanwhile, EU exports to Vietnam also demonstrated robust expansion – rising from €10.7 billion in 2021 to approximately €12.7 billion in 2022, marking a 19.3 per cent upturn.²⁴

2022 trade volumes reflected the resilience and expansion of EU-Vietnam exchange, with total trade turnover hitting €64 billion – a major 30.8 per cent year-on-year leap.²⁵ As of the end of 2022, Vietnam constituted the EU's 31st largest export market (0.5 per cent of total EU exports) and 11th largest import source (1.7 per cent of total EU imports), while capturing 16th place in overall EU trade turnover. Concurrently, the EU represented Vietnam's 5th largest importer, 3rd largest exporter and 4th overall trade partner. This reciprocal trade growth signifies deepening Vietnam-EU economic interdependence.²⁶

In 2022, machinery and appliances emerged as Europe's prime Vietnamese import category at €22.5 billion (43.6 per cent of Vietnam's exports to the EU), followed by footwear at €6.2 billion and textiles at €5.2 billion. Key EU exports to Vietnam included chemicals (€4.2 billion), machinery (€3 billion) and transport equipment (€765 million) – showcasing complementary bilateral supply-demand dynamics spurring greater exchange.²⁷

Diverse European interest in Vietnamese goods is evident, with the Netherlands, Germany and Italy leading EU imports from Vietnam – reflecting Vietnamese products' broad European appeal. Reciprocally, top EU exporters to Vietnam included Germany, Belgium and the Netherlands – underlining robust two-way trade ties.²⁸

22 "Archive:Vietnam-EU - International Trade in Goods Statistics" Eurostat - Statistics Explained, European Commission. Accessed here <ec.europa.eu/eurostat/statistics-explained/index.php?title=Archive:Vietnam-EU_-_international_trade_in_goods_statistics>. Last accessed on 24 November 2023.

23 "Vietnam-EU Trade Increases 14.8 Percent in 2021." Ministry of Industry and Trade of Vietnam. Accessed here <moit.gov.vn/en/news/agency-releases/vietnam-eu-trade-increases-14-8-percent-in-2021-87191.html>. Last accessed on 24 November 2023.

24 "Vietnam - Trade." European Commission, European Union. Accessed here <webgate.ec.europa.eu/isdb_results/factsheets/country/details_vietnam_en.pdf> Last accessed on 27 November 2023.

25 "Vietnam - Trade." European Commission, European Union. Accessed here <webgate.ec.europa.eu/isdb_results/factsheets/country/details_vietnam_en.pdf> Last accessed on 27 November 2023.

26 "Vietnam - Trade." European Commission, European Union. Accessed here <webgate.ec.europa.eu/isdb_results/factsheets/country/details_vietnam_en.pdf> Last accessed on 27 November 2023.

27 "Vietnam - Trade." European Commission, European Union. Accessed here <webgate.ec.europa.eu/isdb_results/factsheets/country/details_vietnam_en.pdf> Last accessed on 27 November 2023.

28 Eurostat. (2022). EU trade with Vietnam - 2022. Accessed here <https://ec.europa.eu/eurostat/statistics-explained/images/f/f0/EU_trade_with_Vietnam2022.xlsx>. Last accessed on 27 November 2023.

Figure 1: EU imports of goods from Vietnam, 2022

	€ million	% of Vietnam in extra EU imports	
Netherlands	10,846	2.1	
Germany	10,554	1.8	
Italy	4,857	1.5	
France	4,401	1.5	
Belgium	3,667	1.5	
Spain	3,113	1.3	
Austria	2,710	4.9	
Poland	2,206	1.7	
Sweden	1,605	2.3	
Slovakia	1,584	6.4	
Czechia	1,224	1.9	
Hungary	992	2.0	
Ireland	598	0.7	
Denmark	556	1.4	
Portugal	539	1.6	
Romania	360	1.0	
Greece	355	0.7	
Finland	263	0.8	
Latvia	248	4.0	
Bulgaria	168	0.7	
Slovenia	148	0.5	
Luxembourg	120	4.8	
Lithuania	67	0.3	
Cyprus	52	1.1	
Estonia	49	0.9	
Croatia	49	0.4	
Malta	7	0.2	

Source: Eurostat and Comext

Figure 2: EU exports of goods to Vietnam, 2022

	€ million	% of Vietnam in extra EU exports	
Germany	3,411	0.5	
Belgium	2,441	1.3	
Netherlands	1,373	0.5	
Italy	1,359	0.5	
France	1,161	0.4	
Spain	525	0.4	
Poland	461	0.5	
Finland	429	1.2	
Denmark	250	0.4	
Austria	226	0.4	
Sweden	224	0.3	
Ireland	159	0.1	
Hungary	109	0.3	
Czechia	96	0.2	
Slovenia	64	0.3	
Romania	57	0.2	
Luxembourg	50	1.6	
Greece	50	0.2	
Bulgaria	49	0.3	
Lithuania	47	0.3	
Portugal	43	0.2	
Slovenia	30	0.1	
Croatia	29	0.4	
Cyprus	22	0.7	
Latvia	20	0.3	
Estonia	13	0.2	
Malta	2	0.1	

Source: Eurostat and Comext

A notable trade relationship development is the burgeoning deficit – rising from €11 billion in 2012 to 28 billion in 2021, further expanding to €39 billion by 2022. While indicating escalating European demand for Vietnamese goods, this also signals areas for future rebalancing and growth prospects.²⁹

²⁹ Eurostat. (2022). EU trade with Vietnam2022 [Data file]. Accessed here <https://ec.europa.eu/eurostat/statistics-explained/images/f/f0/EU_trade_with_Vietnam2022.xlsx>. Last accessed on 27 November 2023.

Figure 3: EU trade balance of goods with Vietnam, 2022

	€ million
Finland	166
Malta	-6
Lithuania	-20
Croatia	-20
Cyprus	-30
Estonia	-37
Luxembourg	-71
Slovenia	-84
Bulgaria	-119
Latvia	-227
Romania	-303
Denmark	-305
Greece	-305
Ireland	-439
Portugal	-496
Hungary	-883
Czechia	-1,128
Belgium	-1,227
Sweden	-1,381
Slovakia	-1,555
Poland	-1,745
Austria	-2,484
Spain	-2,587
France	-3,240
Italy	-3,498
Germany	-7,143
Netherlands	-9,473

Source: Eurostat and Comext

The EVFTA has heralded a new epoch of Vietnam-EU economic symbiosis and interdependence, with substantially amplified, diversified trade volumes reflecting deepening strategic ties. With Vietnam's ascent as a preeminent EU import market player and pivotal bloc supply chain entity, this relationship's dynamics are poised to shape future trade patterns. Moreover, addressing the expanding trade deficit can open balance and growth opportunities as both economies thrive in an increasingly connected global landscape.

Mirroring supply chain diversification and sustainability prioritisation strategies, many foreign retailers have selected Vietnam as a strategic global supply chain hub. Since the EVFTA, EU investors have committed over US\$26 billion into nearly 2,250 Vietnamese projects. Denmark's LEGO Group, for instance, received approval to invest over US\$1 billion in a carbon-neutral Vietnamese factory,³⁰ while Germany's Adidas has 51 local suppliers with over 190,000 employees – epitomising surging EU corporate presence as economies integrate.³¹

EuroCham's Business Confidence Index survey confirmed this uptrend, with 31 per cent of members ranking Vietnam among their top three global investment destinations and over half planning 2023 Vietnamese investment boosts – especially in high-tech manufacturing.³² This investment boom highlights FTAs' effectiveness in attracting high-quality, sustainable FDI and cementing Vietnam as a strategic destination.

To date, the EU constitutes Vietnam's 6th largest foreign investor with over US\$27.8 billion injected into 2,450 projects in the past three decades, above 60 per cent in manufacturing.³³

As consumers increasingly favour eco-friendly products amidst the global green transition, firms are professionally prioritising green logistics. However, Vietnam faces barriers in aligning with the EU's green supply chain focus, including enforcing more stringent environmental standards and regulations. Additionally, green technology adoption necessitates immense investments, while ensuring transparent, sustainable sourcing from local suppliers can prove challenging. Improving logistics, infrastructure and skills, plus raising consumer sustainable product awareness, pose significant hurdles. Overcoming these will position Vietnam at the forefront of European green supply chain development.

30 "LEGO building its 1st carbon-neutral plant in Binh Duong – Why Vietnam?" Accessed here <<https://tuoitrenews.vn/news/business/20220501/lego-building-its-1st-carbonneutral-plant-in-binh-duong-why-vietnam/66913.html>>. Last accessed on 27 November 2023.

31 "Where are Adidas' Factories Located in Vietnam?" Accessed here <<https://www.vietnam-briefing.com/news/where-adidas-footwear-and-apparel-is-made-in-vietnam.html>>. Last accessed on 27 November 2023.

32 "Vietnam's Business Landscape is Brightening, Says EuroCham's Q3 Business Confidence Index." European Chamber of Commerce in Vietnam, <https://eurochamvn.org/vi/vietnams-business-landscape-is-brightening-says-eurochams-q3-business-confidence-index/>. Last accessed on 23 November 2023.

33 "The European Union and Vietnam" Accessed here <https://www.eas.europa.eu/vietnam/the-eu-and-vietnam_en?s=184>. Last accessed on 27 November 2023.

STRENGTHENING EU-VIETNAM ECONOMIC RELATIONS: EUROCHAM'S ROLE IN ADVANCING THE EVFTA

The EVFTA's 2020 enactment constituted a watershed in EU-Vietnam economic relations. Transcending tariff elimination, the EVFTA stimulates trade and investment by eliminating close to all tariffs, reducing regulatory barriers and bureaucratic red tape, protecting geographical indications, and providing additional opportunities in services and public procurement markets. This fosters an environment conducive to mutual growth and development.

Importantly, the EVFTA emphasises sustainable development, labour standards and responsible practises, ensuring economic benefits are realised without compromising social and environmental values. This enables both parties to responsibly tackle global economic challenges.

The EVFTA also establishes a new international trade agreement benchmark with its comprehensive scope, regulatory alignment focus and integral sustainable development components.

Moreover, the EVFTA's comprehensive market access coverage is complemented by the EU-Vietnam Investment Protection Agreement (EVIPA). Once fully ratified, the EVIPA will include modern investment protection rules enforceable through the novel Investment Court System, while preserving the right of governments on both sides to regulate in their citizens' interest. The EVIPA will replace the 21 existing bilateral investment agreements between individual EU Member States and Vietnam.

EuroCham plays a pivotal role in advancing EVFTA implementation through collaboration with key stakeholders. We actively engage with EU institutions, the EU Delegation to Vietnam and the Vietnamese government to realise the agreement's potential. Our partnership with the European Parliament's Committee on International Trade (INTA) Monitoring Group enables us to provide invaluable insights into the practical application of the EVFTA.

In collaboration with governmental agencies like the Ministry of Industry and Trade, the Ministry of Agriculture and Rural Development, the Ministry of Finance, the Ministry of Transport, and the Ministry of Science and Technology, EuroCham provides expert guidance on EU standards and requirements, particularly concerning Vietnamese exports. This collaborative effort aids in aligning legal frameworks with the EVFTA and underscores EuroCham's dedication to the interests of both Vietnamese and European businesses. Additionally, we assist Vietnamese provinces and industry associations in promoting their products within EU markets.

Furthermore, EuroCham offers comprehensive training and support to its members in areas such as customs procedures, tax compliance, Harmonised Commodity Description and Coding System (HS Codes), and rules of origin, demonstrating our commitment to ensuring smooth trade relations.

EuroCham actively contributes to the EVFTA's Trade Committee and its specialised committees, evaluating the agreement's implementation in areas such as investment, trade in services, electronic commerce, and government procurement.

EuroCham serves as a vital bridge between Vietnam and the EU, facilitating essential exchanges of information and coordination, particularly in amending and supplementing legislative documents necessary for the EVFTA's effective implementation.

Our commitment extends to supporting the European business community's efforts to enhance the competitiveness of Vietnamese businesses, especially SMEs, by promoting the application of science and technology, advancing manufacturing, aiding supply chain development, and contributing to human capital development in areas such as technology, legal, and insurance sectors.

In conclusion, EuroCham's commitment to the full implementation of the EVFTA encompasses the development of institutions, policies, and legal frameworks, aiming to improve Vietnam's trade and investment environment while maximising the opportunities presented by this landmark agreement for both Vietnamese and European business communities. The EVFTA, with EuroCham's dedicated involvement, sets a precedent for responsible and comprehensive international trade agreements that benefit all parties involved.

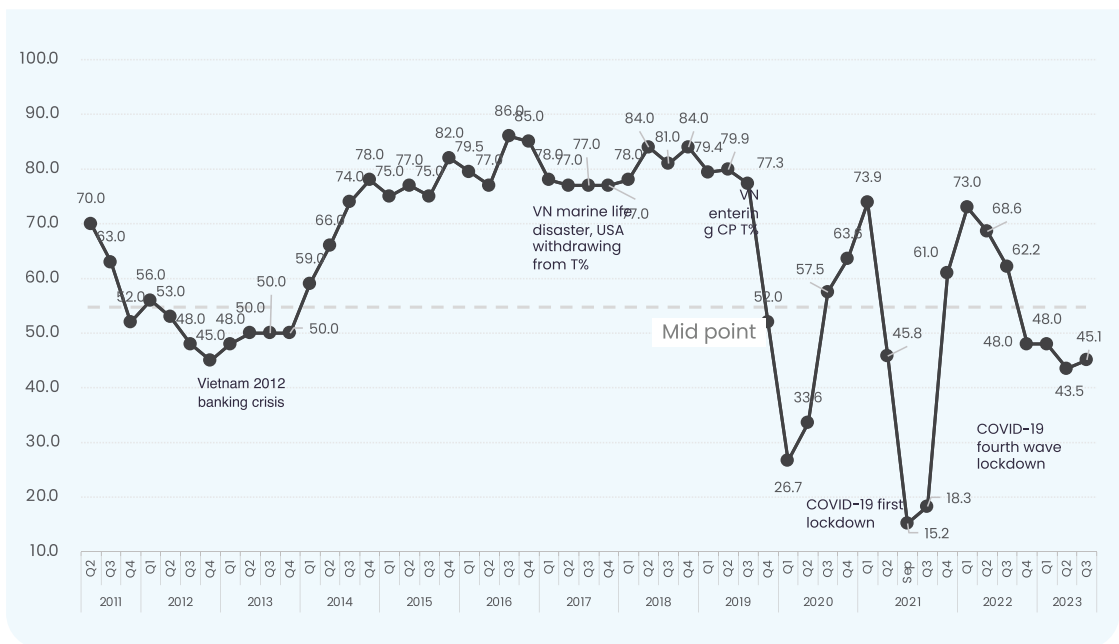
EXECUTIVE SUMMARY

OVERVIEW OF VIETNAM'S BUSINESS CLIMATE

The quarterly Business Confidence Index (BCI), which is conducted by Decision Lab, serves as a vital tool for understanding the perceptions of European and Europe-related companies and investors in the Vietnamese market. Conducted since 2011, the BCI collects feedback from EuroCham Vietnam's extensive network of 1,400 members across a diverse range of sectors. This survey provides valuable insights into the current business landscape in Vietnam and offers a glimpse into future expectations.

Decision-makers, media, and business professionals see the BCI as a key indicator of economic activity in the country. It is a trusted source of information on the business environment in Vietnam, and its findings are widely used to inform government policies and investment decisions.

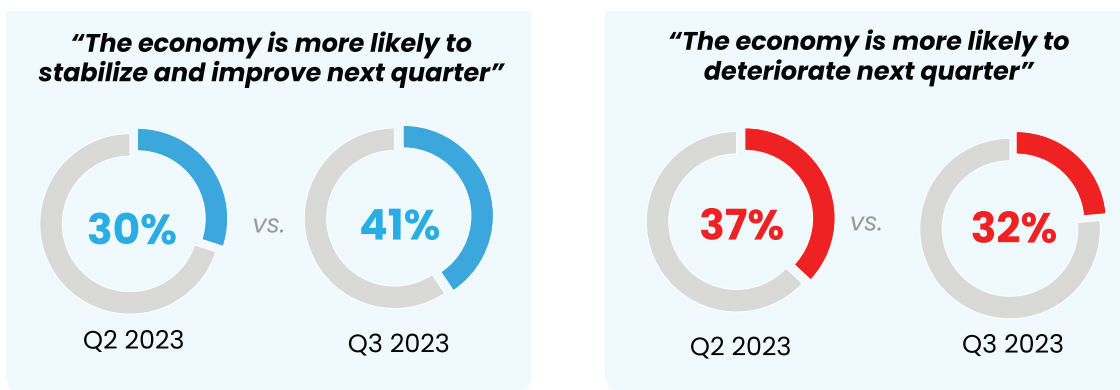
Figure 4: EuroCham Business Climate Index



EuroCham Business Confidence Index: Quarter 3, 2023

The BCI regained its upward trajectory in Q3 2023, offering a glimmer of hope for the Vietnamese business environment after a turbulent 2023. The metric nudged up to 45.1 in Q3 2023, from 43.5 the previous quarter. While still below the 50-point threshold for four straight quarters, this small rise indicates emerging positive economic momentum.

Between Q2 and Q3, there was a three per cent drop in pessimism regarding the current situation, while positive and neutral perspectives increased by six and four per cent respectively. Furthermore, the Q3 survey revealed a shift in projections for the quarter to come. Compared to responses in the Q2 survey, there was an 11 per cent rise in businesses anticipating economic stabilisation and growth for the upcoming quarter. On the other hand, businesses projecting a negative trend were reduced by five per cent.



Approaching year-end, hope and caution persisted in Q3 2023. Though Vietnam's Q3 GDP grew a promising 5.3 per cent year-on-year, companies continue to be cautious. Expectations regarding increased revenue or orders remained stable, with no change from the previous quarter. Just 22 per cent of companies plan to expand their teams in Q4. Only 16 per cent expect an increase in investments.

Vietnam's global investment appeal remains strong. A notable 63 per cent of surveyed businesses positioned Vietnam within their top 10 FDI destinations. Even more striking, 31 per cent ranked Vietnam among their top three, while an impressive 16 per cent hailed it as their foremost investment destination. Reflecting this confidence, over half of those surveyed plan to increase their foreign direct investment in Vietnam by the end of the year.

Yet hurdles persist. A substantial 59 per cent cited administrative difficulties as their main challenge when operating in Vietnam. Challenges such as uncertainties in rules and regulations, hurdles in permit acquisition, and strict visa and work permit requirements for foreign workers also stood out as prominent barriers.

To improve the nation's FDI attraction, 58 per cent of respondents said streamlining bureaucracy is key, 48 per cent advocated for enhancing the regulatory environment, one-third called for upgrading transport infrastructure, and 22 per cent emphasised easing visa and work permit requirements for foreign experts.

Sustainability is rising as a priority for European companies in Vietnam, with 80 per cent citing ESG alignment as highly or moderately important.

However, major obstacles remain when translating priorities into practise. Regulatory uncertainty, infrastructure gaps, and insufficient government support were cited as hindrances to implementing sustainability measures locally.

Additionally, only 20 per cent of firms are proactively preparing for impending EU green regulations, such as the Carbon Border Adjustment Mechanism (CBAM). Meanwhile, 38 per cent currently have no plans for alignment. This distinct lack of preparedness not only poses challenges domestically but can hinder international competitiveness, especially in the crucial EU market.

Over three years since its implementation, the EU-Vietnam Free Trade Agreement (EVFTA) continues to significantly benefit Vietnam's business environment. A substantial majority of companies, over 60 per cent, have found the agreement advantageous, primarily due to tariff reductions. This is followed by benefits such as improved competitiveness within Vietnam, diminished trade barriers, broader partnerships with local businesses, and increased access to the Vietnamese market.

Despite these advantages, the agreement faces several challenges that limit its full potential. Issues like discrepancies in customs valuations for imports, opaque and lengthy customs clearance processes, technical trade barriers, and a general uncertainty or lack of clarity about the agreement's details act as significant impediments.

Insights from earlier reports, like the Q2 2023 edition, further illuminate the concerns of the European business

community in Vietnam. A notable point of concern is Vietnam's infrastructure, which 53 per cent of European business leaders deemed "very inadequate" or "lagging behind". The Vietnamese Government has responded to this challenge by prioritising the development of key infrastructure projects, with a particular emphasis on improving highway networks.

The same Q2 2023 report sheds light on the trend of relocating operations from China to Vietnam. It reveals a subdued inclination towards such relocations, with the majority (81 per cent) of companies not having moved any operations to Vietnam. Only a small fraction is considering or planning to make such moves.

The report also indicates a limited awareness of the Carbon Border Adjustment Mechanism (CBAM) among businesses, with 27 per cent acknowledging it. Yet, only 43 per cent see CBAM as relevant to their operations. The primary challenges associated with CBAM include navigating compliance requirements, bureaucratic hurdles, and adapting business processes. These factors underscore the complexity and challenges that European companies in Vietnam face in staying aligned with evolving international trade regulations and environmental policies.

SUMMARY OF KEY ISSUES AND RECOMMENDATIONS

PART 1: BUSINESS ENVIRONMENT IMPROVEMENT

1.1 Digital

a. Cybersecurity regulations and Digital economy regulation

Cybersecurity regulations

- (i) Clarify which entities fall under data localisation and local office requirements. While Decree 53 states that all domestic enterprises are subject to local storage, it is noted that the Cybersecurity Law requires this of domestic providers of "telecommunications services, internet services, and value-added services in Vietnam cyberspace". Therefore, clarification is needed on this point. In addition, the plain language of Decree 53 is unclear as to whether a local branch of an offshore company will be deemed a domestic enterprise, so clarification in the form of official written guidance is still needed in this regard as well for clear and consistent implementation. In the case of foreign enterprises, the data localisation and local office requirements are applicable only when they provide regulated service(s) (e.g., telecommunications services, data storage in cyberspace, e-commerce, online payment, payment intermediaries, etc.), but the level of involvement in said regulated services is not specifically provided for in Decree 53;
- (ii) Ensure consistency across regulations. For example, in the banking industry, the SBV enables foreign branches to host and process users' data abroad, in their headquarters. However, Decree 53's data localization provisions and the Personal Data Protection (PDP) Decree's cross-border data transfer rules may create conflict with other existing regulations. At present, therefore, there is a risk that companies, especially foreign enterprises, are experiencing difficulties in their compliance efforts;
- (iii) Provide a clear process to enable cross-border data transfer when needed. At the moment, the plain language of both Decree 53 and the PDP Decree is unclear as to whether keeping a copy of the data in Vietnam, while sending data abroad, is compliant or not. Therefore, clarification in the form of official written guidance is needed for compliance purposes because international companies must send data to their headquarters in the process of their operations.

Digital economy regulations

- (i) Ensure compatibility between Vietnam and the EU with regards to Article 45 of the EU GDPR transfers based on an adequacy decision including a concrete timeline and action list;
- (ii) Establish a Facilitator 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;

- (iii) 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;
- (iv) 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.

b. Collaboration in the digital age to advance the semiconductor industry

- (i) Promote the usage of digital technologies within the supply chain: We recommend Vietnamese stakeholders push forward in implementing digital technologies to bring unparalleled transparency to supply-chain operations. This should include real-time tracking systems for sourcing materials, manufacturing processes, and distribution networks. By doing so, Vietnamese players will be better equipped to validate the standards and efficacy of supply-chain systems, ensuring compliance with international norms;
- (ii) Promote European-Vietnamese Partnerships in the Semiconductor Industry: Foster closer collaboration between European technology firms and Vietnamese manufacturers, enhancing the local industry's capacity to meet international standards.
- (iii) Integrate Sustainability Metrics in Supply-Chain Monitoring: To elevate the commitment to environmental stewardship, it is advisable to incorporate sustainability metrics into the digital tracking systems. This will allow companies and regulatory bodies to more effectively measure, control, and report the environmental impact of industrial activities within the entire supply chain. This step is crucial for meeting both local and global sustainability goals and regulations;
- (iv) Implement Robust Digital Mechanisms for Intellectual Property Protection: Given the sensitive nature of intellectual property in the industry, we urge the establishment of advanced digital logging and tracking systems for all IP-related activities. In addition, adopting encryption protocols and secure data environments should be a priority to ensure that access to sensitive IP data is restricted to authorized personnel only. These measures will significantly enhance the identification and prevention of unauthorized IP use or theft;
- (v) Invest in a skilled workforce to implement the standards within the industry: Finally, one of the most important aspects is to grow a workforce. It should be able to implement and manage the high standards required for digital technologies, supply-chain management, IP protection, and cybersecurity. Partnerships with educational institutions for specialized training and continuous learning initiatives will be essential for building a workforce that is not only skilled but also adaptable to evolving industry needs.

c. Telecommunications Regulation

- (i) The Ministry of Information and Communications and Vietnam Telecommunications Authority should soon organize the dissemination of the provisions of the amended Telecommunications Law, especially new regulations and new adjustments to ensure that both the public and businesses have a clear and comprehensive understanding of the new policies, fostering a sense of confidence in the investment and business processes of enterprises; In the process of developing the Decree and guidance for the Telecommunications Law, the Ministry of Information and Communications and Vietnam Telecommunications Authority should continue to maintain an open and receptive approach. They should actively listen to the opinions of the business community, allowing for their contributions and insights in shaping the drafts.

1.2 Intellectual Property Rights

a. Intellectual Property Rights Enforcement

Criminal prosecutions of IP infringement

- (i) It is critical to underscore once more the significance of the SPC issuing authoritative guidance on criminal prosecution of IP infringements in order to furnish all enforcement agencies with timely direction;
- (ii) It is imperative that enforcement agencies engage in consistent dialogue and collaboration with pertinent organisations and individuals, such as members of IPRSC, in order to address the obstacles and develop

suitable resolutions that effectively address the ever-evolving and complex nature of IP infringements in Vietnam.

Mandatory expert opinion from Vietnamese IP organization

- (i) Advocate for IPR enforcement agencies to carry out enforcement and adjudication activities in accordance with their jurisdiction and functions, with professional opinions serving as a point of reference only; rights holders are not obligated to provide additional professional opinions in situations where an infringement is overtly apparent or where analogous cases have occurred in the past;
- (ii) In addition to technical considerations, adjudication and the management of infringements should take into account the malicious intentions of infringers who intentionally create counterfeit products that are not entirely identical to the original products on the market with the intention of deceiving consumers or capitalizing on the reputation and popularity of the original products to promote similar products (free riding technique);
- (iii) Strengthen propaganda and training to enhance the capacity and knowledge of adjudicating and enforcement agencies regarding intellectual property in order to facilitate the exercise of their authorities and the performance of their duties;
- (iv) Accelerate the establishment of specialized IP courts;
- (v) Recognize and incorporate consumer perspectives into the adjudication and enforcement processes, considering the potential impact of infringement on consumer welfare and addressing instances where consumer confusion may arise. This could involve engaging consumers in the evaluating process or conducting surveys to better understand the public perception of IP-related issues.

Complexity of copyright registration procedure for enforcement

- (i) Encourage flexibility to consider alternative proof of copyright ownership instead of the copyright registration certificate.

b. Intellectual Property Rights prosecution

Copyright issues

- (i) Remove the requirement for content-related summaries in works;
- (ii) Clarify that the commitment section need not to be completed if the author is deceased.

Patent issues

- (i) In accordance with Vietnam's responses at multiple conferences, a partially Vietnamese invention is still required to file an initial application. As a result, we suggest that this response be formally incorporated into Circular guiding Decree 65;
- (ii) According to IP Vietnam's responses at multiple conferences, it is imperative that both domestic and foreign entities comply with the initial filing requirements when submitting an application for a utility solution patent or a patent. As a result, we suggest that this response be formally incorporated into Circular guiding Decree 65;
- (iii) The Circular that provides guidance for Decree 65 should specify which technical domains are deemed to have an influence on defense and national security. For instance, is a security control requirement applicable to an invention pertaining to a device that serves multiple functions, including intelligence, counterintelligence, criminal investigation, and civil purposes (e.g., smartphones, cameras, image processing chips, general wireless communication equipment, and radars);
- (iv) Further regulations should be imposed to allow intellectual property proprietors to select between the two procedures outlined below:



- a. File a patent application in Vietnam or a PCT application of Vietnamese origin (as currently stipulated in Decree 65);
- b. Submit a first filing request for a patent application: In this instance, a concise description (i.e., no more than one to two pages) is sufficient to demonstrate the invention's nature and initiate the first filing procedure (Decree 65 does not specify this circumstance; therefore, it is suggested that this be included in the Circular Guiding Decree 65).

Trademark issues

- (i) Issue comprehensive guidelines regarding the capabilities of agencies tasked with identifying and certifying well-known trademarks, as well as the processes involved in this regard. Specifically:
- (ii) Prescribe detailed regulations regarding the scope of authority, tasks, and powers of competent agencies responsible for reviewing and recognizing well-known trademarks;
- (iii) Offer guidance on the procedures for coordination and consultation among relevant competent agencies in the process of considering and recognizing well-known trademarks.

Delay in the establishment of IP rights

- (i) Implement requisite actions to expedite all phases of the trademark registration application process. This encompasses the submission of applications, evaluation of content, and addressing inquiries such as trademark renewals, responses to notices of refusal, particularly those concerning international trademark registrations designating Vietnam, and handling various types of complaints.

Guidance from IP Vietnam on the Letter of Consent

- (i) It is essential to explicitly define the conditions for accepting the LOC within the Intellectual Property Law and relevant decrees and circulars. This approach aligns with international norms, mirroring trademark evaluation and protection methods used globally. Moreover, it does not contradict the fundamental tenets of civil rights determination under Vietnamese law;
- (ii) Alongside stipulating the principles and criteria for LOC acceptance, it is necessary to incorporate provisions addressing scenarios where the LOC is not acceptable. In trademark evaluation practice, any LOC that satisfies the established acceptance criteria and does not encounter regulatory objections should be endorsed. This measure is vital to eliminate ambiguity, inconsistency, and challenges faced by applicants and stakeholders, including the unnecessary expenditure of time, effort, and resources;
- (iii) The development and maintenance of a comprehensive, up-to-date database that is readily and freely accessible to the public is crucial. This database should provide detailed information regarding trademarks protected based on a LOC, including the issuer of the LOC and the specific trademarks involved. Such a resource will empower applicants to make informed decisions and apply for LOCs from all proprietors of previously protected reference trademarks, in accordance with the relevant principles and conditions stipulated in current regulations.

1.3 Construction

a. Resolving difficulties relating to fire safety and firefighting operations

Certificate materials

- (i) Firefighting and fire prevention equipment manufactured outside Vietnam should be permitted for construction use if it holds a Certificate of Origin and Certificate of Quality compliant with ISO/IEC 17025 standards, issued by internationally recognised certification organisations accepted by the Vietnamese Government Bureau Veritas, SGS, Intertek, etc;
- (ii) For equipment made in Vietnam, a Certificate of Quality meeting the ISO/IEC 17025 standards from a Vietnamese Government-approved certification organisation should suffice. This organisation need not necessarily be the Fire and Rescue Police Department.

Certification of materials for renovation construction

- (i) Firefighting and fire prevention equipment manufactured outside or within Vietnam should be considered acceptable for use in construction projects if it is accompanied by a Certificate of Origin and Quality in compliance with ISO/IEC 17025 standards. This certification should be issued by internationally recognised Certification Organisations approved by the Vietnamese Government, such as Bureau Veritas, SGS, Intertek, among others;
- (ii) For renovation projects, there should be a detailed specification that clearly defines the extent of modifications to each system and equipment, especially those that significantly impact the efficiency of the firefighting system. This specification is essential to provide clear guidance on which modifications necessitate review and approval in terms of fire safety measures during renovations.

1.4 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; and
- (v) Complete the condominium construction codes defining the concept of condotels, hometels, and officetels.

b. Protecting the interests of investors in case of insolvency or bankruptcy of real estate developers

Protection in case of insolvency or bankruptcy of real estate developers

- (i) Promulgate legal provisions with specific standards and guidance with regard to the financial capacity of real estate developers;
- (ii) Ensure bank guarantee contracts are compulsory for real estate developers before pre-selling apartments.

Confusion in regulations on real estate project transfer

- (i) 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.

1.5 Mergers & Acquisitions

a. Environmental, Social, and Governance (ESG) Standards

- (i) Promote Vietnam as a destination for sustainable (and ESG compliant) investment in ASEAN, seizing the chance to distinguish itself as a preferable investment destination for European investors;
- (ii) Introduce framework for ESG that enables foreign investors to comply with requirements imposed by their respective home jurisdictions (e.g., the European Union);
- (iii) Raise awareness amongst private and public stakeholders (Vietnamese individuals and enterprises), regarding the importance of ESG standards in M&A investment;
- (iv) Incentivise ESG-friendly investment alternatives with appropriate subsidies or legal exemptions;

- (v) Create or adopt a national rating system (and possibly, a regulatory approval requirement) for the “ESG-value” of certain investments;
- (vi) Provide strong and clear guidelines to steer foreign M&A investment towards Vietnam’s net-zero carbon goals;
- (vii) Promote best practices to encourage sustainable domestic (and inbound) investment; and
- (viii) Introduce reliable and internationally accredited ESG evaluation criteria, which can be verified through independent resources.

b. Economic concentration control

- (i) Consider an exemption of internal corporate group re-organizations from the economic concentration control regime;
- (ii) Consider raising the threshold amounts under the relevant economic concentration control regulations which trigger notifiable transactions;
- (iii) Consider clarifying how the VCC interprets or calculates the merger filing notification thresholds in typical transactions based on VCC’s database by way of conferences or guidance;
- (iv) Consider clarifying terms of the antitrust/competition law to provide clear and unequivocal thresholds for inbound investments; and
- (v) Upskill staff and increase headcount at the relevant authorities (e.g., the VCC) to bolster resources for an increase in caseload.

1.6 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 of prioritising commercially viable projects as those slated to be implemented as PPPs;
- (ii) Clarify the bidding process for unsolicited projects and the process for conversion of State-funded projects into PPP format;
- (iii) Submit selected projects to a competitive, transparent tender process as contemplated under the Law on PPP;
- (iv) Allow projects to be developed by leading global sponsors based on unsolicited proposals/direct appointment as pilot projects in specified high-priority sectors in order to develop a baseline standard of bankable project documentation and risk allocation which could secure international project financings from foreign lenders;
- (v) Put potential projects through a rigorous commerciality assessment (and appoint reputable international technical and financial consultants to advise and assist relevant Government authorities on such process) 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 reputable 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 risk of prolonged negotiation delays;
- (ii) Bring in tangible projects in line with international best practices to provide authorised State bodies with hands-on experience;

- (iii) Organise capacity-building sessions on the Law on PPP to ensure its cohesive implementation;
- (iv) Require a joint implementing process involving all key Ministries and authorities for a unified practice in the identification, assessment and development of projects, potentially leveraging those individuals who have gained experience of bankability 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, focusing on key elements such as the availability and disbursement of debt and equity funding and credit support measures;
- (iv) Test these regulations with actual projects.

1.7 Tax & Transfer Pricing

a. Corporate Income Tax Policies to Adapt With The Impact Of Global Minimum Tax Rate – 15 Per Cent (OECD Pillar 2)

- (i) Government takes the opportunity presented by Pillar 2 to undertake a comprehensive review of the tax incentives currently in place. This includes studying the impacts of Pillar 2 on current and future investors and considering practical and effective solutions for encouraged sectors so that Pillar 2 adoption does not create negative impacts on the investment environment and Vietnam still meets its commitments under Pillar 2.
 - a. For example, if expenditure-based incentives were to be introduced instead of income-based, such as tax holidays, there would be less impacts from Pillar 2 adoption on foreign investment. Accordingly, foreign investments could be increased for targeted sectors and locations and the commitments under Pillar 2 would still be met.
 - b. Examples of expenditure-based incentives that could be considered with reference to international practice including (i) accelerated depreciation for machinery and equipment of the investment projects and (ii) double tax deduction of labour cost or research and development (R&D) costs for encouraged investment projects.
 - c. Such expenditure-based incentives may increase the likelihood of generating additional investment as they directly target investment expenses.
- (ii) In addition to encouraging investment in R&D, innovation and high-technology incentives could be targeted to support policy objectives such as promoting the green transition;
- (iii) Tax revenues generated from QDMTT could additionally be spent on areas to continue to improve the overall investment environment such as infrastructure and labour force skills development; and
- (iv) Pillar 2 provides a very good opportunity for Vietnam to consider tax incentive reform, and this should be done as soon as possible so as not to lose either tax revenues or foreign investment, as other countries will impose top-up taxes from 2024 and are also considering revising their tax incentive regimes in response.

b. Input Value Added Tax (VAT) Creditibility and Corporate Income Tax Deductibility of Invoices from Run-away Vendors

- (i) To create fairness and transparency for the enterprises, the tax authorities should consider accepting tax credit and deduction of valid invoices with proper payment and supporting documents from the consumer's perspective. Dealing with the run-away vendors should be handled separately by way of legal investigation.

c. Transfer price adjustments for customs declaration Enhancing effectiveness of

dispute resolution mechanism by Advance Pricing Agreements (“APA”) and Mutual Agreement Procedure (“MAP”)

- (i) It is recommended that the time for of evaluating and negotiating the applications is shortened and consideration is given to conclude MAP applications within a reasonable timeframe;
- (ii) The procedures for DTA application should also be revised so that taxpayers can declare their eligibility and don't have to pay taxes outright from the beginning, instead of having to pay taxes upfront and expect to receive tax refunds down the line when the supporting documentation is available;
- (iii) In addition, if the tax authorities refuse to receive DTA applications, they should be obligated to provide a written explanation of their legal grounds for such refusals based on quotes of tax laws and regulations, instead of advising the taxpayers verbally.

d. Deductibility of Marketing/Sales Support Offering To Indirect Customers In A Distribution Chain

- (i) Government of Vietnam should amend relevant regulations to allow such expenditure to be acceptable for tax deduction on the basis such expenditure directly contributes in increasing revenue of the enterprises.

PART 2: SUSTAINABLE DEVELOPMENT

2.1 Energy & Electricity

- (i) Prioritise transparent and effective mechanisms to stimulate investment by all power consumers in energy efficiency measures to achieve the national energy efficiency strategy goals. This includes reducing subsidies to electricity prices.
- (ii) Maximise the contribution of solar, biomass, small hydropower, wind, and offshore wind power within the energy system, by clarifying a timely and coordinated approach to allocating projects (e.g., creation of a one-stop shop approach where one assigned authority/agency has the authority and capability to manage the consent and permitting for renewable energies) and ensuring grid availability.
- (iii) Revise the PPA between EVN and clean energy producers to meet international standards to harvest the full cost-reduction benefits of the planned auction processes in exchange for full take-or-pay and key provisions which address concerns of international lenders:
 - a. PPAs need to remove the risks of unjustified curtailment and termination clauses with specific definitions and list of force majeure events and focus on establishment of international arbitration and stable currency indexation.
 - b. Enhance energy security with the inclusion of natural gas as a transition fuel to temporarily replace coal in the short term.
 - c. Focus on the short-term ability to deliver projects included within PDP7 and PDP7-revised.
 - d. Implement the intention to halt any new coal-powered plants in PDP8, with a clear roadmap on how and where the injection of new renewable capacity will be incorporated into the grid, to replace areas previously but no longer considered for coal power. The timing and process for necessary grid upgrade plans should accompany this.
- (iv) 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.
 - a. Establish a clear tariff or funding mechanism in a transparent risk-free format where initial agreed prices can be relied upon for the lifetime of the project.
 - b. Suitable criteria and effective procedure to select pilot projects

- c. Remove barriers for on-site renewable generation and consumption from roof-top solar or small-scale onshore wind/onshore solar.
- d. Provide official criteria and recognition of renewable electricity certificates (RECs – both international and domestic certificates) as recognized transitional solutions in efforts to achieve 100% clean energy as well as greenhouse gas (GHG) emissions reduction of businesses.
- (v) Expand the pilot project scheme (especially for offshore wind to kick start this industry), encourage private investment in the important power transmission network, and allow investors who meet the requirements to build 220kV and 500kV transmission lines to do so on their own.
- (vi) Define the industrial and commercial power tariffs required under PDP8, in a clear Roadmap to Power Tariffs to 2025.
 - a. Increase the ambition of the Nationally Determined Contributions (NDCs) on greenhouse gas emission reductions reflecting increased targets for clean energy and better energy efficiency measures.
 - b. Promote the benefits of decreased pressure on the power transmission and distribution system by continuing to support the growth of rooftop solar power plants for self-consumption/local sale.
 - c. Give priority to the development of offshore wind power and seek to enhance the ability to deliver initial projects with some form of fast-track mechanism or pilot projects.
 - d. Expand the initial MARD C-PFES pilot scheme to the national level and continue to use the financial benefits entirely for increased forest habitat and wildlife protection.¹
 - e. Allow storage on-site with solar power and other forms of renewable energy generation.
 - f. 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 and segregation at source.
- (iii) Legalise the secondary material marketplace.
- (iv) Continue to provide a conducive business environment for compliant waste management businesses.
- (v) Increase public awareness of solid waste management.
- (vi) Set up a public-private committee to propose solutions.
- (vii) Provide clear guidance and support infrastructure for waste segregation-at-source at household and companies.

Addressing plastic pollution

- (i) Implement existing regulations and ensure strict enforcement.
- (ii) Promote legislation to incentivise Vietnamese and multinational companies to comply with EU regulations to allow the country to enter global supply chains.

¹ “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/PA00TQPI.pdf>, last accessed 29 April 2021.

- (iii) Ban OXO-degradable technology and introduce compostable plastic that can be certified under international standards to prevent greenwashing.
- (iv) Promote investment in composting facilities and dedicated recovery supply chains to reduce the use of single-use plastics linked to organic waste.
- (v) Incentivise cost-effective recycling and treatment of domestic waste at the household level through classification to facilitate the implementation of the EPR law.
- (vi) Set up the EPF as a public-private committee to propose solutions.
- (vii) Provide tax-incentivized mechanic for compostable plastics packaging and recycled plastics packaging to encourage transition to environmental-friendly materials and promote local recycling industry; and
- (viii) Ban single-use plastic and promote an alternative solution. Work with businesses to develop a plan for phasing out single-use plastic products. This would give businesses time to adjust their operations and to find alternative products to offer their customers.

Water supply and Wastewater issues

- (i) Synchronise existing environmental policies to ensure a coherent political framework by better integrating the existing legal basis;
- (ii) Improve the situation on the ground by increased transparency and controlling the implementation of environmental policies on provincial and local levels; strengthen law enforcement and the willingness to take regulatory action;
- (iii) Listen to grass-root levels and encourage local environmental groups; support the actions of citizens to control the implementation of the State's policies;
- (iv) Introduce and endorse water-sensitive urban design and take advantage of Blue-Green Infrastructure, including modern storm water management;
- (v) Information – Communication – Education is key for a cleaner environment, so improve and adjust school and university curricula by integrating “green” issues; public awareness, in general, needs to be improved;
- (vi) Take advantage of the knowledge and experience of international water companies through open, transparent, and fair public tenders;
- (vii) Encourage the reuse of wastewater by providing legal frameworks, guidelines, and standards to share quality water for applications like irrigation and industrial production;
- (viii) Adjust domestic and industrial wastewater fees to full cost recovery, implementing the “polluter-pays-principle”;
- (ix) Foster sustainability-driven, water-wise tourism that will attract wealthy and nature-minded tourists; prevent the destruction of valuable ecosystems by uncontrolled tourism development;
- (x) Consider Blue-Green infrastructure for dealing with climate change; and
- (xi) Consider and endorse green financing to increase capital flows from the public, private, and non-profit sectors to sustainable development priorities.

Air quality control

- (i) Accelerate the revision of the Law on Environmental Protection, 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 with power stations; and
- (vi) Accelerate the development of a non-polluting public transportation sector.

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

- (i) Integrate “Green Building” wording in subsidiary and ancillary construction laws;
- (ii) Enforce and promote the application of sustainable building materials solutions through the Vietnam Association for Buildings Materials;
- (iii) Apply a comprehensive life-cycle approach;
- (iv) Promote green labels and EPDs;
- (v) Provide greater transparency on the timing of the introduction of market-based pricing for electricity;
- (vi) Remove subsidies on fossil-fuel-based electricity;
- (vii) Publish a Roadmap to Retail Electricity Tariffs for commercial and industrial power consumers;
- (viii) Make buildings more energy efficient;
- (ix) Make minimal certification a precondition for the licensing of certain types of buildings regardless of their use and incentivise higher levels of certification; and
- (x) Prepare a clear urban planning showcase, including not just green buildings but also water, waste, traffic, and environmental livelihood improvement solutions.

Circularity in Construction

- (i) Create regulations to remove barriers and facilitate market entry of secondary building materials from demolition/deconstruction;
- (ii) Provide incentives to promote materials and building recovery and reuse, including using financial mechanisms, e.g., planning fee rebates, and reduction in development cost charges where reuse thresholds are met; and
- (iii) Create a Circular Economy Roadmap for Buildings that outlines the tools needed to deliver these policies, including the development of local supply chains with material reclamation facilities, databases, and capacity building across the value chain.

c. Extended Producers Responsibility

- (i) Fs rate should be re-calculated to better reflect the practical recycling situations in Vietnam, and haven't followed the circular economy principles by not deducting recoverable materials value, especially materials which has higher value of recovered materials than the cost of recycling, such as aluminum, iron, and cardboard packaging, because We recommend conducting a new study with clear criteria and/or consult more studies to have a comprehensive view.
- (ii) EPR framework should be implemented in phases, beginning with a transitionary period of at least 2 years from 2024. Under this trial period, enterprises should not be subjected to administrative penalties if they fail to meet their required recycling rate. Focusing on trial implementation without any penalties to strengthen the legislative framework and effective guidelines for businesses.
- (iii) Fs rate and implementation time for batteries in BEV should be similar to that of vehicles and motorcycle.
- (iv) For automotive industry, we suggest collaborate with the auto industry to build an apt ecosystem. 2030 is a



feasible year to apply recycling norms for automotive and motorcycle-related discarded products, inclusive of an enforcement mechanism for compliant companies and penalties for breaches. Drawing inspiration from Europe, the regulation should pivot on the ratio between the total material volume and reusable value after product disposal compared to the product's original volume. In addition, preliminary dialogues with automotive assemblers and importers about vehicles' battery recycling and management guidelines for seamless implementation should be engaged.

- (v) Have preferential policies in recycling contributions for packaging and products using recycled materials to create output for recycled materials, specifically for the part using recycled materials calculated with a coefficient of 0 for Fs.
- (vi) The distribution of VEPF should be publicized for transparency.

2.3 Tourism & Hospitality

a. Entry visa policies & administrative procedures

- (i) Expand the list of visa-exempt countries to all EU countries;
- (ii) Provide short-stay visa exemption in certain situations, in particular in support of forums, exhibitions, and sporting events;
- (iii) Ensure consistency between the Vietnamese and English versions of the e-visa portal; and
- (iv) Create specific lines for business class and handicapped, seniors beyond 70 and families with infants.

b. Destination marketing

- (i) Create specific advertising campaigns aimed at business owners and their employees who normally interact with tourists, such as local shops, local restaurants, public transportation, so that they understand the value of tourism in Vietnam, the meaning of cordiality, smile and the affectionate attention to tourists;
- (ii) Create educational campaigns in schools and universities, where the values of friendship, cordiality and hospitality are disseminated as icons of Vietnam, explaining to students that helping a tourist has the value of showing the world that Vietnam is a hospitable country, pleasant and welcoming to those who want to know the country, its customs and unique cultural identities;
- (iii) Foster provincial collaboration for tourism opportunities;
- (iv) Simplify licensing procedures, incentives for film crews to borrow loans with low-interest rates, modern facilities, and preferential policies in support of locations and accommodation;
- (v) Create tax initiatives for international movie productions and actors; and
- (vi) Build prayer places in public areas, restaurants, hotels, and entertainment spots; provide Muslim-friendly food and drinks with certification stamps.

c. Retirement and medical tourism

- (i) Provide medical visa and visa specifically for global retirees;
- (ii) Enhance collaboration between travel agencies, hotels, hospitals to build medical tourism products;
- (iii) Advertise Vietnam as a destination for retirement and medical tourism in both domestic and international channels; and
- (iv) Provide training for relevant stakeholders to meet international standards.

d. Long-term prospects and sustainability efforts

- (i) Put a nationally coordinated action plan in place to keep beaches, cities, and cultural heritage sites clean;

- (ii) Establish effective recycling campaigns to reduce plastic that ends up in the environment and be consistent in fining those that don't abide by the law;
- (iii) Create a national plan to remove single-use plastic entirely from hotels, travel companies, airlines, and hospitality service providers;
- (iv) Prioritise sustainable, diverse developments over large-scale projects often focusing on the condotel second-home market only;
- (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;
- (ix) Encourage experiences enabling travellers to interact with local people in meaningful ways and allowing the development of community-based tourism initiatives; and
- (x) 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.

2.4 Transportation & Logistics

a. Infrastructure

- (i) Issue implementation documents of Decision 1012;
- (ii) Simplify the dredging procedure for terminals and allow for a 10-year dredging approval license rather than case-by-case approvals; and
- (iii) Standards in firefighting and fire safety regulations need clear guidance. The authorities need to develop a racking standard that clearly states the specification of in-rack sprinklers for racks over 5.5 metres and below 14 metres high. This is then a single standard that is clearly required and only dangerous goods (DG) would need higher requirements.

b. Customs

Improper declaration and application of preferential tariffs

- (i) Distinguish the application of preferential tariffs from the penalty applicable to a breach of the law;
- (ii) Do not cancel the enjoyment of preferential tariffs if an administrative error, such as an incorrect declaration in customs declaration sheets, is made;
- (iii) Implement the policy linked to customs procedures of ports to ease the transfer of goods from one port to another (both within as well as in a second phase across customs zones) in case of operational requirements by the terminal or the carrier's vessel; and
- (iv) MOIT to work on the process of digitalization on issuance & approval of E-C/O for EU and other countries having FTA with Vietnam.

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) 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.

HS Code classification: Rulings/Notifications

- (i) Specify the applied supporting rationale behind the HS code classifications provided.
- (ii) Continue publishing all legal reference sources of classification online in Vietnamese and English, including those that were listed and committed to be published in Article 6 of Circular 14, but preferably all those within the last five years.²
- (iii) A more reasonable timeline between the decision issued date, instruction availability date and effective date. The Guidance shall be issued 30 days at least before the Effective date with clear information, and instruction to related parties (GDC, Department of Customs in province/ city, enterprise). Related training and seminar need to be organized in between with question and answer to have active exchange from customs authority and enterprises after the guidance and instruction released, in order that Enterprise have enough time to prepare, and be ready for D-day; and
- (iv) When the customs data to be declared and proceeding on system only, the new tariff and data after the modification must be ready at least 07 working days before the Effective date to synchronize with Enterprise's process and data, having no waiting time for the Enterprise.

On-spot Import and Export procedures

- (i) To keep the effectiveness of Article 35.1 of the Decree 08 including its Point c to allow the continuation of the current on-spot import/export practices.

c. Sustainability

- (i) Set up a forum with all stakeholders to support a review of opportunities and to share ideas for 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 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.
- (viii) Obtain businesses' support and instigate measures to work with central and provincial authorities to navigate the changes required to deliver the triple bottom-line (people, profit, and planet).

2.5 Human Resources & Training

a. Labour organisations at enterprises and trade union fees

- (i) Announce the Draft Decree for public feedback.
- (ii) Clarify the role and relationship when both a "new labour organisation" and a "traditional union" coexist within a same enterprise in guiding regulations of the new Labour Code 2019 and the amended Law on Trade Union.

² 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.

- (iii) Amend the financing regulations for both types of organisations to ensure clarity, prudence, equality and correctly reflect the rights of employees' representative organisations.

b. Work permit for foreigners

- (i) Forego the recruitment post prerequisite before submitting foreign labour demand reports.
- (ii) Simplify required documentation for Manager/ Executive Director position at branches and representative offices.
- (iii) Allocate the authority to local DOLISAs to issue work permits in all scenarios.

c. Expansion of termination by employer

- (i) Revise regulations to recognise retrenchments stemming from a company's business optimisation activities.
- (ii) Introduce a provision that allows retrenchment of one employee given the company adheres to legal procedures applicable to retrenchment of multiple employees.
- (iii) Expand the scope of acts of misconduct subject to immediate dismissal, such as 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.
- (iv) Extend the statute of limitations for settling labour disciplinary actions from 12 months to 24 months and this period should commence from the date the employer becomes aware of the misconduct.
- (v) Provide clear benchmarks to determine what qualifies as "seriously detrimental" or "posing seriously detrimental damages", potentially by specifying a monetary threshold.

d. Social insurance contributions for foreign employees

- (i) Making contributions to the pension and survivorship regimes voluntary for foreign workers.
- (ii) Introducing a bilingual template for the lump-sum SI allowance application and facilitate online submission of the related application dossier.

e. Strategic enhancement of education and training in Vietnam for a prosperous digital economy

- (i) Promulgate Gender-Inclusive Policies: Support legislative measures to create an environment that is conducive to learning and free from gender bias in tech-related subjects from an early age.
- (ii) Foster Extracurricular Technological Programs: Encourage programs focusing on technology and coding to develop interest and passion among girls in the field.
- (iii) Enhance Accessibility to Resources: Offer equal learning opportunities, scholarships, and incentives to facilitate and motivate girls to explore technical disciplines.
- (iv) Create Synergy with Tech Corporations: Leverage partnerships for facilitating
- (v) Embrace and Customize Executive Education: Implement non-degree courses, aligning with market needs and offered at local pricing, to advance resolutions of the XII and XIII Congresses effectively.
- (vi) Elevate Education Quality and Accessibility: Aim for the attainment of the government's targeted education sector expenditure and elevate tertiary gross enrolment rates to align with regional counterparts.

f. Promotion of educational excellence and technological innovation

- (i) Streamline Work Permit Procedures to support the continued inflow of qualified foreign workers and their families
- (ii) Augment Network Infrastructure: Enhanced nationwide connectivity and equitable access to 4G/5G

networks are fundamental to avoiding a digital divide.

- (iii) Fortify Regional and Provincial Cooperation: Encourage local authorities to collaborate with local digital competence centres to extend support widely.
- (iv) Elevate Local Teacher Capabilities: Initiate collaborations with international institutions for teacher training and professional development, fostering an environment conducive to lifelong learning.
- (v) Prioritize Environmental Health: Enhancement of air quality in financial centres will accentuate the attractiveness of the education sector, promoting fruitful international collaborations.

2.6. Women in Business

a. Labour regulations affecting female employees

- (i) Set out clear incentives for employers who adopt policies in line with Article 79.2(a) of Decree 145 in forthcoming decrees;
- (ii) 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; and
- (iii) Implement a quota based on the number of female employees in upper-level management positions instead of the total number.

b. Paternity leave should be extended for men

- (i) Increase paternity leave to one month in the new Social Insurance Law, as an incremental step towards a policy which more equally divides maternity leave between the mother and father.

c. Ensuring gender equality in Vietnam's digital transformation

- (i) Gather data on female participation in STEM educational programs and careers to ensure that the Government has an accurate perception of the actual STEM gender gap;
- (ii) In issuing future policies in respect to Vietnam's digitalization and modernization, or amending existing ones, ensure that the issue of female underrepresentation in STEM and the information and technology sector is addressed;
- (iii) Issue legislation implementing national policies on digitalization and modernization which include measures to foster greater female participation, which are time-bound, specific and measurable;
- (iv) MOET should cooperate with stakeholders such as tech companies and potential investors to determine a specific direction for STEM education, which ensures the quality of training and that students are being taught the skills which will ultimately be required, as well as addressing negative social norms and gender stereotypes that often discourage girls from pursuing STEM studies from an early age;
- (v) MOET and MOLISA should develop vocational programs targeting the reskilling and upscaling of skills of female workers towards digitalization, particularly those in industries susceptible to replacement by automation; and
- (vi) Implement campaigns and inspirational activities to change social awareness about the role of women in STEM professions.

PART 3: HEALTH AND BEAUTY

3.1 Pharmaceuticals

a. Improve patient access to innovation

- (i) Speed up the availability of new medicines by reducing the Marketing Authorization approval timeline (revision of the Pharma Law)
 - Regulatory reliance, as recommended by the WHO, allows an authority to use the work of other trusted regulatory authorities when making its own decision. This can help reduce workload and prioritize resources. We strongly recommend adopting this mechanism in Vietnam to speed up the Marketing Authorization decision for new medicines, post-approval variations, and vaccines' batch-release testing, to enable timely access for patients while still ensuring the quality, safety and efficacy of medicines and maintaining Vietnam's regulatory responsibilities for decision-making.
- (ii) Prevent medicine shortages of medicines via reduction of administrative barriers and regulatory harmonization (revision of the Pharma Law)
 - Renewal, which is mainly an administrative procedure to be streamlined per Decision 1661,³ should be made automatic to reduce the workload of both companies and the authority and most importantly, avoid supply disruptions as seen in recent years.
 - Ensure a transitional measure is in place and in effect at the end of 2024 to maintain the validity of thousands of Marketing Authorizations extended by the National Assembly's Resolution 80 dated 9 January 2023, in case their renewal dossiers could not be reviewed on time and the automatic renewal mechanism is not yet in effect.
 - Post-approval site change should be classified as a Major Variations to harmonize with the ASEAN Variations guideline instead of a new registration dossier as currently stipulated in the Pharma Law, to reduce the significant administrative burden and approval timeline.
- (iii) Improve patient access to new medicines in public hospitals via timely National Reimbursement Drug Listing (NRDL Circular)
 - Issue a comprehensive update of the NRDL in 2024, after a 5-year delay, to include more advanced medicines.
 - Enable more frequent updates of the NRDL. The update process should be initiated at least once a year, in line with the Government's direction to ensure faster and more equitable access to advances in treatment solutions, and help reduce household direct out-of-pocket expenditures per Resolution 20.
 - The process of proposing drugs for inclusion in the NRDL can be carried out at the time of Marketing Authorization submission. Product license owners, manufacturers or authorized entities are allowed to directly participate in providing information related to products in the process of submission for inclusion into the NRDL to ensure accuracy, completeness, timeliness, scientific soundness and transparency.
 - The requirement for Health Technology Assessment ("HTA") should be considered carefully in the context of Vietnam, as building relevant databases and expertise will take time to ensure the quality, efficiency and transparency required. We recommend taking a flexible approach to HTA, in which cost-effectiveness evidence should serve only as a reference and not a deciding factor.
- (iv) Ensure patient continuous access to innovative medicines in public hospitals (Tender regulations)
 - Ensure the stability of procurement policies by maintaining the brand name bidding package for originators and by effectively implementing the price negotiation mechanism to ensure continued patient access to the highest quality treatments and a predictable, sustainable investment environment.

³ Decision 1661/QĐ-TTg dated 4 October 2021 of the Prime Minister approval of a plan to reduce and simplify regulations related to business activities under the scope of management functions of the Ministry of Health (Decision 1661).

- (v) Enable medicines' availability for out-of-pocket payment at public hospitals (Decree guiding Tender Law).
 - Provide a detailed guideline for healthcare establishments to effectively procure medicines which are not covered by the health insurance fund, and vaccines used for on-demand vaccination services, to address the major long-standing gap whereby patients at public hospitals with needs and with the ability to afford are not able to use the medicines⁴ as per their demand.

b. Foster adoption of sustainable healthcare financing policies for innovation

- (i) Regulate the Supplementary Health Insurance package (revision of the Health Insurance Law) to diversify the HI packages, enable optionality for patients and release the HI fund burden for the Government, in line with the direction in Resolution 20.
- (ii) Develop new financing mechanisms, including: the novel pricing models such as Market Entry Agreements tailored to the Vietnam's context to accelerate patient access while providing sufficient incentives for innovation; consider to facilitate new mechanisms that follow international experience (including financial and non-financial) such as to transfer revenues generated from excise duty imposed on products harmful to health (e.g. alcohol, tobacco) to the health insurance fund; expand and encourage the implementation of patient drug assistance programs...
- (iii) Leverage health data to drive innovation and sustainability: Regulate linkages, partnerships, and data exchanges between social health insurance and commercial health insurance actors. Consider assigning the Government to regulate implementation guidelines.

c. Incentivize the development of an innovative pharmaceutical ecosystem

- (i) Enablers (revision of the Pharma Law)
 - Enable Foreign Invested Enterprises with the right to import pharmaceuticals ("FIE Importers") to operate their legal entities more effectively, reduce complexities and cost of doing business, ensure smooth information flow throughout the supply chain and ensure continuity, efficiency, and timeliness of medicine supply.
 - Enable FIE Importers to decide on and carry out investment projects such as local manufacturing (contract manufacturing, technology transfer), clinical trials, etc. with local partners, e.g. the ability to import and transport products used in clinical trials.
 - Intellectual Property ("IP") enforcement: Put in place policies and strict enforcement to protect clinical trial data, drug patents, and other confidential data during drug registration and circulation; Establish an IP enforcement agency to quickly and effectively resolve disputes, closely monitor and strictly inspect and handle cases of patent infringement, counterfeit drug.
- (ii) Incentives (revision of the Pharma Law and other guiding regulations to implement the National Pharmaceutical Sector Development strategy)
 - Develop a comprehensive set of incentives in policies, which should be based on the current advantages of Vietnam and well-align with, and even better than, existing incentives offered by other countries in the region. Stakeholder consultation is crucial throughout the development of these incentives to ensure attractiveness and feasibility.
 - Incentives should be closely linked with market access, such as fast-track Marketing Authorization, NRDL, and procurement.

⁴ Medicines constitute preparations containing pharmaceutical substances or herbal materials for human use for the purpose of prevention, diagnosis, curing, treatment, alleviation, and modification of physiological functions of the human body, including chemical medicines, herbal medicines, traditional medicines, vaccines and biologics – as stipulated in Clause 2, Article 2 of Law No. 105/2016/QH13 ("Pharmacy Law") and reference to the concluding remarks made by Deputy Prime Minister Vu Duc Dam at the meeting on medicine supply to hospitals in Notification 275/TB-VPCP dated 2nd August 2018.

3.2 International Quality Medicines: Generics & Biosimilar

a. Accelerate the Amendment of Law of Pharmaceuticals and related laws and regulations

- (i) Revise and redraft the Pharma Law with consideration for the comments and suggestions of the industry;
- (ii) Prepare clear guidelines regarding the introduction of a simplified MA extension process, along with clear transitional steps and implementation milestones;
- (iii) Amend first-time drug registration processes with a feasible timeline, transitional steps and milestones;
- (iv) Introduce the responsibility of authorities in the case of delays;
- (v) Submit the new draft Pharma Law for National Assembly approval in October 2024;
- (vi) Implement regulatory coherence and adjust related regulations by January 2025; and
- (vii) A number of regulations, including the extension of MA, need to take effect immediately after the Pharma Law takes effect, to avoid drug shortages for patients' treatment and prevention.

b. Expand the scope of FIE's Operations

- (i) Expand the scope of the rights of FIEs'. Specifically, FIEs which are the contract giver or contract acceptor performing the CMO/technology transfer should be allowed to perform activities related to distribution of the localized products in Vietnam by themselves. This is a-must-have-regulation to boost the local manufacturing of high-quality, affordable, safe, and effective medicines in Vietnam;
- (ii) Revise Tender regulation for Tolling and Tech Transfer products following the classification of Marketing Authorization Approval. Tolling and Tech Transfer products should be classified as local products not foreign products; and
- (iii) Provide Tender & Procurement incentives for localized high-quality products that will attract more foreign investment in the Pharma industry in the coming time.

c. Increasing patient access to State-Of-The-Art Therapies

- (i) Consider the early issuance of guidance for biosimilar dossier technical appraisals;
- (ii) Include a specific definition for biologics that are not approved as a biosimilar, such as biocopies and noncomparable biologics, in the Pharma Law to help healthcare professionals have accurate and complete understandings about circulating biologics;
- (iii) Consider the early issuance of healthcare professional guidance for using biosimilars in clinical practise to improve patient treatment efficacy and safety; and
- (iv) Increase biosimilar's medical educational and training activities to healthcare professionals and healthcare authorities for improving knowledge.

3.3. Medical Devices & Diagnostics

a. Accelerating the marketing authorisation process for class C and D medical devices

- (i) Expedite the evaluation and authorisation processes for Class C and D medical devices to ensure uninterrupted availability and access to essential medical devices.
- (ii) Accelerating the issuance of marketing authorisations and crafting a dedicated procedure for new Class C and D medical devices will guarantee a steady provision of innovative and crucial medical devices, fostering sustainable care for the Vietnamese patients.
- (iii) MOH should have a priority mechanism to issue marketing authorisation for products with valid import license/ marketing authorisation but have changes that lead to a new marketing authorisation submission required.

b. The tender of medical devices

- (i) Provide explicit guidelines on bidding procedures for medical devices, especially the cost per test model.
- (ii) Organise workshop or training sessions to relevant parties to facilitate seamless implementation.

c. Supplementary health insurance and health insurance fund/budget for prevention and primary health to reduce the burden of treatment

- (i) To ensure that Vietnamese patients can have access to new medical devices, services, and technology, we respectfully propose that the MOH speedily updates technical services/ medical devices list in the following circulars and release them:
 - a. Circular 04 on promulgating the schedule, rates and conditions of payment of costs of covered medical supplies to health insurance participants
 - b. Circular 43 on providing for technical and professional levels in the network of health facilities” and Circular 21.
 - c. Circular 22 replaced Circular 39 promulgated from 2018 on unifying prices of medical examination and treatment services covered by medical insurance among hospitals of the same class across the country and guidelines for applying prices and payment for medical services in certain cases” and Circular 13.
- (ii) Regularly update the list of Medical Technical Services and collaborate with Departments under MOH and Vietnam Social Security to complete the calculation of costs for these services and allow deployment at healthcare facilities nationwide.
- (iii) Given that the Law on Health Insurance is under revision, we also respectfully request National Assembly to endorse reimbursement for early diagnostics, and screening of certain diseases, such as: cervical and breast cancer, and chronic diseases such as diabetic, high blood pressure. This can significantly reduce treatment burdens later on.

3.4. Cosmetics**a. Simplify administrative procedures in cosmetics management - focus on strengthening post-market surveillance****Removal of cosmetics advertising pre-approval procedures**

- (i) The Agency for Foundation Culture removes the requirement for cosmetic advertising pre-approval in Decree 181 at the earliest opportunity.
- (ii) The content of reducing administrative procedures for cosmetic advertising should be incorporated in the Decree on cosmetic management.

Removal of requirement for a Certificate of Free Sale

- (i) The content on removing CFS requirement for all imported cosmetics, especially those imported from the EU, should be included in the Decree on cosmetic management.
- (ii) No alternative should be required when the CFS requirement is abolished.

b. Strengthen the application of information technology and e-government in cosmetic management**Develop nationwide cosmetic management software**

- (i) To synchronously solve the problems, we propose the MOH develop online software to receive cosmetic notification dossiers nationwide. This system will consistently apply level 4 public services to both imported cosmetics (notified to the DAV) and domestically produced cosmetics (notified to the DOH). By doing so, we not only address the challenges faced by businesses but also facilitates efficient and transparent dossiers processing. Businesses in every province and city can apply the same online notification process and each province or city does not need to develop its own software. This system will serve as a comprehensive nationwide cosmetics industry database, allowing management authorities to easily access information and

support post-market surveillance efforts.

- (ii) Revise the provisions on cosmetic notification process in the Decree on cosmetic management and remove any words that could be interpreted as requiring of hard-copy applications in Circular 06.
- (iii) When planning to upgrade the software, management authorities should notify businesses in advance of the expected time so that businesses can actively plan their upgrade accordingly.
- (iv) Propose all provincial DOH to apply a full online approval procedure for Cosmetic Notification and Cosmetic Advertising without requiring hard copy dossier submission.

Allow electronic labeling of some mandatory information on cosmetic labels

- (i) The Drug Administration of Vietnam incorporates electronic labeling into cosmetic labeling regulations in the Decree on cosmetic management.
- (ii) The Directorate for Standards, Metrology and Quality includes cosmetic products in the scope of application of electronic labeling in the updates of Circular 18.

c. Develop a competitive and fair cosmetic market for consumer safety

- (i) The Ministry of Industry and Trade updates regulations related to e-commerce management and completes e-commerce management legal framework to upgrade the management level in line with the current development of e-commerce.
- (ii) The Vietnam Competition and Consumer Authority strengthens management on e-commerce platforms, especially for unofficial stores to build a fairer and healthier business environment.
- (iii) The Drug Administration of Vietnam and Departments of Health put more resources and focus on post-market surveillance of cosmetics traded on electronic platforms.

d. Streamline the process of registration of skin antiseptics with simple formulation

- (i) We request that the MOH develop a separate notification or registration process for skin antiseptics with common formulas and active ingredients (such as hand sanitizers) to reduce document requirement and implement completely online without any hard-copy requirement. This group's safety risk is completely different from that of insecticides, so management requirements should be adjusted to accommodate businesses and consumers' needs.
- (ii) For these products, test results of overseas-qualified laboratories should be accepted instead of requiring enterprises to re-conduct the tests in Vietnam. Enterprises should also be allowed to conduct the tests as soon as they submit the registration application.

PART 4: CONSUMER CHOICE

4.1 Food, Agri and Aqua Business Sector

a. Implementation of Agroecology and Organic production in Fruits and Vegetable

- (i) Encourage for the reduction of the use and risk of chemical pesticides. For example, the European Union proposed to aim to reduce the use and risk of chemical pesticides, as well as the use of the more hazardous pesticides, by 50 per cent by 2030 and to increase Organic farming total utilized agricultural area (UAA) from around 14.7 million hectares of agricultural land in the EU in 2020 corresponding to 9.1 per cent to 25 per cent in 2023.
- (ii) Furthermore, encourage the adoption of agroecology through increase of smaller-surface farming, intercropping, and crop-rotation.



- (iii) Incentivize the formation of collaborative clusters and cooperatives for ease of obtaining a single organic certificate.
- (iv) Provide financial assistance for farmers transitioning to organic methods.
- (v) Increase effort and investment for research, training, and policy efforts for a smooth transition to agroecology.
- (vi) Regarding molecules creating cross-contamination and hence impacting food safety and exports, Vietnamese authorities could focus on some pesticides such as Cypermethrin, Permethrin, Acetamiprid, Mancozeb, and many more.

b. Implementation of a One Health Approach in Animal Production

- (i) To further disseminate the regulations and monitor compliance through the enhancement of stakeholders' understanding regarding antimicrobial veterinary products and their WHO category; understanding of the prophylactic use concept; and understanding of the classification of farming enterprise based on livestock units.
- (ii) Ensure better compliance and monitor of regulations with the use of antimicrobial-containing products through labelling and impact assessment of antimicrobial use and resistance.
- (iii) It would be desirable for the government to engage with the food animal production industry, encourage harmonization of antimicrobial regulations, and monitor potential impacts on disease and production in the region.
- (iv) Encourage the alternatives to antimicrobial disease treatments such as biosecurity, vaccination, use of alternative solutions such as probiotic, prebiotics or others nature-based solutions that are used for decades in Europe should be promoted.

c. Financing options for the Sustainability development of Food, Agriculture and Aqua Culture Sectors

- (i) Seminars to be conducted by the Ministries and financial institutions to educate corporates about the benefits of working capital;
- (ii) A subsidized ESG incentive scheme from the Government (similar to the subsidized scheme for the encouraged sector) is needed, this will boost/encourage companies to activate their ESG plans on transitioning towards net zero; and
- (iii) More effort in the development of policies that have interlinked impact is needed. For instance, a clear articulation of the PDPVIII implementation plan with specific timelines is in need as it'll benefit corporates in the agriculture and aquaculture sector as well.

4.2. Wines & Spirits

a. Special Consumption Tax

- (i) No further increases of the SCT should be implemented until 2026, to allow the Government to consider and develop evidence-based taxation policies to meet its objectives on public health and stable income for the State budget properly and comprehensively.
- (ii) Taking the consideration how to reform SCT, the hybrid methodology (a combined AV and specific tax model) should be studied for the W&S industry to meet these objectives. This is also in line with the Government's Tax Reform Strategy until 2030 and Resolution 115.

EuroCham Wine & Spirits Sector Committee stands ready to support these efforts, including a study of the feasibility of the SCT hybrid model in Vietnam, and sharing experiences and best practices from other markets to develop this model for the W&S industry in Vietnam. This would help to set a reasonable and suitable tax methodology with the country's living standards and to achieve the objectives of tax revenues, business development, and public health protection.

- (iii) The MOF, in conjunction with the relevant agencies, should study measures that would address the considerable problem of unrecorded alcohol in Vietnam such as through stronger coordination and law enforcement, protecting consumer safety, and building consumer awareness, with support from the W&S industry. The reduction in unrecorded alcohol will reduce the loss in tax collection from the abovementioned 57% of all alcohol consumed in Vietnam.

b. Advertising and promotion

- (i) Ensure consistency in the revisions of provisions on advertising and promotion of W&S products in the Law on Advertising and Law on Commerce, respectively, with the Law on Prevention of Beer and Spirits' Harmful Effects so as not to introduce further regulatory burdens on the W&S industry;
- (ii) Remove the ban on the promotion of all W&S products in the Law on Commerce. These products should instead be subjected to the relevant advertising restrictions under the Law on Prevention of Beer and Spirits' Harmful Effects instead of Law on Commerce i.e., promotion of alcoholic beverages below 15 percent ABV should be permitted;
- (iii) Review the definition of "advertisement" in the Law on Advertisement to encompass activities conducted by W&S companies, including business and product introductions. This expansion will help establish a clear legal framework for these activities while also promoting the responsible consumption of wine and spirits;
- (iv) To promote awareness of responsible drinking and enhance social responsibility, it is recommended to adopt a balanced and inclusive approach to regulating alcoholic products, rather than rely only on ABV. Advertising restrictions should be made on the basis of where and how the advertisement is placed to give more information to consumers on which products are suitable and how alcohol should be consumed. This approach aims to provide consumers with more comprehensive information about suitable products and responsible alcohol consumption. It underscores the importance of public health and awareness, promoting responsible drinking practices, irrespective of the ABV of the beverage; and
- (v) Finally, such a complete ban on advertisement of W&S products above 15% ABV further leads to an increase in unrecorded alcohol products while threatening the operations of legitimate W&S businesses because consumers are not aware of authentic W&S products and licensed sales outlets. The absolute ban should be revised to the specific ban on which advertisement channel and should be distinguished from mentoring activities for reducing alcohol abuse and increasing the awareness of responsible drinking.

4.3. Automotive

a. Homologation requirements for automotive business

Product composition declaration for customs clearance

- (i) For vehicles that have previously undergone homologation and are produced in factories holding a valid Certificate of Production issued by the Vietnam Register, we recommend granting them immediate homologation without the need for additional testing.
- (ii) For CBU imports, we suggest that certificates should only be presented for parts deemed as "compulsory-component approval" parts, especially when the parts reference number on the vehicle declaration differs from the previous document.
- (iii) Recognise and authorise UNECE documents pertaining to products from the EU. This should be applicable to the generic model range Vehicle Type Approval for CBUs, similar to the practice across EU nations, rather than being specific to model or engine for Vietnam.
- (iv) The European Type approval operates on three distinct "layers":
 - a. Component type approval (relevant for components like glasses, mirrors, horns, etc.)
 - b. System type approval (referring to overarching "Systems" such as emissions, brakes, crash systems)



- c. Whole vehicle type approval (an aggregation of both Components and System type approvals)
- d. Under the EVFTA, the comprehensive vehicle type approval from Europe is recognised, encompassing both component and system aspects (as referenced in Annex 2-B Para 3B of the FTA). Hence, individual Component and System type approvals should be deemed unnecessary.
- (v) Amend Decree 60 to implement Annex 2-B “Motor vehicles and motor vehicles parts and equipment” by October 2023 as per the guidelines of the EVFTA.
- (vi) Provide clear testing and homologation procedures by Vietnam Register. Additionally, explicit guidelines for self-homologation, inclusive of provision from Circular 12, should be provided.

Recognition for safety glass in implementation of EVFTA

- (i) In line with the EVFTA's implementation, we would like to recommend the relevant ministries consider recognising ECE certificates for imported frameless Safety Glass and Mirror components (those without heating equipment or other electrical or electronic appliances) classified under Chapter 70, similar to the recognition provided for safety glass and other components under Chapter 87.

b. Green growth action plan

- (i) For the transition from ICE vehicles to EV, we propose to add PHEV to the EVs list for support policies similar those for BEV (import duty, special consumption tax, ownership fee), to refrain from applying import taxes on EV and hybrid CBU cars imported as for facilitation of consumption and market growth for the beginning of transition to EV, and CKD kits, raw materials, and production equipment to be imported for EV manufacturing and assembly. It is highly recommended to support plug-in hybrid electric vehicles (PHEV) in the short term, particularly while establishing a national public charging network.
- (ii) MOT confirmed to make available the national technical regulation for EV and EV charging stations including plugs, connectors (chargers); wireless charger; electric wires and cables; personal protective equipment (residual current devices); electricity metering equipment to support charging; electromagnetic compatibility; road vehicles - EV electric motors; road vehicles – EV power transmission systems. Technical standard of charging station is very important for operation of EVs. As EU is pioneering market in EV development, we will give our feedback during the open consultation to cooperate with Vietnam authorities by sharing respective information for building up-to-date technical regulations in Vietnam related to charging infrastructure, EVs and its components.
- (iii) Provide EV technology transfer incentives that go beyond the current support in prevailing regulations to customers, CBU-importers, and CKD manufacturers at national and provincial levels.
- (iv) Clarify how companies will invoice power charging to EV users at public and private charging stations at, for example, car dealerships with Vietnam Electricity (EVN) charging stations.
- (v) Provide fiscal incentives to early private investors in charging station networks that offer public high-power fast DC charging in order to ensure access, coverage, interoperability, and a sizeable market
- (vi) Offer EV owners specific benefits decided at city-level such as free tolls, dedicated and VIP parking, open access to the city centre, etc.
- (vii) For FC limit measures, we support the government's direction in fulfilling Vietnam's commitments at COP21 and COP26. We recommend the FC limit measure should be applied with CAFE (weight base -kg) method like in EU and other parts of the world. The suggested method could enhance more flexibility for the automakers to have smooth business plan while assuring the fuel efficiency required. We would highly appreciate participating in related discussions about FC limit regulations in Vietnam.

c. Importation of re-manufactured parts

- (i) In line with the signed FTA, the Government should issue under EVFTA the same decision as Decree 77 for CPTPP regulation allowing the import of re-manufactured parts with the same treatment as that provided to

'like new' goods with specific labelling. Allow application for refurbishment license and code issued by the MOIT valid for the same duration as Decree 77 five years from the date of issue, and the refurbishment import license using similar form as Appendix 10 from Decree 77. We express our keen interest in joining dialogues and collaborating with the Government in formulating this regulation.

4.4. Motorcycles

a. Motorcycle limitation in big cities by 2030 and ice phase out to shift to electric vehicles by 2050

- (i) Acknowledge the importance of motorcycles in daily life, considering concerns about public transportation readiness, the efficiency and eco-friendliness of motorcycle, and the potential lifestyle impact of motorcycle restriction.
- (ii) Address pollution by emphasizing vehicles quality over sheer quantity.
- (iii) Emulate best practices from nations that have successfully integrated advanced public transport and traffic infrastructure with motorcycle use to mitigate congestion and pollution.
- (iv) Encourage MOIT to expand biofuel usage, starting from E10, and to thoroughly explore e-fuel for future implementation. Alongside renewable electric energy, biofuel and/or e-fuel should be recognised as green and clean energy sources.
- (v) Promote an educational campaign on ethanol to highlight the benefits of using fuel with lower ethanol content.
- (vi) Consider the adoption and promotion of stricter emission standards for new motorcycles, such as Euro 4, Euro 5. A phased-out approach to older motorcycles and the MOT's proposed roadmap for EURO 4 implemented by 2025 could effectively diminish air pollution and CO2 emissions. Additionally, establish regular testing procedures for gas emissions from used motorcycles.

b. Tax and customs issues

Special consumption tax

- (i) We urge entities like the National Assembly, Ministry of Finance, Ministry of Planning and Investment to re-evaluate this matter during the revision or introduction of a new law on special consumption tax. It would be beneficial to exclude motorcycles over 125cc from the law on special consumption tax.

Import tax exemption license (ITEL)

- b. Extend the regulations applied to cars, aircrafts, and yachts, granting duty exemptions for all M&Es imported for manufacturing within the motorcycle sector.
- c. Pending the implementation of the above recommendation, consider adopting a proportional approach for M&Es imported for the manufacturing of both non-excise taxable and excise taxable products (i.e., imposing duties in proportion to the expected production of excise taxable goods).

Other custom issues

- (i) Introduce a voluntary disclosure mechanism, enabling businesses to proactively inform customs about inventory discrepancies in duty-exempt imported goods and make timely tax payments.
- (ii) Streamline the re-declaration process by (i) Streamline the re-declaration process by permitting a one-time declaration for multiple entries with identical errors; and (ii) allowing an offset of tax payments among declarations requiring modifications.
- (iii) Create a list of goods already classified either pre-emptively, during customs clearance, or post-clearance audit to guide businesses in identifying potential HS code disputes within industries, aiding appropriate actions.



- (iv) Implement regulations on broad scale, moving away from a case-by-case approach, to provide a consistent framework for businesses.

Motorcycle for road testing

- (i) Removing the need for a Certificate for temporary motorcycle registration.
- (ii) Promptly introducing guidelines for the issuance of Certificates to test motorcycles, similarly to the provisions for car.
- (iii) Creating specific scheme for granting number plates to test motorcycles, drawing inspiration from the EU's model. This would involve allowing motorcycle manufacturers to acquire and manage specific number plates by themselves dedicated solely to their test motorcycles.

4.5. Nutrition & Milk Formula Products

a. Infringement of intellectual property rights and quality violations

- (i) Organize training programs to enhance expertise and knowledge on intellectual property for enforcement agencies (such as economic police, and market surveillance), and encourage enforcement agencies to proactively handle recognizable trademark infringements without consulting experts;
- (ii) Issue a specialized program for the inspection and handling of counterfeit and fake trademarks and quality violations in the food industry. This is because the food industry has a significant impact on public safety and health. The program should aim to identify and strictly handle products with packaging and labels that violate trademarks that have been registered and protected by other businesses, and/or violate quality standards; and
- (iii) Take measures to resolve the disagreement in professional opinions between the Intellectual Property Office of Vietnam and the Vietnam Intellectual Property Research Institute.

Ministry of Industry and Trade:

- (i) Instruct market surveillance forces to inspect and strictly handle acts of counterfeiting/falsifying trademarks and quality violations for the food industry;
- (ii) Take measures to require e-commerce platforms to quickly handle counterfeiting/falsifying trademarks, quality violations, and advertising violations when receiving warnings from trademark owners or competent authorities; and
- (iii) Take measures to encourage food associations and industries to develop a Code of Conduct, which agrees on detailed guidelines on what should and should not be done; enterprises committed to producing quality products, not infringing on trademarks, conducting business and advertising in accordance with the law; there should be a mechanism for feedback to identify, report, and self-correct violations, as well as a process for reporting violations to regulatory authorities should they persist.

Ministry of Health:

- (i) Amend legislation to require food for the elderly, patients, pregnant women, and young children to be produced in facilities that meet Good Manufacturing Practices (GMP) or equivalent

4.6. CropLife Vietnam

- a. Strengthening science and evidence-based decision-making on plant science products and new Agriculture technologies.
- (i) Reinforce policies together with stakeholders that encourage agriculture innovation supported by a transparent, science-based regulatory system consistent with international best practices while taking into consideration agronomic realities in Vietnam

- (ii) Cooperate with multiple stakeholders to deliver the latest Plant Based Innovations innovations that can help farmers overcome increasingly complex economic and environmental challenges through case studies or demonstration of agricultural technologies that accelerate innovation, promote their responsible use, and mitigate the risks of pesticides;
- b. Streamline and accelerate the functional implementation of a comprehensive regulatory framework on agricultural input products.
- (i) Accelerate the GM approval process to comply with current regulations to ensure no restrictions on animal feed imports, encourage the cultivation of GM corn by issuing Variety Registrations for Traited Hybrids, and gradually reduce import dependence.

PART 5: DISPUTE RESOLUTION

5.1. Judicial & Arbitral Recourse

a. Courts and the competition authority

- (i) Maintain the predictability and stability of the current system to ensure an enabling regulatory framework;
- (ii) Continue to publish the judgments of courts at all levels;
- (iii) Publish all decisions of the competition authorities; and
- (iv) 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) A right of appeal should be introduced against first-instance court decisions on jurisdiction or on the validity of an arbitral award.

c. Recognition and enforcement of foreign arbitral awards

- (i) Continue to publish updated figures on applications for recognition and enforcement of foreign arbitral awards to follow the publication of figures for 1 January 2012 to 30 September 2019;
- (ii) Implement the Civil Procedure Code so that it provides for the strict application of the provisions of the NYC;
- (iii) Clarify the term "basic principles of Vietnamese laws" in specific and clear criteria to secure that recognition and enforcement of an arbitration award in Vietnam would be transparent and consistent with those stipulated in the NYC;
- (iv) 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; and
- (v) 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.

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14. Pharmaceuticals	III. Incentivize the Development Of An Innovative Pharmaceutical Ecosystem	175
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ABOUT THE EU - VIETNAM FREE TRADE AGREEMENT

OVERVIEW

On 1 August 2020, the landmark EU-Vietnam Free Trade Agreement (EVFTA) entered into force after ten years of negotiations, which culminated in its ratification by the European Parliament on 12 February 2020 and by the Council of Ministers on 30 March 2020. Vietnam's National Assembly ratified both the EVFTA and the EU-Vietnam Investment Protection Agreement (EVIPA). However, the EVIPA requires ratification by all 27 EU Member States, which is still ongoing. As of August 2023, the EVFTA has been in effect for nearly three years. During this period, the EVFTA's commitments have largely taken effect, encompassing areas like tariff reductions, service market opening, investment facilitation, public procurement access, and regulatory frameworks.

As a bilateral commitment with incentives and long-lasting value, the EVFTA has gained positive results since coming into effect. The import-export turnover with the EU in the first and second year after the effective date of EVFTA was US\$54.9 billion and US\$61.4 billion respectively with yearly increases of 11.9 per cent. In 2022, Vietnam's exports to the EU reached US\$46.83 billion, increasing 16.7 per cent year-over-year, accounting for 12.6 per cent of Vietnam's total export turnover of goods.¹ According to data from Vietnam's General Statistics Office, in the first ten months of 2023, exports to the EU totalled US\$36.3 billion,² which was an 8.74 per cent decline from same period in 2022.³ These figures reflect exports concentrated in sectors such as mobile phones and accessories, computers, electronic products and components, garments and textiles, other machinery, equipment, tools and spare parts, footwear, handbags, wallets, wood and wooden products, and fishery products.⁴ At the same time, Vietnam mainly imported accessories, automobile spare parts, completely-built-up cars, and household appliances from the EU, totalling US\$12.6 billion. This was a slight 1.4 per cent decrease compared to 2021.⁵ In 2022 Vietnam's market share in the EU was 1.7 per cent, which was higher than other ASEAN countries⁶. Moreover, exports are gradually increasing to smaller and niche markets such as Eastern Europe, Southern Europe, and Northern Europe.

Foreign direct investment (FDI) attraction in Vietnam has seen a notable increase, evidenced by the growth in both newly registered and additional capital. This trend demonstrates the ongoing confidence of EU investors in Vietnam's investment environment. As of August 2022, 25 of 27 EU Member States have invested over US\$27.6 billion in 2,384 projects in Vietnam, with the highest investment coming from the Netherlands and France.⁷ In 2022, as of 20 December, the cumulative foreign investment in Vietnam from EU investors amounted to approximately US\$2.46 billion. This figure, encompassing newly registered capital, adjusted registered capital, and capital contributions through share purchases, represented 8.87 per cent of the total FDI in Vietnam.⁸ As of 20 December 2022, EU member states had initiated 157 new projects in Vietnam, comprising 7.71 per cent.⁹ In the first six months of 2023, the EU invested approximately US\$1.3 billion in Vietnam. The most significant contributions came from the Netherlands, Sweden, Germany, and Denmark.¹⁰

1 "Bringing Vietnamese goods deeper into the EU: Still have to overcome many barriers", VnEconomy, 19 September 2023. Available at: < [2 "Xuất nhập khẩu đã vượt mốc 600 tỷ USD", Báo điện tử Chính phủ, 3 December 2023, Available at: <https://baohinhphu.vn/xuat-nhap-khau-da-vuot-moc-600-ty-usd-102231203114833097.htm>, last accessed on 20 December 2023](https://vneconomy.vn/dua-hang-viet-tham-nhap-sau-vao-eu-con-phai-vuot-nhieu-rao-can.htm#:~:text=S%E1%BB%91%20l%E1%BB%87u%20c%E1%BB%A7a%20T%E1%BB%95ng%20c%E1%BB%A5c,h%C3%A0ng%20h%C3%B3a%20c%E1%BB%A7a%20V%E1%BB%87t%20Nam.> . Last accessed on 2 November 2023.</p>
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3 "Tân dụng EVFTA, đẩy mạnh xuất khẩu hàng hóa sang EU", Kinh tế đô thị, 21 December 2023, Available at: <https://kinhtedothi.vn/tan-dung-evfta-day-manh-xuat-khau-hang-hoa-sang-eu.html>, last accessed on 21 December 2023

4 MOIT's report on Two Year EVFTA implementation, Report of Mrs Nguyen Thao Hien, Industry and Trade Newspaper cooperated with Import-Export Department, Department of European - American Markets (Ministry of Industry and Trade) to organize a Seminar on "Exporting to FTA markets: Solving the problem of sustainable development".

5 "Đưa kim ngạch thương mại Việt Nam - EU sớm đạt mốc 100 tỷ USD", Báo điện tử Đảng Cộng sản Việt Nam, 2 November 2023, Available at: <https://dangcongsan.vn/lanh-dao-dang-nha-nuoc/dua-kim-ngach-thuong-mai-viet-nam-eu-som-dat-moc-100-ty-usd-650988.html>, last accessed on 20 December 2023

6 "Vietnam - EU relations to be strengthened", VnEconomy, 10 November 2023, Available at: <https://vneconomy.vn/vietnam-eu-relations-to-be-strengthened.htm#:~:text=Vietnam's%20market%20share%20in%20the,and%20Singapore%200.7%20per%20cent,> last accessed on 20 December 2023

7 "Đầu tư trực tiếp nước ngoài từ EU vào Việt Nam: Thực trạng và hàm ý chính sách", Vietnam Journal of Science, Technology and Engineering, Ministry of Science and Technology of Vietnam. Available at < <https://vjst.vn/vn/tin-tuc/6957/da-tu-truc-tiep-nuoc-ngoai-tu-eu-vao-viet-nam-thuc-trang-va-ham-y-chinh-sach.aspx>>. Last accessed on 3 January 2023.

8 "December 2022 report on foreign direct investment", Ministry of Planning and Investment of Vietnam.

9 Ibid.

10 "Vietnam's Trade & Investment With The European Union Following The 2020 EVFTA", Vietnam Briefing, 12 July 2023, Available at: <https://www.vietnam-briefing.com/news/vietnams-trade-investment-with-the-european-union-following-the-2020-evfta.html/#conclusionsHeader>, last accessed on 16 December 2023

There has been a shift in investment strategies from the EU, demonstrating a more diversified approach compared to FDI from Japan or Korea. The EU's investments are broadly distributed across almost all of Vietnam's economic sectors, covering 18 out of 21. The implementation of the EVFTA commitments on market opening have created a favourable environment for Vietnam to promote investment attraction in a number of areas where Europe has potential and where Vietnam's economic growth is most promising. This increased liberalisation of EU investment in Vietnam is particularly evident in several service industries, including banking, telecommunications, transportation, and logistics. Additionally, the construction industry, processing industry, high-tech manufacturing, and green energy sectors are also benefiting significantly from EU investments.

Since 1 August 2020, Vietnam has issued a total of 180,551 certificates of origin (C/O) for goods exported to the EU,¹¹ amounting to a total value of US\$18.7 billion¹². This accounts for over 20 per cent of export turnover to the EU. In 2022,¹³ the export turnover to the EU and UK markets using C/O form EUR.1 reached US\$2.542 billion, which is 4.91 per cent of the total export turnover to the countries that ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Although this figure is not as high as the 25.89 per cent and 23.54 per cent for other member countries, certain commodities have shown impressive rates of utilizing the preferential C/O form EUR.1. These include fibres and textile fibres, technical fabrics (nearly 100 per cent), footwear (99.51 per cent), seafood (82.94), and plastics and plastic products (79.44 per cent). In the first ten months of 2022, the utilization of incentives from the EVFTA stood at 25.1 per cent, with an increase of more than 30 per cent over the same period in the previous¹⁴. After more than two and a half years of the EVFTA's implementation, footwear has emerged as the product with the highest value in terms of C/O issuance.¹⁵

LEGAL ENVIRONMENT AND SUMMARY OF MAIN POINTS

The EVFTA stands as the most comprehensive and ambitious trade and investment agreement that the EU has ever concluded with a developing country. It is the second such agreement in the ASEAN region, after Singapore, and serves to intensify EU-Vietnam bilateral relations. Through this agreement, Vietnam now has access to a market of around 448 million people with an average GDP of US\$16.2 trillion. Meanwhile, exporters and investors from the EU now 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 all tariff lines – will be eliminated in the next seven years. The rest will be partially liberalised through duty-free quotas. Vietnam 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.

For its part, 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 beginning on 1 August 2020. Due to the EVFTA, the sectors expected to benefit the most include major Vietnamese export sectors previously subjected to high EU tariffs, including textiles, footwear, and agricultural products. Nearly full liberalisation will occur in the next four years.

Vietnam stands to gain more from the EVFTA compared to similar agreements due to the complementary nature of the Vietnamese and EU markets. In other words, Vietnam exports products that the EU does not produce in large quantities or at all, such as fishery products and tropical fruits. Conversely, Vietnam imports from the EU products that are not manufactured domestically, including machinery, aircraft, and high-quality pharmaceuticals.

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 dependence on other trading partners.

11 Good such as footwear, aquatic products, textiles and garments, agricultural products, cereal products, and electronic goods.

12 "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.

13 "Utilization of tariff preferences under Vietnam's FTAs in 2022", WTO Center, 15 May 2023. Available at: < <https://wtocenter.vn/thong-ke/21922-utilization-of-tariff-preferences-under-vietnams-ftas-in-2022#:~:text=In%202022%2C%20export%20turnover%20using,preferential%20C%2FO%20form%20EUR>>, last accessed on 21 December 2023.

14 "Evaluation of implementation results of the EVFTA compared to other FTAs from an export perspective", Seminar of VCCI & MOIT, 10 November 2022.

15 Ibid.

The EVFTA is considered a template for the EU to further conclude FTAs with other ASEAN countries. It should be noted that the EU has also negotiated bilateral agreements with other countries in the region such as Thailand, Malaysia, the Philippines, and Indonesia. These are all countries that compete directly with Vietnam in exporting goods to the EU. This is a steppingstone toward the 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 ten years. Thus, Vietnam should take advantage of this window of opportunity to become a regional hub before FTAs with others in the region take effect.

To compensate for losses of income stemming from lower import duties, Vietnam has adopted a set of internal taxes, which is intended to compensate for, or even overcompensate for, the progressive reduction of duties. In actuality, European exporters are facing a double penalty because the increase in internal taxes is already in place while the reduction of import duties is gradual over ten years of implementation, thus resulting in a higher overall tax burden.

The so-called Special Consumption Tax (SCT) was introduced and theoretically applies to up to 12 goods, but for the time being, it mostly impacts imports of wines and spirits as well as cars while also being applicable to domestic products. However, the ad valorem impact is higher for imports due to the fact that they are generally higher priced than domestic products.

Market Access for EU Service Providers

Although Vietnam's World Trade Organisation (WTO) commitments are used as a basis for the EVFTA's service commitments, Vietnam has not only opened additional sectors and 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 the Vietnamese market. Sectors and sub-sectors that are not covered under the WTO, but are in the EVFTA, include interdisciplinary research and 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

However, the rules on TBT in the EVFTA did not become effective immediately. Vietnam has used the interim transition period, originally granted for adapting to the rules of the EVFTA, for erecting new barriers to trade, sometimes even against the letter of the agreement. There is a similar issue with Certificates of Free Sale (CFS) in the cosmetics sector. Unfortunately, the EVFTA has not specifically addressed the issue of CFS, unlike the CPTPP, which has a specific CFS provision. As a consequence, cosmetics originating from CPTPP countries are exempt from CFS, but cosmetics from European countries are not, leading to clear discrimination in treatment between these two regions.

Sanitary and Phytosanitary Measures

Sanitary and phytosanitary (SPS) measures are necessary to ensure that traded food and feed are safe. However, these measures are sometimes misused as a protectionist barrier. The SPS provisions in the EVFTA cover the EU as one entity, eliminating the need for separate access negotiations with each EU Member State. Another relevant provision is regionalisation, which means that, in the event of issues, only imports from the area at risk will be blocked. Lastly, the EVFTA introduces a 'prelisting' system, which is particularly beneficial for trade facilitation. Under this system, Vietnam accepts the decisions made by EU establishments regarding SPS measures. In cases of uncertainty, Vietnam has the option to conduct its own inspections, but at its own expense.

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.

Rules of Origin

A rule of origin (ROO) is used to connect a product with a country and is used to grant a tariff preference to the product based on its origin. The key features of the ROO included in the EVFTA are the same as those in the EU's General Scheme of Preferences (GSP) and the European Union–Singapore Free Trade Agreement. A certain amount of flexibility and limitations apply that take Vietnam's specific situation into account. 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 that non-alteration, certification, and self-certification, cumulation, and duty drawback are all permitted.¹⁸

Geographical Indication

A geographical indication (GI) is a distinctive designation used to identify products as originating in the territory of a particular country, region or locality where its quality, reputation or other characteristics are unique to the designated place of origin.¹⁹ If a product is granted GI status, it is better protected internationally from being misused or counterfeited. Vietnam, recognizing the value of GIs, has significantly expanded its own GI registrations to highlight and promote regional expertise and traditions, as part of initiatives like “One Commune – One Product” (OCOP). Given these developments, it would be prudent to update the list of mutually recognized GIs under the EVFTA.

IPR

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

Despite the Vietnamese government's efforts to protect intellectual property rights (IPR), the enforcement of current legislation remains a significant challenge for EU producers of IP-protected products. There is a wide array of counterfeit products in the market, including garments, accessories, food products, wines and spirits, cosmetics, pharmaceuticals, computer software, vehicle spare parts, engine lubricants, electro-mechanical products, and consumer electronics. These counterfeit items are not being effectively curtailed, and rightsholders often encounter unreasonable evidentiary burdens when attempting to enforce their rights. To address this issue, a more proactive stance from enforcement authorities in Vietnam is necessary.

Government Procurement

Though Vietnam has one of the highest ratios of public investment-to-GDP in the world, with 39 per cent annually from 1995,²⁰ it has not agreed to adjust and monitor its government procurement under the WTO's Government Procurement Agreement (GPA). Although Vietnam became an observer to the GPA in 2012, it has not committed to its standards.²¹

Under the EVFTA, Vietnam has undertaken new commitments regarding government procurement. These commitments are centred around ensuring fair treatment for both EU and domestic bidders with EU investment, on par with Vietnamese bidders, when the government purchases goods or requests services over a specified amount. Vietnam is committed to complying with the general principles of national treatment and non-discrimination. The FTA also requires its parties to assess bids based on fair and objective principles, to evaluate and award bids based solely on the criteria set out in tender announcements and documentation, and to create an effective regime for complaints and dispute resolution.²² These rules require parties to ensure that their bidding procedures meet their specified commitments and protect their interests, thus helping Vietnam to solve its problem of bids being won by inexpensive but low-quality service providers.

¹⁸ Ibid.

¹⁹ Ibid.

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

²¹ “Agreement on Procurement - Parties and observers”, WTO. Available at: <https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm>, last accessed on 23 December 2023.

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.

Recently, there have been a number of instances of bidding regulations being violated that have led to serious consequences. This behaviour does not only result in the loss of state property, but also has no positive effect on the economy and welfare of the country. Dividing customers, bidding low and then rationalising, and data falsification are all bidding arrangements that are commonly used, but are inconsistent with the Vietnamese laws but also EVFTA's which requires fair, transparent and non-discriminatory principles.

Investment Dispute Settlement

Investment dispute settlement is covered in the EVIPA. In the event of an investment dispute (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 respectively, and three third-country nationals. 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 when the claimant is a small or medium-sized enterprise or if the damage claim compensation is low. This is a flexible approach given that Vietnam is still a developing country.

If either of the disputing parties disagrees with the decision of the tribunal, it can appeal to an appeal tribunal. While this is different from the common arbitration proceeding, it is quite like the two-level dispute settlement mechanism in the WTO (Panel and Appellate Body). We believe that this mechanism is cost-effective and timesaving.

The final settlement is binding and enforceable before local courts regarding its validity, except for a five-year period following the entry into force of the EVIPA.²³

At this moment, Vietnam has already ratified the EVIPA. The issue lies with ratification by individual member states of the EU. To this point, the paradox is that the national bilateral IPA previously signed with Vietnam by some EU Member States, and currently in force, are de facto more favourable as they provide some fiscal exemptions for stimulating foreign investment. This is particularly the case for double taxation avoidance (the investor can opt for taxation in the country of origin) or repatriation of benefits following de-investment.

As the EVIPA does not have such comparable fiscal dispositions due to the fact that fiscal competence remains with the Member States and not the European Union as a whole, the EVIPA is in this respect de facto less favourable.

As of the end of October 2023, 16 of 27 EU Member States have ratified the EVIPA. In the meeting on 15 November 2023 in Hanoi with the Chairman of the International Trade Commission (INTA) Bernd Lange and the International Trade Committee of the European Parliament, the National Assembly Vice-Chairman Tran Thanh Man proposed that the EP should back the enhancement of the comprehensive partnership and cooperation between Vietnam and the EU and its member countries across spheres, including inter-parliamentary cooperation, and urge parliaments of the remaining EU countries to soon ratify the EU-Vietnam Investment Protection Agreement (EVIPA).²⁴

Trade and Sustainable Development

The Trade and Sustainable Development Chapter (Chapter 13) of the EVFTA includes 17 articles with the main contents including: biodiversity; climate change; forest resource management and forest product trade; sustainable management of marine biological resources and aquaculture products; labour and transparency. Commitment to sustainable development, in which the rights of workers and the environment are the two main contents to help ensure equal rights and participation opportunities for all parties as well as in the supply chain.

For Vietnamese enterprises, EVFTA is an important opportunity to reposition business strategies as well as establish the image and corporate social responsibility (CSR), in order to exploit a difficult market like the EU. Businesses need to realize that meeting sustainability standards adds to production costs but can also help move up a higher price segment. For relatively "fastidious" consumers in the EU, low selling prices are not the only factor in choosing a product. They are willing to accept a higher price, if the product is environmentally friendly, undergoes the

²³ Please refer to further comments in the Legal Sector Committee's chapter on Judicial and Arbitral Recourse for more information.

²⁴ "EP official lauds Vietnam's progress in green transition", Vietnam Plus, 16 November 2023, available at: <https://en.vietnamplus.vn/ep-official-lauds-vietnams-progress-in-green-transition/271335.vnp>, last accessed on 16 December 2023

production process with civilized labour standards.

In the meantime, the EU has adopted or is going to adopt a number of regulations intended to ensure the sustainability in the production and trade of goods domestically produced or imported. Anti-deforestation regulations (EU Deforestation Regulations – EUDR) as well as the Carbon Border Adjustment Mechanisms (CBAM) will impose new standards as well as the due diligence draft directives will require large enterprises to monitor their supply chain including foreign outsources (such as the ESG standards). This will require close collaboration between the EU and Vietnamese authorities to ensure smooth implementation.

EuroCham stands ready to act as an advisor for these adjustments of these regulations.

THE FUTURE: REGULATORY COOPERATION

Regulatory differences across jurisdictions are costly for companies and frequently prevent high-quality foreign direct investment if local markets offer limited opportunities. These costs are the result of variations in domestic conditions and preferences. For a country to become part of global value chains, it must provide a seamless regulatory environment to attract its desired investors.

Not all these divergences are the 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.²⁵ For an economy to be fully integrated into the global economic system, it needs to internationalise its own regulatory system and the mindset of its regulators. Regulatory systems were often established at a time when domestic policy considerations predominated. The fundamental assumption in place today is that regulators in different fields pursue the same public policy objectives of improving citizens' lives through safer, healthier and more sustainable production and consumption practises.

A wide range of relationships make use of regulatory cooperation. Originally developed for trade matters between US and EU regulators,²⁶ the EU has expanded its approach to all OECD members and many emerging economies. In addition to being used in many areas with Japan,²⁷ it is the cornerstone of the EU-Japan Free Trade Agreement in the automotive sector. Additionally, it provides guidance on better regulation and regulatory coherence for the EU-South Korea FTA and the EU-Canada FTA. From 15 years ago, the EU-China relationship has used a regulatory cooperation approach in the regulation of the financial sector and capital markets. Regulatory cooperation is also used with Taiwan.²⁸ 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 in specific subject areas.²⁹

To reach the next level of EU-Vietnam economic integration, both in trade and investment, regulatory cooperation is perhaps the best approach for future EVFTA implementation at this point. Regulatory cooperation focuses on mutual understanding of good regulatory practises, the modernisation of national regulatory frameworks, the de-bureaucratisation of old-fashioned regulatory approaches, the adoption and improvement of international standards and practises by regulators, and is a precondition for the use of cross-border recognition frameworks,

25 "International Regulatory Co-operation and Trade", OECD library. Available at <www.oecd-ilibrary.org/governance/international-regulatory-co-operation-and-trade_9789264275942-en>. Last accessed on 19 August 2021.

26 "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.

27 "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%20practises%20or%20approaches%20they%20adopt>. Last accessed on 19 August 2021.

28 "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.

29 "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.

regulatory convergence, legislative harmonisation, mutual recognition and equivalency arrangements.³⁰

Regulatory cooperation means that regulators from two different countries or regions, in this case, the EU and Vietnam, collaborate 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;
- Work together on developing international standards, especially in international fora; and
- Discuss how to address issues arising when the two sides' regulations diverge or are incompatible, and thus create barriers to trade or investment.³¹

The participation of businesses on both sides is essential for regulators to identify where the most significant obstacles to better trade and investment integration lie. 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 ideas on how to modernise and improve the Vietnamese business environment.

THE EVFTA IN THE WHITEBOOK

In several chapters throughout this publication, our Sector Committees raise issues and challenges relating to the EVFTA's implementation. An overview of these Sector Committees and their relevant issues are as follows:

Chapter 1. Digital I. Cybersecurity Regulations and Digital Economy Regulation II. Industrial Collaboration in The Digital Age	Chapter 18. Food, Agri and Aqua Business II. Implementation of A One Health Approach in Animal Production
Chapter 9. Green Growth I. Circular Economy 2. Addressing Plastic Pollution	Chapter 19. Wines and Spirits I. Special Consumption Tax
Chapter 13. Women in Business I. Labour Regulations Affecting Female Employees	Chapter 20. Automotive I. Homologation Requirements for Automotive Businesses 1. Product Composition Declaration for Customs Clearance IV. Importation of re-manufactured parts
Chapter 17. Cosmetics I. Simplify Administrative Procedures in Cosmetics Management – Focus on Strengthening Post-Market Surveillance 2. Removal of requirement for a Certificate of Free Sale	

30 "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.

31 "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.



BUSINESS ENVIRONMENT IMPROVEMENT

CHAPTER 1 DIGITAL

OVERVIEW

In past years, we witnessed the great efforts Vietnam has put into building a regulatory framework for digital technologies. We wish to renew our support in accompanying Vietnam in improving this framework thanks to the insights of our experts. Our advice falls in areas such as cybersecurity and personal data protection, the scope of the law on telecommunication and a broader view of industry collaboration. It is paramount to sustain our implementation efforts toward building a framework for both Vietnamese and European institutions to work harmoniously together, ensuring accountability across the supply chain while fostering proper protection of consumers across borders. 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. We believe that the following topics would be beneficial both at a national and global level:

- Working to achieve compatibility between regulations of the data economy between Europe and Vietnam;
- Implementing platforms and tools towards traceability, the origin of goods, and transparency;
- Facilitate the movement of data across borders in compliance with Vietnamese law;
- Adoption of internationally recognised technology security standards; and
- Pursuing clarity and coherence in the growing number of texts regulating the usage of digital technology, as our comment on the law of telecommunication suggests.

I. CYBERSECURITY REGULATIONS AND DIGITAL ECONOMY REGULATION

Relevant authorities: Ministry of Information and Communications (MIC), Ministry of Public Security (MPS), Office of the Government (OOG), Ministry of Justice (MOJ), Ministry of Science and Technology (MOST)

Cybersecurity and data protection regulations

Issue description

The Law on Cybersecurity¹ has recently been supplemented by Decree 53², detailing a number of articles of the Law on Cybersecurity which provides strong requirements on data localisation and local office establishment. This legislation requires government agencies and domestic enterprises to store certain types of data in Vietnam while mandating both local storage and physical presence in Vietnam of foreign enterprises in stipulated instances. On 1 July 2023, the Personal Data Protection (PDP) Decree came into effect, which frames how Vietnamese businesses must operate personal data. That said, we note that the above-mentioned regulations still lack detailed written guidelines, which are needed for clear and consistent implementation. As such, the issue we want to address is to ensure businesses falling under the scope of the law are provided with clear guidelines so that they can comply at a reasonable cost.

Potential gains/concerns for Vietnam

The main gain for Vietnam from a cyber security and a data protection framework that is convenient for businesses to comply with is a boost in productivity for companies operating on its territory. The number of digital tools,

¹ Law 24/2018/QH14 dated 12 June 2018 of the National Assembly on Cybersecurity (Law on Cybersecurity).

² Decree 53/2022/ND-CP dated 15 August 2022 of the Government elaborating a number of articles of the Law on Cybersecurity of Vietnam (Decree 53).

and along with it the amount of data that is processed, is growing exponentially. While the relevant regulations need to reflect and frame the usage of digital tools and related processing of data, it must not hinder the digital transformation of businesses. If companies operating in Vietnam hesitate to implement the newest digital technologies for fear of non-compliance, their productivity will fall behind that of companies with the possibility of implementing such tools, in jurisdictions with clearer guidance, where a long-term digital transformation strategy can be designed.

This issue is even more daunting for international companies that have to comply not only with Vietnamese regulations but also with equivalent ones in other regions they operate in. Any rule in Vietnam constraining how they can implement their IT system will reduce the attractiveness of the country in regard to other options. For example, we noted that Decree 53's rules for the implementation of the Law on Cybersecurity's data localisation and local office requirements cast a wide net and, capture many entities. It is important to provide clear guidelines to companies concerned by the new regulation. We want to underline that the data localisation measures will not necessarily boost security much. The physical placement of the data has no bearing on security. Every system that is directly or indirectly connected to it is subject to assaults (cross-border attacks and data breaches are the norm). Security is primarily concerned with (1) the physical infrastructure in which data is stored, and (2) who owns and manages the data (and can, therefore, assist law enforcement). Vietnamese businesses should be allowed to store and process their data in the most secure data centres, which are audited against global security and privacy standards by independent third parties. Only global service providers can give this degree of security in this area.

Recommendations

- Clarify which entities fall under data localisation and local office requirements. While Decree 53 states that all domestic enterprises are subject to local storage, it is noted that the Law on Cybersecurity requires this of domestic providers of "telecommunications services, internet services, and value-added services in Vietnam cyberspace". Therefore, clarification is needed on this point. In addition, the plain language of Decree 53 is unclear as to whether a local branch of an offshore company will be deemed a domestic enterprise, so clarification in the form of official written guidance is still needed in this regard as well for clear and consistent implementation. In the case of foreign enterprises, the data localisation and local office requirements are applicable only when they provide regulated service(s) (e.g., telecommunications services, data storage in cyberspace, e-commerce, online payment, payment intermediaries, etc.), but the level of involvement in said regulated services is not specifically provided for in Decree 53;
- Ensure consistency across regulations. For example, in the banking industry, the SBV enables foreign branches to host and process users' data abroad, in their headquarters. However, Decree 53's data localization provisions and the PDP Decree's cross-border data transfer rules may create conflict with other existing regulations. At present, therefore, there is a risk that companies, especially foreign enterprises, are experiencing difficulties in their compliance efforts; and
- Provide a clear process to enable cross-border data transfer when needed. At the moment, the plain language of both Decree 53 and the PDP Decree is unclear as to whether keeping a copy of the data in Vietnam, while sending data abroad, is compliant or not. Therefore, clarification in the form of official written guidance is needed for compliance purposes because international companies must send data to their headquarters in the process of their operations.

Harmonisation of the data protection framework

Issue description

The European Union has had the General Data Protection Regulation (GDPR), the Digital Service Act (DSA), the Digital Market Act (DMA), the Data Governance Act, the Security Act, etc. Meanwhile, Vietnam has updated and continued to develop the Law on Cybersecurity, Decree 72 on the Management, Provision, and Use of Internet services and Online information⁴, the Law on E-transactions⁵, the PDP Decree, etc. In light of the National Digital

³ Decree 13/2023/ND-CP dated 17 April 2023 of the Government on Protection of Personal Data (PDP Decree).

⁴ Decree 72/2013/ND-CP dated 30 June 2020 of the Government on the management, provision, and use of internet services and online information (Decree 72) amended by Decree 27/2018/ND-CP (Decree 27).

⁵ Law 51/2005/QH11 dated 29 November 2005 of the National Assembly on E-Transactions (Law on E-Transactions).

Transformation Programme to 2025, with Orientation to 2030 (VNDS) as approved by the Prime Minister with Decision 749⁶, Vietnam is ardently working to develop its digital government, economy, and society. It is also establishing local digital businesses with improved global competitiveness and capacity. Issues:

- Conflicts that may arise for companies already subject to EU-GDPR and Vietnamese companies doing business with EU “data subjects” and that, therefore, need to comply with GDPR;
- Finding a data policy that fulfils the Vietnamese Government’s agenda of data security while addressing the concerns of the business community. The economic impact of such policies needs to be considered; and
- Providing for provisions that do not hinder the free-flow of data across legal instruments including, but not limited to, the Law on Cybersecurity, Decree 72, and the PDP Decree.

Harmonisation of Vietnamese regulations and GDPR

Vietnam and Europe need to address any conflict that may arise for companies already subject to European and Vietnamese regulations. 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. This Facilitator could certify any Vietnamese company processing GDPR-protected data. Certification implies adherence to a code of conduct, where the company states that it complies with the EU-GDPR standards to do business with EU partners.

This Facilitator would handle any issues or difficulties between Vietnamese and European subjects. For example, any request regarding Vietnamese regulations that could conflict with EU-GDPR would be addressed by the Facilitator.⁷ Exceptional access to EU-GDPR protected data can be granted under Article 49 (Derogations) of EU-GDPR 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. Alternatively, it could be included in a third-party institution, for instance at the ASEAN level.

Impact on Vietnam’s Economy

The compatibility of Vietnamese laws with relevant provisions of different jurisdictions and international best practice is vital to ensure the further development of the local digital economy, promote a favourable business environment for European investors/ enterprises in Vietnam, and bring benefits to local consumers. Consistent and aligned approaches would help avoid confusion and compliance-related issues. For example, it would 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 not also hosted here. Businesses in Vietnam are leveraging ICT and other services to increase business and participate in cross-border trade.

Impact on Companies

Vietnamese companies compete on a global scale. As a result, they require cutting-edge resources and industry-leading security to ensure they remain competitive with their regional peers. When issuing regulations on IT services and the digital economy, Vietnam should assess the costs of compliance in the proposed framework. For example, forced localisation limits the ability of businesses to access tools necessary to lower IT costs, innovate, and scale rapidly.

The distinction between “domestic” and “foreign” enterprises with respect to statutory requirements would likely lead to significant confusion and disruption. Decree 53 has included FDI companies registered under the Vietnam’s Law on Investment and incorporated in Vietnam (both wholly-foreign-owned and majority foreign-owned) in its definition of domestic enterprise (though it remains unclear from the plain language of Decree 53 whether the term will cover local branches of foreign companies, which is why additional written guidance is

⁶ Decision 749/QĐ-TTg dated 3 June 2020 of the Prime Minister approving program for National digital transformation by 2025 with orientation towards 2030 (Decision 749).

⁷ For example, Article 21 of the Cyber Security Law on the prevention and response to cybersecurity emergencies.

being sought for). Taking this into account, requiring such digital service providers in Vietnam to store users' data here is inconsistent with the business model of most multinational companies providing digital services. Even if MNCs use some data storage services in Vietnam to reduce latency to customers, for many, most data processing and advanced analytics occur offshore due to cost efficiencies and service improvement insights made possible through data aggregation.

Potential gains/concerns for Vietnam

The fact that Vietnamese regulations could potentially conflict with those in 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 find itself in an untenable position with respect to how it processes that data. In short, compliance with Vietnamese regulations could be deemed incompatible with various EU requirements under EU-GDPR.⁸ If both Vietnamese law and other laws govern a conflict, businesses would be unsure about which regulation is applicable and, therefore, might risk non-conformity with one while adhering to the other, risking large fines as a result. This could lead to companies deciding not to develop their business in Vietnam.

Recommendations

- Ensure compatibility between Vietnam and the EU with regards to Article 45 of the EU-GDPR transfers based on an adequacy decision including a concrete timeline and action list;
- Establish a Facilitator 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;
- 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; and
- 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.

II. COLLABORATION IN THE DIGITAL AGE TO ADVANCE THE SEMICONDUCTOR INDUSTRY

Relevant authorities: Ministry of Information and Communications (MIC), Ministry of Public Security (MPS), Ministry of Justice (MOJ), Ministry of Science and Technology (MOST)

Issue description

One of the objectives of EuroCham Vietnam is to unlock the potential collaboration between Vietnamese and European companies. Following the signature of the EVFTA, we have seen a growing interest from European companies to trade with, or even implement their production lines in Vietnam. In this context, the Digital Sector Committee would like to point out the importance of digital technologies in the future of this industrial collaboration. In the meantime, the European Union is issuing arrays of standards and regulations to support social justice and environmental protection. These rules imply that companies operating in Vietnam, both local and foreign, are able to compile reliable information about their supply chains and share it with their trade partners in Europe. Digital technologies come in line to enable this compliance at a reasonable cost.

The top priority of EuroCham Vietnam is to maximize the potential of Vietnam in the semiconductor industry. We aim to realize the initiatives announced by the Vietnamese Government to improve the business environment to be the most favourable and attractive for European investors and businesses in the semiconductor industry, in

⁸ For example, a Vietnamese data processor could have to share personal data in its system under Article 21, Law on Cybersecurity. If, in the meantime, this data is protected by the GDPR through the Standard Contractual Clause, there is a conflict.

harmony with the regulations in the Chip Act. The semiconductor industry is a key pillar in Vietnam's industrialization and modernization process. Since the 2000s, Vietnam has attracted investment and presence from multinational companies such as Samsung, Apple, Intel, Qualcomm, and many other conglomerates investing in semiconductor technology, significantly contributing to Vietnam's strong integration into the semiconductor industry regionally and globally. This is a sector with enormous development potential, with increasing investments in sophisticated products as well as R&D activities.

Eurocham is looking ahead and commits to support the profound transformations Vietnam needs to undertake to become a key player in the region. For instance, the integration of advanced digital technologies, such as Industry 4.0, IoT, and AI, stands as a cornerstone for the enhancement of manufacturing processes. This strategic implementation not only promises to elevate supply chain transparency and efficiency but also fosters a responsive and adaptable production environment. The incorporation of these cutting-edge technologies is key to maintaining a competitive and innovative edge in the global semiconductor market.

- **Sustainability:** By integrating sustainability metrics into these digital tracking systems, companies and oversight bodies can better measure and control the environmental impact of the entire supply chain. This proactive approach not only aligns with global environmental standards but also contributes to attracting investors and stakeholders. This becomes increasingly vital as international businesses show a growing interest in addressing environmental concerns;
- **Intellectual Property protection:** Providing a trusted framework for foreigners to bring their technologies into Vietnam without fear of IP infringement is necessary to any form of industrial cooperation; and
- **Harmonisation of Cybersecurity and Data Protection Regulation:** We detailed the mechanisms of this issue in the chapter "Cybersecurity and Data Protection Regulation". In the context of industrial cooperation, cybersecurity and data privacy (when sharing data with other supply chain participants) are paramount so that data can flow between regions and actors in a secure way, in full compliance while maintaining a low cost.

Potential gains/concerns for Vietnam

For Vietnam, implementing the basis of the industrial collaboration with Europe will enable long-term growth of global trade between the two regions. As European standards are currently the highest in the world, unlocking this huge market for Vietnamese industry players will also be foundational not only in setting Vietnam as a mature player in the World Trade Organisation (WTO) but also a key player in the semiconductor industry. This strategic alignment will elevate the country's standing in global trade, hence attract further investment and innovation, ultimately cementing Vietnam's role as a key partner in global digital technologies.

However, this endeavour is not without its concerns. Meeting the European standards could require substantial investment in infrastructure and workforce training. The process of harmonizing data protection laws, IP rights, and supply chain sustainability standards may also pose regulatory and compliance challenges.

Recommendations

- **Promote the usage of digital technologies within the supply chain:** We recommend Vietnamese stakeholders push forward in implementing digital technologies to bring unparalleled transparency to supply-chain operations. This should include real-time tracking systems for sourcing materials, manufacturing processes, and distribution networks. By doing so, Vietnamese players will be better equipped to validate the standards and efficacy of supply-chain systems, ensuring compliance with international norms;
- **Promote European-Vietnamese Partnerships in the Semiconductor Industry:** Foster closer collaboration between European technology firms and Vietnamese manufacturers, enhancing the local industry's capacity to meet international standards.
- **Integrate Sustainability Metrics in Supply-Chain Monitoring:** To elevate the commitment to environmental stewardship, it is advisable to incorporate sustainability metrics into the digital tracking systems. This will allow companies and regulatory bodies to more effectively measure, control, and report the environmental impact of industrial activities within the entire supply chain. This step is crucial for meeting both local and global sustainability goals and regulations;

- **Implement Robust Digital Mechanisms for Intellectual Property Protection:** Given the sensitive nature of intellectual property in the industry, we urge the establishment of advanced digital logging and tracking systems for all IP-related activities. In addition, adopting encryption protocols and secure data environments should be a priority to ensure that access to sensitive IP data is restricted to authorized personnel only. These measures will significantly enhance the identification and prevention of unauthorized IP use or theft; and
- **Invest in a skilled workforce to implement the standards within the industry:** Finally, one of the most important aspects is to grow a workforce. It should be able to implement and manage the high standards required for digital technologies, supply-chain management, IP protection, and cybersecurity. Partnerships with educational institutions for specialized training and continuous learning initiatives will be essential for building a workforce that is not only skilled but also adaptable to evolving industry needs.

III. TELECOMMUNICATIONS REGULATION

Relevant authorities: Ministry of Information and Communications (MIC), National Assembly's Committee on Science, Technology and Environment (NACSTE), Vietnam Telecommunications Authority (VNTA)

Issue description

Vietnam's telecommunications landscape is experiencing rapid evolution, marked by a surge in innovative services such as Over-The-Top (OTT) telecom, cloud computing, and internet data centre (IDC) services. To address this trend, the Ministry of Information and Communications (MIC) and Vietnam Telecommunications Authority (VNTA) have conducted research, learned from experiences of developed countries and actively engaged with domestic and foreign enterprises and associations to propose the Government to amend the Telecommunications Law. On 24 November 2023, during the 6th session of the 15th National Assembly, the National Assembly has approved the amended Telecommunications Law with the aim of strike a delicate balance between regulating these emerging services and fostering their growth and innovation. The amended Telecommunications Law will come into effect on January 1, 2025, for the provisions regulating Over-The-Top (OTT) telecommunications services, cloud computing, and Internet Data Centers (IDC). For the remaining provisions, it will take effect on July 1, 2024. In the draft stage of the amended Telecommunications law, concerns have emerged regarding the potential integration of new services under the Telecommunications Law and the necessity for clear and distinct regulations due to their unique characteristics. However, during the drafting process, some of the concerns mentioned above have been partially addressed. Additionally, the challenges in implementing the amended Telecommunications Law emphasize the need for both the government to establish comprehensive guidelines and for businesses to enhance their understanding and compliance with the evolving legal landscape in the telecommunications sector.

Potential gains/concerns for Vietnam

At the draft stage of the amended Telecommunications Law, some provisions of the regulation were identified as potentially causing uncertainty for businesses providing three new services, such as: (i) Classifying Over-The-Top (OTT) telecommunications services, cloud computing services, and Internet Data Centers (IDC) services under the Telecommunications Law, subjecting them to regulations similar to those for traditional telecommunications services; (ii) The need for a "light-touch" regulatory approach for these new services. (iii) Some obligations were deemed not entirely suitable, and certain terms were not clearly defined. (iv) The obligations of businesses providing these services were distributed across various chapters, making it challenging to understand and comply with them.

Therefore, we highly recognized the dedicated effort undertaken by the Examination Agency (The NACSTE), the MIC and VNTA in addressing the concerns raised by business community in submitting for approval by the National Assembly the amended Telecommunications Law towards "light touch regulation" for these 3 services such as: (i) Providers of these 3 services are exempted from certain obligations, such as not having to contribute to the Public Utility Telecommunication Services Fund and not being required to pay telecommunication operation fees; (ii) Providers of these 3 services are not required to obtain a telecommunications license; instead, they only involve the process of registration and notification; (iii) All the rights and obligations of providers of these 3 new

services are consolidated into a single section (Section 3 - Chapter II) for the convenience and compliance of the businesses, (iv) Clear provisions regarding the non-restriction of the foreign investment capital.

When the regulations for the 3 new services come into effect on 1 January 2025, they will create a healthy and fair competitive environment among businesses in the telecommunications sector. However, to ensure the effective implementation of this policy, the government needs to issue detailed implementing decrees, including provisions on the management of providing the 3 new services across borders to users within the territory of Vietnam. The amended Telecommunications Law only outlines general principles for cross-border telecommunications service provision. Therefore, government agencies should promptly clarify these regulations to ensure they do not impose burdens on service providers and align with international practices

Recommendations

- The Ministry of Information and Communications and Vietnam Telecommunications Authority should soon organize the dissemination of the provisions of the amended Telecommunications Law, especially new regulations, and new adjustments to ensure that both the public and businesses have a clear and comprehensive understanding of the new policies, fostering a sense of confidence in the investment and business processes of enterprises;
- In the process of developing the decree and guidance for the Telecommunications Law, the Ministry of Information and Communications and Vietnam Telecommunications Authority should continue to maintain an open and receptive approach. They should actively listen to the opinions of the business community, allowing for their contributions and insights in shaping the drafts.

ACKNOWLEDGEMENTS

EuroCham Digital Sector Committee

CHAPTER 2 INTELLECTUAL PROPERTY RIGHTS

OVERVIEW

Intellectual Property Rights Sector Committee under EuroCham (IPRSC) was established in 2012 to provide a platform for our members to exchange information, voice their concerns and make recommendations for a stronger enforcement of intellectual property (IP) rights in Vietnam. By doing so, we hope to help to bringing the IP legal system closer to the common global standards, producing a healthier and more competitive business climate, and so helping to enhance Vietnam's position as a safe haven of foreign investment. Especially at a time when Vietnam is actively engaged in the global integration process, including the ratification of the European Union-Vietnam Free Trade Agreement (EVFTA).

Chapter 12 of the EVFTA contains provisions on intellectual property, including promises on standards of protection, enforcement, and international cooperation on intellectual property, which explicitly define the extent and principles of preserving property rights. Inventions, industrial designs, trademarks, geographical indications, private information, plant varieties, and copyright are all examples of intellectual property for distinct IP objects. These promises represent both an opportunity for Vietnam to increase the efficacy of intellectual property rights enforcement and a demand for Vietnamese companies to properly understand and have the best preparatory plans in place in order to fully benefit from these commitments, take advantage of the implications that these regulations bring.

We applaud the Vietnamese Government's recognition of the significance of IP rights protection in general, and IP rights enforcements in particular, by issuing guidelines and policies to increase protection and enforcement. However, despite the Government's attempts to defend IP rights, there are still challenges in enforcement that generate significant difficulties for makers of EU IP-protected items.

As a result, we believe that the suggestions below will help to improve the efficiency of IP rights establishment while also actively contribute to the preservation and enforcement of IP rights to guarantee a fair and time-saving handling process for IP disputes in Vietnam.

I. INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

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

1. Criminal prosecutions of IP infringement

Although the Criminal Code has been in force since 1 January 2018,¹ enforcement agencies such as the Economic Police, the People's Procuracy, and the Court have yet to receive any official guidance regarding criminal prosecution for IP infringement. In the meantime, the infringement's sophistication and complexity, as well as a number of practical issues, continue to present obstacles for both IP owners and agencies during the infringement management process. Some typical examples include the lack of a precise definition of "commercial scale", inconsistencies in determining "illegal profits" for the purpose of determining criminal liability, the dearth of explicit directives regarding evaluation methods and criteria, which impede the establishment of "criminal intent" according to the provisions of the Criminal Code.² Indeed, the number of criminal cases prosecuted each year is still relatively low. In Vietnam, IP proprietors commonly depend on administrative remedies to resolve cases of IP infringement cases. However, it has been observed that the sanctions imposed on successful administrative remedies are comparatively lax and fail to effectively deter subsequent infringements.

An area of progress in Vietnam's endeavour to refine and augment its IP legal framework is the establishment

¹ Criminal Code 100/2015/QH13 issued on 27 November 2015 by the National Assembly (Criminal Code)

² Trademark infringement under Article 226 of Criminal Code.

of specialized IP courts. In particular, as stipulated in Article 61 of the Draft Revised Law on Organization of the People's Courts of 2014 (Draft), the Intellectual Property Court of First Instance, the Administrative Court of First Instance, and the Bankruptcy Court of First Instance shall comprise the specialized the People's Court of First Instance.³ Currently, the Supreme People's Court (SPC) is soliciting public comments on this Draft.

Furthermore, in order to enhance the efficacy of law enforcement agencies in their efforts to address infringements, it is critical to underscore once more the significance of the SPC issuing authoritative guidance on criminal prosecution of IP infringements in order to furnish all enforcement agencies with timely direction. Furthermore, it is imperative that enforcement agencies engage in consistent dialogue and collaboration with pertinent organisations and individuals, such as members of IPRSC, in order to address the obstacles and develop suitable resolutions that effectively address the ever-evolving and complex nature of IP infringements in Vietnam.

2. Mandatory expert opinion from Vietnamese IP organisations

Issue description

Although there is no legal obligation to seek opinions for enforcement actions and proceedings, IP enforcement and proceeding agencies have traditionally requested formal or professional opinions from IP organisations such as the Vietnam Intellectual Property Research Institute (VIPRI), the Intellectual Property Office of Vietnam (IP Vietnam), and the Expertise Center for Copyright and Related Rights (ECCR).

Potential gains/concerns for Vietnam

The necessity of an expert opinion substantially hampers the effectiveness of enforcement and adjudication processes as a result of the rapidity and unpredictability associated with opinion rendering. There are instances in which VIPRI and IP Vietnam hold divergent viewpoints regarding the same subject requiring evaluation and inspection. The discrepancy arises from whether the evaluation procedure considers the object's overall aspect. This creates challenges for both adjudication and enforcement agencies as they are unwilling to consider the alternative solutions or make independent decisions within the scope of their functions and authority.

While the internal discrepancies between VIPRI and IP Vietnam pose challenges to adjudication and enforcement processes, they also have broader implications for the determination of IP infringement. This leads to concerns related to consumer confusion, as the current evaluation procedures does not take into account consumers' evaluations.

Recommendations

- Advocate for IPR enforcement agencies to carry out enforcement and adjudication activities in accordance with their jurisdiction and functions, with professional opinions serving as a point of reference only; rights holders are not obligated to provide additional professional opinions in situations where an infringement is overtly apparent or where analogous cases have occurred in the past.
- In addition to technical considerations, adjudication and the management of infringements should take into account the malicious intentions of infringers who intentionally create counterfeit products that are not entirely identical to the original products on the market with the intention of deceiving consumers or capitalizing on the reputation and popularity of the original products to promote similar products (free riding technique).
- Strengthen propaganda and training to enhance the capacity and knowledge of adjudicating and enforcement agencies regarding intellectual property in order to facilitate the exercise of their authorities and the performance of their duties.
- Accelerate the establishment of specialized IP courts.
- Recognize and incorporate consumer perspectives into the adjudication and enforcement processes, considering the potential impact of infringement on consumer welfare and addressing instances where

³ Full text of Draft 2 and Statement of Draft 2 of the Supreme People's Court on the revised Law on Organization of People's Courts of 2014

consumer confusion may arise. This could involve engaging consumers in the evaluating process or conducting surveys to better understand the public perception of IP-related issues

3. Complexity of copyright registration procedure for enforcement

Issue description

Vietnam, a signatory of the Berne Convention, adheres to the principle that copyright protection is automatically secured without the necessity for registration or any formal procedures. However, it is common practice in most countries to have a system of voluntary registration of works. While the Vietnamese Intellectual Property Law⁴ does not require the registration of copyrights and related rights for protection, it appears that obtaining a registration certificate is essential for authors to enforce their rights in the event of a dispute.

Potential gains/concerns for Vietnam

Currently, the process of registering copyrights with the Copyright Office of Vietnam (COV) presents several challenges for intellectual property owners. These challenges include the requirement to submit sensitive documents such as the passport or national ID card of the author/creator and employment contracts, which may contain personal, private information, as well as trade secrets and confidential business information. Additionally, authors or creators are required to sign a declaration, a task that can be problematic if they are no longer employed by the company or, in some cases, if they are deceased. As it stands, only certificates of copyright registration are accepted as valid proof of copyright ownership, and no alternative forms of documentation are considered.

Recommendations

- Encourage flexibility to consider alternative proof of copyright ownership instead of the copyright registration certificate.

II. INTELLECTUAL PROPERTY RIGHTS PROSECUTION

Relevant authorities: Ministry of Science and Technology (MOST), Ministry of Culture, Sports and Tourism (MOCST), Ministry of Information and Communications (MIC)

1. Copyright issues

Issue description

The requirement in Circular 08⁵ to “summarize the main content of the work” should align more closely with the essence of copyright protection. Additionally, guidance is needed for the “commitment to the creation of the work” section, particularly in instances where the author is deceased.

Potential gains/concerns for Vietnam

Copyright laws do not secure the substance of a work; rather they safeguard its expression. A synopsis of the content-related aspects of a script, including dialogue/quotes, characters, or context, does not determine whether a registered work is protected. We have concerns regarding the potential prolongation and the complexity of the copyright registration procedure due to the requirement for modifying the copyright registration declaration in relation to this summary.

As it is not possible for a deceased author to complete the “commitment to the creation of the work” section, guidance should be provided as to whether this section can be left vacant in lieu of the author’s signature, so as

⁴ Law 50/2005/QH11 promulgated on 29 November 2005 of the National Assembly on Intellectual property, as amended by Law 07/2022/QH15 promulgated on 16 June 2022 of the National Assembly amending and supplementing a number of articles of the Intellectual Property Law (Intellectual Property Law)

⁵ Circular 08/2023/TT-BVHTTDL dated 2 June 2023 of the Ministry of Culture, Sports and Tourism regulating forms for registration of copyright and related rights (Circular 08)

to prevent the necessity of revising the copyright registration declaration.

Recommendations

We recommend amending and supplementing the provisions of Circular 08 on copyright registration declarations as follows:

- Remove the requirement for content-related summaries in works.
- Clarify that the commitment section need not to be completed if the author is deceased.

2. Patent issues

Issue description

Security control protocols for inventions

Article 14 of Decree 65⁶, which was issued on 23 August 2023, and is in effect at that time, provides guidance on Article 89.a regarding situations in which security control procedures are required for inventions. This decree details a number of articles of the Intellectual Property Law.

Nonetheless, certain regulations remain ambiguous. For instance:

- What is the definition of a Vietnamese invention? Can a partially Vietnamese invention be deemed as having been invented in Vietnam?
- In the event that both a foreign entity and a Vietnamese entity hold the registration right to an invention, are the initial filing requirements mandatory to adhere to once all security control conditions have been fulfilled?
- Which technical domains are deemed to have a significant influence on the national security and defense of Vietnam? In Appendix VII of Decree 65, for instance, item 4: “Devices and technology used for intelligence, counterintelligence, and criminal investigation” is included in the list of technical disciplines that affect national security and defense. Certain devices, including radars, cameras, phones, image processing processors, and general wireless communication equipment, can be utilized for intelligence, counterintelligence, and criminal investigation in addition to civil intentions. Do inventions of these devices need to comply with security control regulations? (whether security control requirements apply automatically to inventions related to these devices, or only when the inventions’ descriptions explicitly specify that the devices are utilized for intelligence, counterintelligence, and criminal investigation purposes).

Besides, according to Decree 65, whenever inventions are subject to security control requirements, the initial step is to submit patent applications in Vietnam or PCT applications⁷ of Vietnamese origin. Numerous applicants, in fact, have no interest in the Vietnamese market because they exclusively export and trade their products abroad; therefore, they have no reason to submit a patent application in Vietnam. Furthermore, it is not uncommon for applicants to abstain from submitting a PCT application due to their preference for filing patent applications exclusively in one or a limited number of countries, rather than submitting a PCT application for a Vietnamese origin. Nevertheless, in order to fulfill the security control prerequisite, the applicants are still obligated to submit their initial patent application in Vietnam or a PCT application of Vietnamese origin. Therefore, IP proprietors are wasting their time, resources, and money on this mandatory procedure.

Potential gains/concerns for Vietnam

IP owners may find it challenging to ascertain their responsibilities with regard to the security control of their inventions when regulations are ambiguous.

Should an IP owner not have an interest in safeguarding their invention in Vietnam, the obligatory prerequisite of initially filing a patent application in Vietnam or a PCT application of Vietnamese origin serves only as a

⁶ Decree 65/2023/ND-CP dated 23 August 2023 of the Government detailing a number of articles and measures to implement the Intellectual Property Law on industrial property, protection of industrial property rights, rights to plant varieties, and state management of intellectual property (Decree 65)

⁷ A PCT application is a patent application filed under the PCT. The PCT is the 1970 Patent Cooperation Treaty as amended in 1984 and 2001.

security control regulation. This process imposes a burden on both IP Vietnam and IP owners due to its rigidity and inflexibility. IP owners may request withdrawal or abandonment of a patent application after it has been filed. Indeed, numerous nations, including the United States, France, China, and India, afford IP proprietors the opportunity to select the security control method for patent applications.

Recommendations

- In accordance with Vietnam's responses at multiple conferences, a partially Vietnamese invention is still required to file an initial application. As a result, we suggest that this response be formally incorporated into Circular Decree 65.
- According to IP Vietnam's responses at multiple conferences, it is imperative that both domestic and foreign entities comply with the initial filing requirements when submitting an application for a utility solution patent or a patent. As a result, we suggest that this response be formally incorporated into Circular Decree 65.
- The Circular that provides guidance for Decree 65 should specify which technical domains are deemed to have an influence on defense and national security. For instance, is a security control requirement applicable to an invention pertaining to a device that serves multiple functions, including intelligence, counterintelligence, criminal investigation, and civil purposes (e.g., smartphones, cameras, image processing chips, general wireless communication equipment, and radars)?
- Further regulations should be imposed to allow intellectual property proprietors to select between the two procedures outlined below:
 1. File a patent application in Vietnam or a PCT application of Vietnamese origin (as currently stipulated in Decree 65).
 2. Submit a first filing request for a patent application: In this instance, a concise description (i.e., no more than one to two pages) is sufficient to demonstrate the invention's nature and initiate the first filing procedure (Decree 65 does not specify this circumstance; therefore, it is suggested that this be included in the Circular guiding Decree 65).

3. Trademark issues

Recognition of well-known trademarks

Issue description

The Amended Intellectual Property Law (Amended IP Law) has revised the concept of a "well-known trademark" in Article 4.20. Under the new definition, a well-known trademark is recognized as a mark that is widely known by the relevant section of the public within Vietnam, as opposed to being known by the general consumer base across all fields, as was stipulated in previous regulations. This amendment aligns with the assessment criteria for well-known trademarks detailed in Article 75.1, focusing on "consumers concerned who have come to know the trademark." This change is expected to streamline the process for recognizing well-known trademarks in the future. Additionally, the Amended IP Law aims to alleviate the burden of proof for IP owners in establishing a trademark's well-known status. While the criteria in Article 75 for evaluating well-known trademarks remain unchanged from previous regulations, trademark owners now need to satisfy only "a few specific criteria" from Article 75, rather than all. The Amended IP Law further introduces a time reference for establishing the well-known status of a trademark.

Decree 65 explicitly states that the criteria set forth in Article 75 of the Amended IP Law serve as the foundation for establishing rights to a well-known trademark (Article 10.2), determining protected subjects (Article 73.5), identifying infringement of rights related to a well-known trademark (Articles 77.2 and 77.4), and proving the right holder of a well-known trademark (Article 91.5).

As per the current regulations, well-known trademarks are acknowledged based on decisions by IP Vietnam or through civil proceedings in court. Nevertheless, existing legal documents lack specific guidelines regarding the scope of authority, responsibilities, and powers of competent agencies in the review and recognition of well-known trademarks. These documents also fall short in detailing the procedures for the evaluation and recognition

of well-known trademarks.

Potential gains/concerns for Vietnam

The absence of detailed regulations for competent authorities to recognize well-known trademarks and the procedures for such recognition can result in numerous conflicts during the implementation of the law. Specifically, owners of well-known trademarks are currently unable to fully exercise their legitimate rights as prescribed by law. This is due to their inability to establish and enforce their rights in the face of infringements and unfair competition. In practice, the delay or failure of IP Vietnam to address cases involving opposition and invalidation of protection certificates based on well-known trademarks hinders the exercise of trademark rights by third parties. To mitigate the subjectivity of IP Vietnam and other relevant authorities in recognizing the protection of well-known trademarks, it is imperative to introduce public regulations that provide detailed guidance on the criteria for determining famous trademarks.

Recommendations

Issue comprehensive guidelines regarding the capabilities of agencies tasked with identifying and certifying well-known trademarks, as well as the processes involved in this regard. Specifically:

- Prescribe detailed regulations regarding the scope of authority, tasks, and powers of competent agencies responsible for reviewing and recognizing well-known trademarks.
- Provide detailed instructions concerning testing regulations and specific criteria for the recognition of well-known trademarks in scenarios related to the establishment and enforcement of rights.
- Offer guidance on the procedures for coordination and consultation among relevant competent agencies in the process of considering and recognizing well-known trademarks.

4. Delay in the establishment of IP rights

Issue description

Pursuant to the Intellectual Property Law and its associated guiding Circulars, the period for substantive examination of a trademark registration application is stipulated not to exceed nine months from the date of its publication. If the application requires re-examination, or if the applicant modifies the application or submits additional remarks in response to notifications from IP Vietnam, the total duration for such re-examination or processing of amendment requests generally should not surpass the initial examination timeframe.⁸ Nevertheless, the actual practice shows that substantive examination of trademark applications often experiences delays, typically extending to about two years from the date of publication. Furthermore, if the applicant provides feedback on the results of the substantive examination, it usually requires an additional twelve months or more for IP Vietnam to review the feedback and reach a final decision on the trademark registration, depending on the complexity of the case.

Regarding international registrations designating Vietnam, if part or all of the goods or services fail to meet the protection criteria or exhibit deficiencies, IP Vietnam will issue a provisional refusal notice. This allows the applicant to rectify these deficiencies or contest IP Vietnam's preliminary refusal. The procedure for correcting deficiencies or challenging the provisional refusal aligns with that for national trademark applications, including adherence to application regulations.⁹ Recently, there is a considerable backlog at IP Vietnam in addressing responses to notices of provisional refusal concerning Vietnamese designations of international trademark registrations. Some cases, submitted over three to four years ago, remain unresolved.

⁸ Article 119 of the Amended IP Law.

⁹ Article 41.6 Circular 01/2007/TT-BKHCN dated 14 February 2007 by the Ministry of Science and Technology guiding the implementation of the Government's Decree 03/2006/ND-CP dated 22 September 2007 specifying details and guiding the implementation of a number of articles of the Intellectual Property Law on industrial property (Circular 01), as amended by Circular 16/2016/TT-BKHCN issued on 30 June 2016 of the Ministry of Science and Technology amending and supplementing a number of articles of Circular 01/2007/TT-BKHCN dated 14 February 2007 guiding the implementation of the Government's Decree 103/2006/ND-CP dated 22 September 2007 detailing and guiding the implementation of a number of articles of the Intellectual Property Law on industrial property, as amended and supplemented according to Circular 13/2010/TT-BKHCN dated 30 July 2010, Circular 18/2011/TT-BKHCN dated 22 July 2011 and Circular 05/2013/TT-BKHCN dated 20 February 2013 (Circular 16).

In line with the provisions of the IP Law and the Law on Complaints¹⁰, the timeframe for addressing an initial complaint at IP Vietnam should not exceed thirty days from the acceptance date. In complex scenarios, this period may extend but should not surpass forty-five days.¹¹ However, it is observed that numerous complaint cases related to trademark registration applications have been pending at IP Vietnam for over a decade without resolution.

Potential gains/concerns for Vietnam

We recognize the challenges faced by IP Vietnam due to the escalating volume of applications and the concurrent scarcity of human resources, which have contributed to the delays in processing. Nevertheless, the increasing delays in the adjudication of numerous trademark registration applications are a matter of considerable concern and warrant earnest attention from IP Vietnam. Such protracted delays are causing significant difficulties and disruptions to the business operations of trademark applicants in Vietnam and are adversely impacting consumer interests. Specifically in Vietnam, without an official certificate of registration, it becomes challenging or nearly impossible for trademark owners to take measures to safeguard their interests related to their brand or reputation. When the rights of legitimate trademark owners are not upheld, consumers are at risk of encountering counterfeit, substandard, or fraudulent products. Additionally, for trademark owners, the uncertainty regarding the protection status of their trademarks can significantly influence their business decisions and strategies, including marketing, promotion, negotiations, partnerships, mergers, and acquisitions.

Recommendations

- Implement requisite actions to expedite all phases of the trademark registration application process. This encompasses the submission of applications, evaluation of content, and addressing inquiries such as trademark renewals, responses to notices of refusal, particularly those concerning international trademark registrations designating Vietnam, and handling various types of complaints.

5. Guidance from IP Vietnam on the Letter of Consent

Issue description

The Letter of Consent (LOC) is currently not explicitly regulated, acknowledged, or rejected within the IP Law and its accompanying guiding documents. In its trademark evaluation practices, IP Vietnam, through Notice 15168¹² has provided interim guidance on issues relating to the LOC, which are detailed as follows:

In each specific case, the LOC issued by the owner of a referenced trademark may serve as evidence to counteract a notice of refusal for trademark protection, provided that certain principles and conditions are adhered to:

- The trademark under application must not be identical to or significantly different from the referenced trademark;
- The LOC must include mandatory elements as specified by relevant regulations; and
- In instances where a third-party application is filed for a trademark similar to a previously protected trademark based on an LOC, the new applicant must furnish the LOC from each owner of the referenced protected trademarks.

Potential gains/concerns for Vietnam

The lack of a definitive legal framework for recognizing a LOC, coupled with the provision permitting the approval of an LOC to address specific grounds for the refusal of trademark protection on an individual basis, renders the trademark application process both challenging and uncertain, with outcomes that are often vague and unpredictable. Frequently, even when the submitted LOC adheres to the guidelines and criteria set forth by IP Vietnam, trademarks are still denied protection. The reasons for such refusals are not clearly articulated, leading to confusion among applicants. This uncertainty, inconsistency, and lack of clarity in IP Vietnam's guidance and

¹⁰ Law on Complaints 02/2011/QH14 dated 11 November 2011 by the National Assembly (Law on Complaints).

¹¹ Article 22.6 Circular 01 as amended by Circular 16 and Article 28 of the Law on Complaints.

¹² Notice 15168/TB-SHTT issued on 29 December 2020 by the National Office of Intellectual Property on resolving a number of issues in the examination of trademark applications (Notice 15168).

practice concerning trademark evaluation significantly hampers applicants in formulating strategies for trademark protection and devising business plans. The situation not only results in wasted time, effort, and financial resources for the applicants and the reference trademark owners who issue the LOCs, but also for all parties engaged in negotiating the LOCs, particularly when such documents are not accepted by IP Vietnam as evidence to counter a notice of refusal for trademark protection.

Moreover, although the stipulation requiring new applicants to submit an LOC from each owner of previously protected reference trademarks for similar third-party trademark applications is logical, it imposes challenges on applicants. In practice, it is often not feasible for applicants to ascertain beforehand whether a reference trademark is subject to another LOC issued by a different reference trademark owner.

Recommendations

- It is essential to explicitly define the conditions for accepting the LOC within the Intellectual Property Law and relevant decrees and circulars. This approach aligns with international norms, mirroring trademark evaluation and protection methods used globally. Moreover, it does not contradict the fundamental tenets of civil rights determination under Vietnamese law.
- Alongside stipulating the principles and criteria for LOC acceptance, it is necessary to incorporate provisions addressing scenarios where the LOC is not acceptable. In trademark evaluation practice, any LOC that satisfies the established acceptance criteria and does not encounter regulatory objections should be endorsed. This measure is vital to eliminate ambiguity, inconsistency, and challenges faced by applicants and stakeholders, including the unnecessary expenditure of time, effort, and resources.
- The development and maintenance of a comprehensive, up-to-date database that is readily and freely accessible to the public is crucial. This database should provide detailed information regarding trademarks protected based on a LOC, including the issuer of the LOC and the specific trademarks involved. Such a resource will empower applicants to make informed decisions and apply for LOCs from all proprietors of previously protected reference trademarks, in accordance with the relevant principles and conditions stipulated in current regulations.

ACKNOWLEDGEMENT

EuroCham Intellectual Property Rights Sector Committee

CHAPTER 3 CONSTRUCTION

OVERVIEW

The EuroCham Construction Sector Committee (Construction SC) is the 19th Sector Committee of the organisation, serving as a key representative body for the construction industry in Vietnam. Its role is crucial in connecting the public and private sectors, establishing forging collaborative partnerships that are vital for the industry's sustainable progress. We are committed to fostering engagement with Vietnamese authorities, offering reliable and insightful advice, functioning as an important advisor to the Government in legislative processes and construction related issues. It aims to facilitate a harmonious relationship between the public and private sectors, fostering a stable regulatory environment, advocating for best practices and international standards, and promoting the development of skilled labors. This commitment is pivotal in driving towards a greener and more sustainable future of construction industry.

In Vietnam, as in many countries, the construction industry is a dynamic and evolving field, and fire safety is an essential aspect of construction and building management. We truly appreciate the continuous effort of the Government in implementing Resolution 99¹ by strengthening and perfecting the fire safety regulations with a comprehensive vision of facilitating business operations while making fire safety the top priority. While the new National Technical Regulations on Firefighting (QCVN) are a step forward in ensuring fire safety in buildings and constructions in Vietnam, they have also introduced new bottlenecks that are impacting business operations.

Between 2020 and 2022, three versions of the QCVN were introduced, requiring new fire safety regulations that have caused significant delays in obtaining fire safety approvals for major capital investment projects.

Additionally, the current standards for Vietnamese construction materials, such as fireproof paint, are notably stringent, leading to economic challenges and increased costs for construction projects. This situation has made it difficult for investors, particularly in the case of the “team” project, where the high cost of meeting fire protection standards has been a significant issue². We acknowledge and appreciate the introduction of Official Dispatch 1091³, which has streamlined the process of fire safety compliance. This new regulation replaces the need for individual certificates for each project with a Certificate of Inspection of Firefighting Apparatus applicable to batches or shipments from various suppliers or manufacturers. This change transfers the responsibility of inspecting materials and equipment to suppliers and manufacturers, fostering their active involvement in product testing and certification. This shift is crucial for creating a more user-friendly construction market.

To further enhance this system, the Government should focus on expanding the number of laboratories and institutions capable of performing the necessary tests and streamline the certification application process. Additionally, the development of an open-source platform to list certified materials and equipment currently used in Vietnam is vital. By mirroring international practices, such as those of the Fire and Safety Research Institute (FSRI)⁴, Vietnam can position itself as a responsible global participant, aiding in the modernisation of its infrastructure and economic growth.

In the realm of construction, creativity and adaptation are key drivers, aimed at fostering innovative workplaces and experiences. It is our primary duty to ensure that this creativity aligns with safe and responsible practices, helping to prevent incidents like fires and their repercussions. We are grateful for the ongoing support of the Vietnamese Government and the conducive business environment it fosters. Maintaining this partnership necessitates a joint effort, with a firm commitment to fire safety being paramount.

1 Resolution 99/2019/QH14 dated 27 November 2019 of the National Assembly on continuing to complete and improve the effectiveness and efficiency of implementation of policies and laws on fire prevention and firefighting (Resolution 99).

2 “The new fire-fighting regulations that have been in effect for half a year have been proposed to be corrected” dated 16 August 2023, Vietnam.vn. Available at < <https://www.vietnam.vn/en/quy-chuan-phong-chay-chua-chay-moi-co-hieu-luc-duoc-nua-nam-da-de-nghi-sua/>>, last accessed on 24 November 2023.

3 Official Dispatch 1901/C07-P3,P4,P7 dated 11 April 2023 of the Ministry of Public Security, Vietnam Fire and Rescue Police Department (Official Dispatch 1901).

4 Materials and Products Database | UL's FSRI – Fire Safety Research Institute (912) FSRI's Materials and Products Database Promotional Video - YouTube. Available at <<https://www.youtube.com/watch?v=LDdPI9NN758>> last accessed on 7 November 2023.

RESOLVING DIFFICULTIES RELATING TO FIRE SAFETY AND FIREFIGHTING OPERATIONS

Relevant authorities: Department of Science, Technology and Environment of Ministry of Construction (MOC); Ministry of Public Security (MPS)

1. Certification of materials

Article 38.2 of Decree 136⁵ mandates that all firefighting and prevention equipment must be tested and certified by the Fire and Rescue Police Department before they are put into use, in accordance with technical regulations, standards, and guidelines set by the Ministry of Public Security (MPS).

Additionally, QCVN 03:2023 BCA⁶, also issued by the MPS specifies in Article 3.1.2 that firefighting and fire prevention equipment, certified by international organisations adhering to ISO/IEC 17025 standards, and valid at the time of application for fire protection certificate, can be recognised by the Fire and Rescue Police Department for certification in Vietnam. This policy represents a significant stride by the Vietnamese government to expedite the fire protection certification process.

Despite this, a two-step verification process remains in place. First, the Fire and Rescue Police Department must prior-approve the firefighting and prevention equipment for project design and construction. Post-completion, the firefighting and fire prevention equipment undergoes a second verification before the issuance of a fire fighting and fire prevention certificate for operation. This dual verification process can potentially extend the duration of firefighting permit approvals and increase the workload for the Fire and Rescue Police Department.

To alleviate this burden while ensuring rigorous quality control, we propose a modification to the initial verification step:

- Firefighting and fire prevention equipment manufactured outside Vietnam should be permitted for construction use if it holds a Certificate of Origin and Certificate of Quality compliant with ISO/IEC 17025 standards, issued by internationally recognised certification organisations accepted by the Vietnamese Government Bureau Veritas, SGS, Intertek, etc;
- For equipment made in Vietnam, a Certificate of Quality meeting the ISO/IEC 17025 standards from a Vietnamese Government-approved certification organisation should suffice. This organisation need not necessarily be the Fire and Rescue Police Department.

This proposed initial verification method has already proven successful for various products and equipment in the Construction SC (except for fire fighting products).

The second verification step, conducted before granting the final certificate for project operation (i.e. the firefighting and fire prevention certificate for operation), would continue to be managed by the Fire and Rescue Police Department. This final assessment ensures the department retains ultimate control over the quality of firefighting and fire prevention equipment.

2. Certification of materials for renovation construction

Article 13.3 of Decree 136 mandates approval from the Fire and Rescue Police Department for any renovation construction that affects the firefighting and fire prevention system and equipment, as outlined in Article 13.5. Although Article 13.5 provides a clear definition of these systems and equipment, it does not specify the threshold of modifications considered significant enough to impact the firefighting and prevention system. This ambiguity could imply that any alteration, regardless of scale, to the systems and equipment mentioned in Article 13.5 requires approval from the Fire and Rescue Police Department.

⁵ Decree 136/2020/ND-CP dated 24 November 2020 of the Government providing guidelines for a number of articles of Law on Fire Prevention and Fighting and Law on amendments to Law on Fire Prevention and Fighting (Decree 136).

⁶ QCVN 03:2023/BCA dated 30 October 2023 of Ministry of Public Security on National Technical Regulation on Fire Protection Equipment (QCVN 03:2023).

Additionally, when submitting documents for firefighting permits, renovation projects might be obliged to conform to the latest firefighting regulations. This requirement can significantly influence both the cost and timeline of the renovation. Hence, it is suggested that a detailed definition of the level of modification for each system and equipment, which impacts the firefighting system, should be clearly outlined.

Recommendations

We would like to make the following recommendations:

- Firefighting and fire prevention equipment manufactured outside or within Vietnam should be considered acceptable for use in construction projects if it is accompanied by a Certificate of Origin and Quality in compliance with ISO/IEC 17025 standards. This certification should be issued by internationally recognised Certification Organisations approved by the Vietnamese Government, such as Bureau Veritas, SGS, Intertek, among others;
- For renovation projects, there should be a detailed specification that clearly defines the extent of modifications to each system and equipment, especially those that significantly impact the efficiency of the firefighting system. This specification is essential to provide clear guidance on which modifications necessitate review and approval in terms of fire safety measures during renovations.

ACKNOWLEDGMENTS

EuroCham Construction Sector Committee

CHAPTER 4 REAL ESTATE

OVERVIEW

The Vietnamese real estate market has been growing in recent years due to encouraging investment policies and an increase in new investments. 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 been stimulated by important laws, such as the Law on Construction¹, Law on Housing², Law on Real Estate Business³, and the Law on Investment⁴.

Nonetheless, if more administrative reforms and transparent procedures are not put in place, this international 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. In 2020 and 2021, COVID-19 disrupted Vietnam's real estate sector. The condotel market was almost frozen, with transaction volumes negligible.⁵ The pandemic also impacted the entire economy, with tourism-accommodation real estate being significantly affected. Statistics showed that retail, apartment, and resort real estate segments suffered heavy damage, while residential real estate was slightly affected.⁶

By implementing the policy of safe and flexible adaptation to COVID-19, by the beginning of 2022, Vietnam's economy had gradually recovered. Vietnam's real estate market was to hold great promise in 2023, with expectations of a robust recovery. However, the real estate market has encountered numerous challenges that mostly arose from burdensome effects of inflation and interest rates. It was not until April 2023 did the market significantly recover, so there is reason for optimism. According to the Ministry of Construction (MOC), within the first two quarters of 2023, for commercial housing construction projects, there were 7 projects completed, equal to about 50% compared to the first quarter of 2023 and about 29.17% compared to the same period in 2022.⁷

The EVFTA in effect has also provided 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 FDI into the manufacturing sector. The property market is still 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. CONDOTELES, HOMETELES, OFFICETELES 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

As discussed in previous editions of the Whitebook, condotels, hometels, and officetels are hybrid types of

1 Law 50/2014/QH13 dated 18 June 2014 of the National Assembly on Construction (Law on Construction).

2 Law 65/2014/QH13 dated 25 November 2014 of the National Assembly on Housing (Law on Housing).

3 Law 66/2014/QH13 dated 25 November 2014 of the National Assembly (Law on Real Estate Business).

4 Law 61/2020/QH14 dated 17 June 2020 of the National Assembly (Law on Investment).

5 Ibid.

6 Ibid.

7 "Bố xây dựng công bố thông tin về nhà ở và thị trường bất động sản Quý II năm 2023" (The Ministry of Construction announced information about the housing and real estate market in the second quarter of 2023), moc.gov.vn, 03 August 2023. Available at: <<https://moc.gov.vn/vn/tin-tuc/1285/77241/bo-xay-dung-cong-bo-thong-tin-ve-nha-o-va-thi-truong-bat-dong-san-quy-ii-nam-2023.aspx>>, last assessed on 17 August 2023.

property which have appeared in the Vietnamese real estate market since 2014. However, the legal framework that synchronises regulations between these types of property is still being completed. When implementing sales activities, investors often “borrow” certain relevant provisions of law such as the Law on Housing, the Law on Tourism.⁸

Condotels, hometels, and officetels are apartments that combine many different functions with a living environment. Article 3.4 of Decree 43⁹ regulates that, in the case of land on which a condo for mixed purposes was 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, Article 3.3 of Law on Housing contains definitions of condo buildings for residential purposes and those with mixed-use residential and commercial purposes. Under Article 3.3, 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.¹⁰ 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 Law on Investment, 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 Law on Housing, the approval of residential housing construction projects might be subject to either (i) an in-principle decision on investment according to the Law on Investment, or (ii) an in-principle consent to investment, where projects are not subject to an in-principle decision on investment under the Law on Investment.¹¹ However, an urban zone project investor must prepare and submit a dossier to the authorities for a decision on investment approval.¹² 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 the 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 investment¹³ in the new Law on Investment.¹⁴ Resolution 164¹⁵ reaffirms the removal of this investment approval under Decree 11. Furthermore, under Article 126 of the Land Law,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

8 Law 09/2017/QH14 dated 19 June 2017 of the National Assembly on Tourism (Law on Tourism).

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

10 Law on Housing 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 regulates 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 6.1.1 of Law on Housing, residential apartments will not be used for other purposes. This means that the Law on Housing 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.

11 Article 170.2 of the new Law on Investment.

12 Article 20 of Decree 11/2013/ND-CP dated 14 January 2013 of the Government on investment management of urban development (Decree 11).

13 Article 3.1 of the new Law on Investment.

14 Article 76.5 of the new Law on Investment.

15 Resolution 164/NQ-CP dated 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 (Resolution 164).

16 Law 45/2013/QH13 dated 29 November 2013 of the National Assembly on Land (Land Law).

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.



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 prescribes eight kinds of accommodation establishments, of which, condotels are called tourist apartments.¹⁹ However, this definition is unclear, as both officetel and hometel 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 276²⁰ 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 for these types of real estate.

On 6 January 2022, the Government issued Decree 02²¹, making the legal regulations on tourist apartments clearer. Article 6 stipulates the following types of real estate business contracts: “The sale, transfer, lease, lease purchase, sublease of real estate and transfer of real estate projects movable property must be made into a contract according to the form specified below”. In addition to some other forms of real estate business contracts, contracts for sale and purchase of tourist apartments are required to be made according to Form 02 of this Decree. We can see from the form that the Government has applied the existing provisions of the contract of sale and purchase of an apartment to specifically apply to tourist apartments.

Under Article 10 of Form 02, there is a format clause stipulates that a lessee who has not yet received the handover of the tourist apartment from the lessor can transfer the contract. This clause seems to recognise the right to transfer the tourist apartment sale contract to the buyer. However, Article 10.3 of Form 02 also states that “In both cases mentioned in Clauses 1 and 2 of this Article, the buyer of the tourist apartment/office apartment combined with accommodation, or the transferee of the lease purchase contract for a tourist apartment/office apartment combined with accommodation”. This provision seems ambiguous since it only allows a tenant buying a tourist apartment to have the right to transfer the contract. Accordingly, even if the provisions of the sale and purchases contract of an apartment apply to the tourist apartment are recognised under Decree 02, regulations on the order and procedures for the transfer of the contract are still absent. This makes the transfer of the contract of sale and purchase of an apartment difficult to perform.

On 3 April 2023, the Government published Decree 10.²² If a condotel satisfies all requirements, it will be granted a LURC (often called a “red book”).

The New Draft Law on Real Estate Business dated 31 August 2023 (the “Draft”), which is currently open for public comment, introduces several new regulations concerning condotels, hometels, and officetels. This Draft, if approved by the National Assembly, could potentially have significant impacts on the real estate market.

- **Real Estate permitted for trading:** tourist apartments, tourist villas, and combined accommodation and office spaces are types of real estate permitted for trading²³;
- **LURCs:** The buyer of tourist apartments, tourist villas, construction projects with a lodging function, portions of space within apartment buildings, and mixed-use buildings with various designated purposes shall be granted land use rights, ownership of residential houses, and other assets attached to the land²⁴.
- **Ownership duration:** the duration of tourist apartments, tourist villas, construction projects with a lodging function, portions of space within apartment buildings, and mixed-use buildings with various designated purposes, is determined according to the land use duration under the Land Law²⁵.

19 “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.

20 Dispatch 276/BXD-QLN dated 20 January 2020 of the Ministry of Construction on investment management, construction and business of tourist apartments, tourist villas (Dispatch 276).

21 Decree 02/2022/ND-CP dated 6 January 2022 of the Government on elaboration of certain articles of the Law on Real Estate Business (Decree 02).

22 Decree 10/2023/ND-CP dated 3 April 2023 on amendments and supplements to several articles of Decrees on instructions for implementation of the law on land, which amended Article 32 of Decree 43/2014/ND-CP to add the instance of being certified for ownership of non-residential building works (Decree 10).

23 Article 5.2 of the Draft.

24 Article 5.3 (b) of the Draft.

25 Article 5.3 (c) of the Draft.

- **Requirements for Sale or Lease contracts relating to condotels, hometels, officetels:** a contract entered into with the buyers or lessees must clearly define:
 - The land use form, usage function, and ownership duration of the construction projects in accordance with the approved and authorized project. This is to ensure compliance with legal regulations and enable the buyers or lessees to obtain ownership registration from the competent state authority for the acquired or leased construction projects²⁶;
 - Shared ownership and individual ownership of project owners within the project, construction works.
 - Arrangement of parking spaces within the project, construction work.
 - Plan for organizing the management and operation of construction works, as well as the collection, management, and utilization of maintenance fees, service charges related to the management and operation of construction works.²⁷
- Commitment on profit sharing: the project investor must either obtain a guarantee from a credit institution for fulfilling their commitment to distribution of profits or implement alternative measures to ensure appropriate fulfilment of obligations related to distribution of profits.²⁸
- **Responsibilities of the buyers or lessees:**²⁹
 - Contributing to maintenance funds and service fees for managing and operating the construction work.
 - Adhering to regulations and rules governing the management and operation of construction works applicable to said works by law.
 - Complying with legal provisions related to the management, utilization, operation, and business activities of construction work.
 - Fulfilling tax declaration and payment obligations as required by law for the management, utilization, operation, and business of construction works.

EuroCham Legal Sector Committee believes that establishing a clear 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, as well as aiding the stable and healthy development of Vietnam's real estate market.

Potential gains/concerns for Vietnam

Without legal provisions, there could be negative impacts on housing project investors' investment decisions. Condotels, hometels, 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 that 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

- Promulgate legal provisions with specific standards and guidance for condotels, hometels, and officetels;
- Clarify the applicable land-use term for condotels, hometels and officetels;
- Amend legal provisions on the classification and mechanism of using land for mixed-use apartments;

²⁶ Article 16.9 of the Draft.

²⁷ Article 19.2 of the Draft.

²⁸ Article 16.10 of the Draft.

²⁹ Article 21.9 of the Draft.



- Grant LURCs and ownership of houses and other assets attached to land for condotels, hometels, and officetels; and
- Complete the condominium construction codes defining the concept of condotels, hometels, and officetels.

II. PROTECTING THE INTERESTS OF INVESTORS IN CASE OF INSOLVENCY OR BANKRUPTCY OF REAL ESTATE DEVELOPERS

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

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.

Project apartments are off-plan properties under Article 108.2 of the Civil Code.³⁰ Therefore, under Article 4.4 of the Law on Bankruptcy³¹, 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 the redistribution of assets.³² This means that, if the value of assets (e.g., the housing project) is not sufficient for payment, each object of the same line of redistribution of assets shall be paid according to the percentage corresponding to the debt amount.³³ 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 for which they have paid.

Article 56.1 of the Law on Real Estate Business and Article 1.3 of Circular 13³⁴ 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 of apartment contracts. This is one way of protecting project housing buyers. However, Circular 13 does not clearly state that real estate developers cannot sell future apartments without bank guarantee contracts in place. Obtaining such contracts may cause the cost of future apartments to rise by between 2 and 3 per cent. This, in turn, reduces the competitiveness of these projects in the real estate market.³⁵ 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 in place, project housing buyers will lose their payments and have no recourse to own their apartments.

30 Article 108.2 of Civil Code 91/2015/QH13 dated 24 November 2015 of The National Assembly (Civil Code).

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

32 Article 54 of the Law on Bankruptcy.

33 Article 54.3 of the Law on Bankruptcy.

34 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 (Circular 13).

35 PhD Do Duc Hong Ha, "Guaranteed housing in the future: legal basis for implementation in Vietnam?", *Tapchinhanghang*, 8 August 2019. Available at: <<http://tapchinhanghang.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 Law on Bankruptcy, 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. As a result, a significant number of project apartment owners will be seriously affected.

Recommendation

- Promulgate legal provisions with specific standards and guidance with regard to the financial capacity of real estate developers;
- Ensure bank guarantee contracts are compulsory for real estate developers before pre-selling apartments.

2. Confusion in regulations on real estate project transfer

Issue description

Under the Law on Investment, a foreign investor wholly acquiring a local real estate development company is allowed to do so by way of a share transfer transaction.³⁶ However, in practice, these are usually treated by local authorities as a project transfer transaction. As such, the transferors and transferees are required to obtain approvals for a real estate project transfer under Law on Real Estate Business.³⁷

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). On the other hand, 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 Law on Construction, Law on Investment, and/or Law on Real Estate Business. By treating a share transfer transaction as a project transfer transaction, the seller has to complete double procedures despite the fact that there are core differences.

Recommendations

- 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 30³⁸, 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.³⁹ Further, MOND and MPS are responsible for specifying areas with national defence and security requirements in each province and sending written notification to the relevant People's Committee. This provides 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. According to the MOC, since the Law

³⁶ Articles 24.2 and 46.1 of the Law on Investment.

³⁷ Article 51 of the Law on Real Estate Business.

³⁸ Decree 30/2021/ND-CP dated 26 March 2021 of the Government amending some articles of Decree No. 99/2015/ND-CP dated 20 October 2015 on guidelines on the Law on Housing (Decree 30).

³⁹ Article 1.22 of Decree 30.

on Housing came into effect, the number of houses that foreigners buy and own in Vietnam is not large, only about 3,000 units, mainly apartments.⁴⁰ By the end of 2022, the Hanoi DOC was the first authority to publish the list of apartments that have been granted apartment ownership certificates (also known as “pink book”) to foreigners. With this precedent, we assume that the issuance of pink books to eligible foreigners will also soon be implemented in the rest of the country.⁴¹ For HCMC, during the socio-economic press conference in Ho Chi Minh City on 12 October 2023, the Ho Chi Minh City Department of Taxation provided a written response with respect to the issues that 47 projects (including 8,159 apartments) in Ho Chi Minh City have not been issued pink book due to lack of fulfilment of financial obligations by tax authorities. According to this response, only approximately 2,000 out of 8,159 apartments in 47 projects apartments remain unresolved due to unfulfilled financial obligations. The rest are and have been having their financial obligations settled.⁴²

Potential gains/concerns for Vietnam

The long delay in issuing a Land Use Right Certificate (LURC) 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 delays could also make foreign investors hesitant to invest in Vietnam’s 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 to 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.

Recommendations

- 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

⁴⁰ “Foreigners only purchase approximately 3,000 houses in Vietnam”, *Dantri*, 19 June 2023. Available at <<https://dantri.com.vn/bat-dong-san/nguoi-nuoc-ngoai-chi-mua-va-so-huu-khoang-3000-can-nha-o-viet-nam-20230619070802834.htm>>, last assessed on 8 September 2023.

⁴¹ “List of apartments that have been granted LUR for foreigners in Hanoi City”, *Hanoi Department of Construction*, 16 December 2022. Available at <<https://soxaydung.hanoi.gov.vn/vi-vn/tin/danh-sach-can-ho-da-duoc-cap-gcn-so-huu-nha-cho-nguoi-nuoc-ngoai-tren-dia-ban-thanh-pho-hanoi/408152-399095-553665>>, last assessed on 19 October 2023.

⁴² “Revealing the reason why about 2,000 apartments in Ho Chi Minh City have not been issued pink books”, *Dantri*, 12 October 2023. Available at: <<https://dantri.com.vn/bat-dong-san/lo-ly-do-khoang-2000-can-ho-tai-tphcm-chua-duoc-cap-so-hong-20231012180203684.htm>>, last assessed on 19 October 2023.

CHAPTER 5 MERGERS AND ACQUISITIONS

I. ENVIRONMENTAL, SOCIAL, AND GOVERNANCE STANDARDS

Relevant authorities: Ministry of Nature Resources and Environment (MONRE) and Ministry of Planning and Investment (MPI)

Issue description

In pursuit of ways to mitigate climate change and improve the sustainability proposition of their portfolios, Environmental, Social, and Governance (ESG) issues have made it to the top of the priority lists of the international investment community. New and rapidly sophisticating regulations in offshore markets, such as the European Union and other financial hubs like the United States, Singapore, and the Emirates, have also raised the bar for its less developed Eastern competitors. Foreign investors have simultaneously raised their expectations and are pining on Vietnam's take on the implementation of ESG.

As a rapidly developing country in Southeast Asia – reinforced by its unique geopolitical and geographic position within the ASEAN community – Vietnam has the chance to take the lead as a role model for its peers in the field of environmental protection and the improvement of the social fabric of the region. Additionally, its large and rapidly growing population of over 100 million people further emphasizes the country's responsibility to contribute to sustainability goals. This responsibility is particularly important in the context of foreign investment, especially through M&A activities. These investments have the potential to either support or hinder Vietnam's sustainability transition. As one of the countries most vulnerable to the consequences of climate change, it is crucial for Vietnam to prioritize sustainable practices in order to mitigate these risks.

Despite plenty of economic incentive, the Vietnamese regulations for ESG – meaning viable investment alternatives that account for the ESG requirements of offshore investment portfolios – do not match the demand that has been generated on the back of the global push for more sustainability in business, for example in project financing. If Vietnam does not learn how to compete with other – more ESG-friendly jurisdictions, it risks losing traction in the market and fall behind its competitors in attracting foreign money to further develop the country.

Potential gains/concerns for Vietnam

The Vietnamese regulatory environment for ESG-related issues is currently inconsistent and fragmented. Rolling out a comprehensive ESG framework would allow Vietnam to gain credibility in the race towards its ambitious net-zero-carbon commitment. Sustainability and “green transition” topics have become top priorities amongst the global investment community. Vietnam thus has the unique opportunity to exploit this trend, especially while regional peers are also grappling with their individual response to this surge of importance of ESG topics. However, as the ESG discussion is progressing across the globe and the Southeast Asia region, this window of opportunity is starting to close and may turn into a mid-term disadvantage for Vietnam if not addressed appropriately.

Recommendations

- Promote Vietnam as a destination for sustainable (and ESG compliant) investment in ASEAN, seizing the chance to distinguish itself as a preferable investment destination for European investors;
- Introduce framework for ESG that enables foreign investors to comply with requirements imposed by their respective home jurisdictions (e.g., the European Union);
- Raise awareness amongst private and public stakeholders (Vietnamese individuals and enterprises), regarding the importance of ESG standards in M&A investment;
- Incentivise ESG-friendly investment alternatives with appropriate subsidies or legal exemptions;
- Create or adopt a national rating system (and possibly, a regulatory approval requirement) for the “ESG-value” of certain investments;

- Provide strong and clear guidelines to steer foreign M&A investment towards Vietnam's net-zero carbon goals;
- Promote best practices to encourage sustainable domestic (and inbound) investment; and
- Introduce reliable and internationally accredited ESG evaluation criteria, which can be verified through independent resources.

II. ECONOMIC CONCENTRATION CONTROL

Relevant authorities: Ministry of Industry and Trade (MOIT) and the Vietnam Competition Commission (VCC)

Issue description

Vietnam's government has issued Decree 03, which regulates the functions, rights and duties, and organizational structure of the Vietnam Competition Commission (VCC).¹ The VCC was introduced by Vietnam's new Law on Competition² (from the year 2018) and is designated to be the leading authority responsible for the supervision and management of competition matters in Vietnam.

The issuance of Decree 03 is thus an important milestone to supplement the new system, which provides further detail about the VCC's purpose, its workings, and responsibilities. Based on this new guidance, the VCC will likely be able to increase the authorities' efficiency in dealing with competition-related applications (or any violations thereof) in Vietnam. This is contingent on the successful amalgamation of the two previous authorities with separate competencies: the Competition Council and the Vietnam Competition and Consumer Authority.

Despite this step towards easing the related bureaucratic burden on M&A investors, there are still areas to be dealt, which are not explicitly addressed in the new regulations of Decree 03 and have yet to stand the test of practice.

The implementing Decree 35³ proposes strict thresholds, which are inadequate to allow small-scale M&A deals to proceed without bureaucratic hurdles. This represents a deterioration of the circumstances under the previous Law on Competition 2004⁴. Because the Law on Competition 2018 and its implementing Decree 35 do not provide any exemptions for 'economic concentration', the system seems too rigid to effectively achieve its justified goals – i.e., protecting the local market from any overpowering offshore competition, driven by offshore funds.

In the global context of M&A laws, well-established examples of such exemptions provide for efficient economic concentration control and competition supervision, while allowing M&A investors to plan according to clear-cut regulations. Such exemptions may include, for example, corporate re-organisation transactions within corporate groups and transactions in relation to which the underlying economic concentration substance has previously been considered and cleared by the competition authorities. The existing economic concentration control notification rules are, therefore, too broad and unspecified. This – combined with extremely low thresholds for "economic concentration" – leads to a lot of complications on the practical side of Vietnamese M&A.

The system of economic concentration control (without any viable exemption), in combination with the painfully low thresholds for the "economic concentration" label under Vietnamese competition laws, therefore, is a strong counter-argument when considering the viability of M&A transactions.

Potential gains/concerns for Vietnam

Vietnam has begun adjusting the prevalent economic concentration control regiment in recent years, including attempts to create more streamlined and speedy procedures, and reducing the required bureaucracy when filing

¹ Decree 03/2023/ND-CP dated 10 February 2023 of the Government, has taken into effect on April 1, 2023, replacing Decree 07/2015/ND-CP of the Government on the functions, rights, duties, and organizational structure of the Competition Commission and Decision 24/2015/QĐ-TTg of the Prime Minister promulgating the organizational and operational rules of the Vietnam Competition Commission (Decree 03).

² Law 23/2018/QH14 dated 12 June 2018 of the National Assembly on Competition (Law on Competition 2018).

³ Decree 35/2020/ND-CP dated 24 March 2020 of the Government elaborating on several articles of Law on Competition (Decree 35).

⁴ Law 27/2004/QH11 dated 3 December 2004 of the National Assembly on Competition (Law on Competition 2004).

for M&A approval. In addition to this, further clarity in the area of antitrust/competition law regulations (particularly in the context of economic concentration control) will be an essential step on Vietnam's roadmap.

Vietnam's efforts in this venue are already yielding positive results, as Vietnam is receiving some of the largest regional inbound PE and VC investments seen over the past years. Vietnamese start-up companies alone secured cumulative funding of US\$413 million in the second quarter of 2023.⁵ To build on this growing momentum, Vietnam can benefit from the rigorous implementation of existing regulations, reducing authoritative discretion in licencing procedures, and promoting further clarity of the governing laws would make a significant contribution to Vietnam's investment proposition.

Because Vietnam is often a piece of a larger mosaic of transactions within a group of companies (e.g., in regional or global company restructuring), it is often the owner's largest concern. Due to the existing Vietnamese regulations on economic concentration control, Vietnam is often left out of the equation, or simply seen as "problematic", when considering certain kinds of cross-border M&A.

International best practice and standards require the definition of clear thresholds and the compliance with statutory approval deadlines. As long lingering uncertainties in procedural requirements are sided by unpredictable delays in obtaining necessary approvals, the Vietnamese M&A market cannot reach its next level of maturity. To provide the required service level to host internationally competitive M&A transactions, Vietnam should also consider increasing the dedicated resources on all levels of the administration to guarantee smooth and speedy processing of dossiers and efficient communication between competent government agencies and investors.

Recommendations

- Consider an exemption of internal corporate group re-organizations from the economic concentration control regime;
- Consider raising the threshold amounts under the relevant economic concentration control regulations which trigger notifiable transactions;
- Consider clarifying how the VCC interprets or calculates the merger filing notification thresholds in typical transactions based on VCC's database by way of conferences or guidance;
- Consider clarifying terms of the antitrust/competition law to provide clear and unequivocal thresholds for inbound investments; and
- Upskill staff and increase headcount at the relevant authorities (e.g., the VCC) to bolster resources for an increase in caseload.

ACKNOWLEDGMENTS

EuroCham Legal Sector Committee

⁵ "Vietnamese start-ups raise \$413mn for Q2 total funding", Tuoi Tre News, 16/8/2023. Available at: <https://tuoitrenews.vn/news/business/20230816/vietnamese-startups-raise-413mn-for-q2-total-funding/74996.html>, last accessed on 13 September 2023.

CHAPTER 6 PUBLIC-PRIVATE PARTNERSHIPS

OVERVIEW

Modern, efficient infrastructure is vital to continued economic growth and to lowering the cost of doing business. Rapid economic growth and urbanisation are driving high demand for public infrastructure for goods and services. However, Vietnam's infrastructure development needs have been estimated at US\$605 billion from 2021 to 2040. Meanwhile, the infrastructure gap is estimated to be 1.2 % of GDP as of 2019.¹

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

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

Due to difficulties with the evolving PPP regime and the lack of Government policy certainty and risk allocation available, sponsors and investors - particularly foreign private investors - have, in certain sectors such as renewable energy, primarily relied on implementing smaller-scale projects under the Law on Investment, without the protection of a long-term 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 infrastructure developments remain extremely rare for a country of the scale and growth potential of Vietnam. Whilst the Law on PPP constitutes an important legal development, this will not, by itself, translate into a series of successful privately invested infrastructure projects.

I. DEVELOP A PIPELINE OF VIABLE AND VISIBLE PROJECTS

Relevant authorities: Office of Public-Private Partnership – Public Procurement Agency, Ministry of Planning and Investment (MPI), Ministry of Transport (MOT), authorised State bodies, and other related authorities

Issue description

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

Clarifying prioritised projects for a PPP project pipeline

Ministry of Planning and Investment, through its Public Procurement Agency, as well as Ministry of Transportation, and certain local authorities such as Ho Chi Minh City's Department of Planning and Investment, have published certain information about potential projects online.² However, the information is not always comprehensive and

¹ Investment forecasts for Vietnam: Global Infrastructure Hub. Available at: <https://www.gihub.org/countries/viet-nam/>, last accessed on 25 October 2023.

² 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 2 August 2022.

the disparate sources of information introduce the potential for conflicts between them and relevant industry master plans, which can cause confusion for prospective investors. Clear and practical guidance from a single, centralised source of data 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 debt and equity funding. This may require a sector-oriented approach including sector-specific regulations.

Unsolicited proposals

Unsolicited projects are permitted by both the Law on Tendering³ (together with its guiding regulations set out in Decree 25⁴) 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 remain largely untested. Pending the development of a pipeline of projects to be tendered, clarification of the rules applicable to unsolicited projects is particularly important 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 cent⁵ 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. 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.

Potential gains/concerns for Vietnam

Having tangible projects identified, prepared, and announced to the market (whether greenfield or brownfield) continues to be of the highest priority to kick-start Vietnam’s PPP programme. It is critical that the existing regulations be tested by implementing PPP projects which, in turn, should increase the confidence of investors.

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 of prioritising commercially viable projects as those slated to be implemented as PPPs.
- Clarify the bidding process for unsolicited projects and the process for conversion of State-funded projects into PPP format.
- Submit selected projects to a competitive, transparent tender process as contemplated under the Law on PPP.
- Allow projects to be developed by leading global sponsors based on unsolicited proposals/direct appointment as pilot projects in specified high-priority sectors in order to develop a baseline standard of bankable project documentation and risk allocation which could secure international project financings from foreign lenders.
- Put potential projects through a rigorous commerciality assessment (and appoint reputable international technical and financial consultants to advise and assist relevant Government authorities on such process) involving homogenous international standard screening procedures.
- Provide incentives and attractive measures for sectors struggling to attract PPP investment.

³ Law 43/2013/QH13 dated 26 November 2013 of National Assembly on Tendering (Law on Tendering).

⁴ Decree 25/2020/ND-CP dated 28 February 2020 of the Government implementing the Law on Tendering (Decree 25).

⁵ Article 3 of Decree 25/2020/ND-CP dated 28 February 2020 of the Government on elaboration of some Articles of the Law on Bidding on investor selection.

II. IMPROVE CAPACITY AND COORDINATION AMONGST GOVERNMENT AGENCIES

Relevant authorities: Office of Public-Private Partnership – Public Procurement Agency, 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 and standardised risk approach among public authorities continue to be frequently cited by potential international project investors and sponsors as major difficulties for carrying out projects, including PPP projects, in Vietnam. There are also only very limited precedents of completed privately invested projects that have secured international project financings. 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 generation sector.

Lack of coordination among Government authorities

The lack of coordination by the Government and among related authorities has also caused confusion for investors.

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 programme. Project delays and increase costs could, potentially, result in a loss of investors' patience and interest in the Vietnamese PPP programme. 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 programmes in other markets in Southeast Asia.

Recommendations

- Develop (with the help of reputable 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 risk of prolonged negotiation delays.
- Bring in tangible projects in line with international best practices to provide authorised State bodies with hands-on experience.
- Organise capacity-building sessions on the Law on PPP to ensure its cohesive implementation.
- Require a joint implementing process involving all key Ministries and authorities for a unified practice in the identification, assessment and development of projects, potentially leveraging those individuals who have gained experience of bankability issues in the context of successful power projects.

III. RATIONALISE DETAILED IMPLEMENTING REGULATIONS

Relevant authorities: Office of Public-Private Partnership – Public Procurement Agency, Ministry of Planning and Investment (MPI), authorised State bodies, and other related authorities

Issue description

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. 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.

In addition to 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 laws and regulations. Ideally, all investor selection processes and criteria applicable to PPP contracts and investments would be included in one all-comprising text (and implementing regulations) to help facilitate this type of investment. Finally, provisions under the Law on PPP do not yet fully address key host country support 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 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.⁶ 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 Land Law 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 debt funding from foreign lenders.

Foreign currency guarantee

Foreign exchange considerations also continue to affect the attractiveness of PPP projects in Vietnam for 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. The Law on PPP contains 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.⁷ 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 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.⁸ 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 in which the Government bears 50 per cent of the deficit between actual and “committed” revenue for the project in certain circumstances and would also benefit from 50 per cent of the surplus between actual and committed revenue. 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 strict conditions that do not apply where the revenue of a project exceeds projections.

⁶ Article 80.4 of the Law on PPP.

⁷ Article 81.2 of the Law on PPP.

⁸ Articles 69 and 70 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.⁹ This differs from the previous regime under which PPP contracts may be governed by a 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 law (usually English law) to BOT project contracts has been and continues to be an absolutely critical bankability issue to mobilise the 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”, which remains an undefined concept subject to a broad interpretation and is too vague to remove the concern of international investors and foreign lenders.

Timing to financial close

The Law on PPP introduces a requirement for sponsors and project companies to achieve financial close within 18 months from the signing of a project agreement for projects approved by the National Assembly or Prime Minister, or 12 months from the signing of a project agreement for other projects.¹⁰ This does seem overly prescriptive in light of the time it has historically taken to negotiate BOT contracts for complex internationally funded power projects. Additionally, the consequences of failing to meet the statutory deadlines on financial close are not clear. Based on the experience of foreign lenders to large-scale projects in Vietnam, the earlier mentioned timelines 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.

Consents for capital assignment

The Law on PPP requires the authorised State agency 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). These restrictions are likely to act as a deterrent to investors as there are no fixed criteria for permissible transfers in equity holdings in projects and project companies – these 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 cases:¹¹

- 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

⁹ Article 55 of the Law on PPP.

¹⁰ Article 76 of the Law on PPP.

¹¹ Article 52 of the Law on PPP.

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 of 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. Vietnamese laws and regulations should not limit the flexibility of the parties to do this without risking the availability of financing sources for projects in Vietnam.

Lender's step-in rights

The Law on PPP also removes 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 does not cover this expectation and will likely, unless varied in template or negotiated PPP contracts, result in a very serious hurdle to accessing project financing.

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 in which amendments to the PPP contract must be considered by the parties.¹² 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 in existing regulations, conflict with other legislative regimes that serve to undermine incentives for PPP investors, and key structural gaps relating to Government support persist. We believe that these will limit the attractiveness of PPP projects to foreign investors.

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, focusing on key elements such as the availability and disbursement of debt and equity funding and credit support measures.
- Test these regulations with actual projects.

ACKNOWLEDGMENTS

EuroCham Legal Sector Committee

¹² Article 50 of the Law on PPP.



CHAPTER 7 TAXATION AND TRANSFER PRICING

OVERVIEW

Resolution 43 on supporting the socio-economic recovery and development program,¹ including the policy of reducing the Value-Added Tax ("VAT") rate by 2 per cent, implemented in the past two years, has brought many positive effects for businesses and individuals. We support the decision to extend the VAT rate reduction to 8 per cent until the end of 2023 and hope that it will be extended until 30 June 2024 to provide support due to the impact of slower global growth and trade on the economy.

We also appreciate that the business community has the opportunity to contribute to many important law amendments, including to the Laws on VAT and Corporate Income Tax ("CIT"), and to provide input in relation to the adoption of the Global Minimum Tax. We look forward to continuing to provide our suggestions for improving the tax environment in Vietnam.

I. CORPORATE INCOME TAX POLICIES TO ADAPT WITH THE IMPACT OF GLOBAL MINIMUM TAX RATE – 15 PER CENT (OECD PILLAR 2)

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

Issue Description

The EU member states agreed to implement the Global Minimum Tax Rate of 15 per cent (OECD Pillar 2) for fiscal years beginning 31 December 2023. Other leading investors in Vietnam including Korea and Japan enacted regulations to give effect to Pillar 2 from 2024.

To implement Pillar 2, Vietnam introduced a draft resolution in July 2023 to collect the top-up taxes under 02 mechanisms including the Qualified Domestic Minimum Top-up Tax ("QDMTT") and the Income Inclusion rule ("IIR").

One of biggest concerns in relation to Pillar 2 is the impact on new foreign investment, and for current investors that the benefits of tax incentives previously granted would be lost or reduced.

Potential gains/concerns for Vietnam

Regarding the implementation of extra taxes under Pillar 2, there is significant interest among businesses, notably multinational companies operating in Vietnam and major Vietnamese corporations with overseas investments, about the implications of this global tax reform. Specifically:

- Whether the tax incentives which companies have been or would be entitled will be reduced or lost? This could impact decisions to make investment in Vietnam for current or new foreign investors since tax incentives are an important factor, together with the overall investment environment, in foreign investment attraction, which is a key source of capital, technology, and knowhow.
- What policies the Vietnam Government could introduce to encourage foreign investment for current and prospective investors affected by Pillar 2 when the tax incentive benefits are reduced, lost or no longer available?

This issue is particularly important when Vietnam is currently making efforts to attract the leading global companies in targeted sectors to enable the economic growth strategy of Vietnam in the years to come.

¹ Resolution 43/2022/QH15 dated 11 January 2022 of the National Assembly on fiscal and monetary policies for supporting socio-economic recovery and development program.

From recent observations of international developments, many countries which have declared they will adopt Pillar 2, have drafted local corporate income tax laws to consider other tax benefits in response to Pillar 2.

Recommendations

We would like to recommend:

- Vietnam Government take the opportunity presented by Pillar 2 to undertake a comprehensive review of the tax incentives currently in place. This includes studying the impacts of Pillar 2 on current and future investors and considering practical and effective solutions for encouraged sectors so that Pillar 2 adoption does not create negative impacts on the investment environment and Vietnam still meets its commitments under Pillar 2.
- For example, if expenditure-based incentives were to be introduced instead of income-based, such as tax holidays, there would be less impacts from Pillar 2 adoption on foreign investment. Accordingly, foreign investments could be increased for targeted sectors and locations and the commitments under Pillar 2 would still be met.
- Examples of expenditure-based incentives that could be considered with reference to international practice including (i) accelerated depreciation for machinery and equipment of the investment projects and (ii) double tax deduction of labour cost or research and development (R&D) costs for encouraged investment projects.
- Such expenditure-based incentives may increase the likelihood of generating additional investment as they directly target investment expenses.
- In addition to encouraging investment in R&D, innovation and high-technology incentives could be targeted to support policy objectives such as promoting the green transition;
- Tax revenues generated from QDMTT could additionally be spent on areas to continue to improve the overall investment environment such as infrastructure and labour force skills development; and
- Pillar 2 provides a very good opportunity for Vietnam to consider tax incentive reform, and this should be done as soon as possible so as not to lose either tax revenues or foreign investment, as other countries will impose top-up taxes from 2024 and are also considering revising their tax incentive regimes in response.

II. INPUT VALUE ADDED TAX (VAT) CREDITIBILITY AND CORPORATE INCOME TAX DEDUCTIBILITY OF INVOICES FROM RUN-AWAY VENDORS

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

Issue Description

The Vietnam tax authorities publish a list of run-away vendors who have ceased operation without proper notification and contact the direct customers to deny input VAT credits and tax deductions in relation to the invoices issued by those vendors, including invoices issued a long time in the past.

Potential gains/concerns for Vietnam

While enterprises always seek to comply with the prevailing tax regulations and collaborate with the tax authorities to prevent tax fraud, the denial of VAT credit and corporate income tax deductions for all invoices from the run-away vendors is not reasonable because the enterprises (i) have actually bought goods or used services for their business purposes, (ii) have received and fully paid the valid invoices from/to the relevant vendors and (iii) are not in a position to validate/monitor the daily business operations of those vendors.

The denial of VAT input credits and tax deductions can result in significant tax exposures, including additional tax liabilities, late payment interest and penalties.

Recommendations

We would like to recommend as follows:

- To create fairness and transparency for the enterprises, the tax authorities should consider accepting tax credit and deduction of valid invoices with proper payment and supporting documents from the consumer's perspective. Dealing with the run-away vendors should be handled separately by way of legal investigation.

III. ENHANCING EFFECTIVENESS OF DISPUTE RESOLUTION MECHANISM BY ADVANCE PRICING AGREEMENTS (“APA”) AND MUTUAL AGREEMENT PROCEDURE (“MAP”)

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

Issue Description

1. Advance Pricing Agreements (APAs)

APA is a prospective dispute resolution mechanism for cross-border transfer pricing transactions. They provide tax certainty for taxpayers and tax administrations by negotiating the terms of transfer pricing transactions upfront. This minimises onerous transfer pricing documentation requirements, as well as mitigating the risk of audit, litigation and double taxation.

Vietnam introduced the APA program in 2013 with Circular 201, which Circular has been replaced by Circular 45 in 2021. Circular 45 is effective from August 2021.

Under the provisions of Circular 45 the APA period of 5 years has been reduced to 3 years, furthermore no roll-back option has been implemented.

Ten years after the implementation of the APA program, despite the numerous APA applications which have been submitted by multinational companies and applications, which have been accepted by the Vietnamese competent authorities to the APA program, Vietnam still has not concluded and implemented APAs. The evaluations and assessment of the APA applications by the Vietnamese competent authority moves slowly, in most of the APA applications in the last years, taxpayers did not experience any developments.

The reduced effective duration of the APA, the lack of the roll back option and the long processing time taxpayers experienced, made the APA application lose its goal as a dispute prevention instrument.

With regards to the numerous APA applications submitted to the Vietnamese competent authority, Vietnam should consider shortening the time spent on evaluation, assessment process, continue the APA negotiation process with the overseas competent authorities and reach agreement in a short period of time.

Furthermore, to enhance the effectiveness of the APA in the future, we recommend that Vietnamese competent authority considers implementing a reasonable timeframe for evaluating, assessing and negotiating the APA applications. Generally, in international practice, an APA application may reach an agreement between two countries' competent authorities in approximately two years after the submission of the application.

In terms of the effective duration, we recommend considering to re-introduce the 5-year effective period, which, in general, is in line with international practice. Furthermore, the roll-back option could provide an effective solution for a potentially longer processing period.

2. Mutual Agreement Procedure (MAP)

The MAP is an instrument for the resolution of international tax disputes whenever a taxpayer considers that the actions of one or both contracting states' tax administrations result in taxation not in accordance with the provisions of a tax treaty.

Vietnam has signed double tax treaties with around 80 countries; therefore Vietnam has the necessary legal framework to manage mutual agreement procedures.

However, in practice based on multinational companies' experience, the applications for a mutual agreement procedure submitted to the Ministry of Finance do not move forward, there have been either little or no developments. There has been no application under mutual agreement procedure in transfer pricing-related matters, which has reached agreement and settlement.

Furthermore, we have seen cases where the provincial tax departments refused to receive the Double Taxation Agreement ("DTA") applications because the taxpayers could not provide the certificates of tax residence for the current year. Such refusals are unreasonable because no tax jurisdictions issue certificates of tax residence for the current year. On the other hand, taxpayers could not declare their tax exemption eligibility on the tax forms because of such unreasonable rejections and had to pay double taxes. After that, taxpayers would have to revise the tax forms to report their tax exemption eligibility, prepare applications for tax rebates and hope that they would get refunds for the overpaid tax portions, which hardly ever happen in reality. It has been observed and reported that the tax refund procedures are extremely slow, strangled with red tape and seem to be done deliberately.

Recommendations

We would like to recommend as follows:

- It is recommended that the time for evaluating and negotiating the applications is shortened and consideration is given to conclude MAP applications within a reasonable timeframe;
- The procedures for DTA application should also be revised so that taxpayers can declare their eligibility and don't have to pay taxes outright from the beginning, instead of having to pay taxes upfront and expect to receive tax refunds down the line when the supporting documentation is available;
- In addition, if the tax authorities refuse to receive DTA applications, they should be obligated to provide a written explanation of their legal grounds for such refusals based on quotes of tax laws and regulations, instead of advising the taxpayers verbally.

IV. DEDUCTIBILITY OF MARKETING/SALES SUPPORT OFFERING TO INDIRECT CUSTOMERS IN A DISTRIBUTION CHAIN

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

Issue description

To better boost sales in a distribution chain, an enterprise will provide sales supports or conduct promotion programs benefiting its direct distributor's customers ("the indirect customers"). This is a business operation model that is very popular globally and contributes to increasing the enterprise's revenue.

However, the tax authorities currently do not accept tax deductions for to sales support/ promotion expenditures to the indirect customers based on the argument that such expenditures should have been the obligation of the enterprise's distributor, rather than the enterprise.



Recommendations

We would like to recommend as follows:

- Government of Vietnam should amend relevant regulations to allow such expenditure to be acceptable for tax deduction on the basis such expenditure directly contributes in increasing revenue of the enterprises.

ACKNOWLEDGEMENTS

Tax & Transfer Pricing Sector Committee of EuroCham

B GREEN & SUSTAINABLE DEVELOPMENT

CHAPTER 8 ENERGY AND ELECTRICITY

OVERVIEW

Relevant authorities: Office of Government (OOG), Ministry of Industry and Trade (MOIT), Ministry of Natural Resources and the Environment (MONRE), Ministry of Planning and Investment (MPI), Ministry of Finance (MOF), Ministry of Agriculture and Rural Development (MARD), Ministry of Science and Technology (MOST)

The EuroCham Green Growth Sector Committee (GGSC) welcomes and supports the priorities of the Government in managing and developing the energy market in Vietnam. In particular, we applaud the additional emphasis on clean energy in Resolution 55¹ and the visionary stance described therein. EuroCham also recognises the commitments that Vietnam made at COP 21 and COP 26, reiterated at COP 28, and wishes to contribute to their fulfilment, through the support and collaboration of the private sector.

Energy impacts all aspects of Vietnam's environment. As such, the approach to developing and transmitting it effectively and efficiently may compound or reduce climate and environmental impacts.

EuroCham notes the growth in demand from power-consuming companies, particularly large-scale international companies that have established or are seeking to establish a base in Vietnam, who seek clean energy for their businesses. Often, this is part of a corporate commitment to 100 per cent clean energy use, in many cases, companies have a green energy target well in advance of Vietnam's net zero 2050 commitment that was established in COP 26. This, in turn, is part of a global movement driven by consumers' expectations. In many Asian countries, a 100 per cent clean energy supply is achievable without financial penalties to the consumer.

Vietnam has shown an impressive and rapid growth of solar and wind power, with the expansion of indigenous solar energy reaching 27 per cent of national power production capacity by the end of 2020, with 16,500MW of solar installed by this date.

The cost of producing clean energy has decreased as markets have incorporated larger-scale projects and technologies have improved. With increased scale comes increased efficiency and cost reduction on a unit level can drop. In parallel, technological advances based on tried and tested solutions can deliver renewable energy effectively at a low risk, allowing more competitive energy production. Where markets can control and reduce risks for developers and consumers in delivering large-scale renewable investments, renewable energy is able to become the cheapest power options in global markets. Observations from several markets across the world that have embraced renewable energy and have provided a stable platform for it to establish and grow show that prices in comparison to fossil fuel generation are amongst the lowest in the energy mix, particularly for hydro and offshore wind².

The economic benefits of the trend in renewable energy introduction are visible in Vietnam in areas where rooftop solar companies can supply manufacturing consumers with electricity cheaper than the Vietnam Electricity's (EVN's) tariff. This reduction of operating costs is a major benefit to manufacturers, and we strongly support the continued development of low-cost clean energy in Vietnam. Expanding new direct renewable energy offtake can also reduce pressures on the need for upgrades for EVN's transmission system. The ability for energy users to source green energy directly from renewable energy sources through Direct Power Purchase Agreements (DPPAs, discussed in more detail later in this chapter), are fundamental to supporting the energy transition and avoiding impacts and reliance on regional and national transmission systems.

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 Since the establishment of the offshore wind tariffs for Taiwan, costs per MW (megawatt) have reduced by approximately 60%). In the UK costs have increased even further by over 70% and support for the offshore wind industry has enabled this to be the cheapest form of energy generation (when comparing thermal, nuclear and renewable technologies).

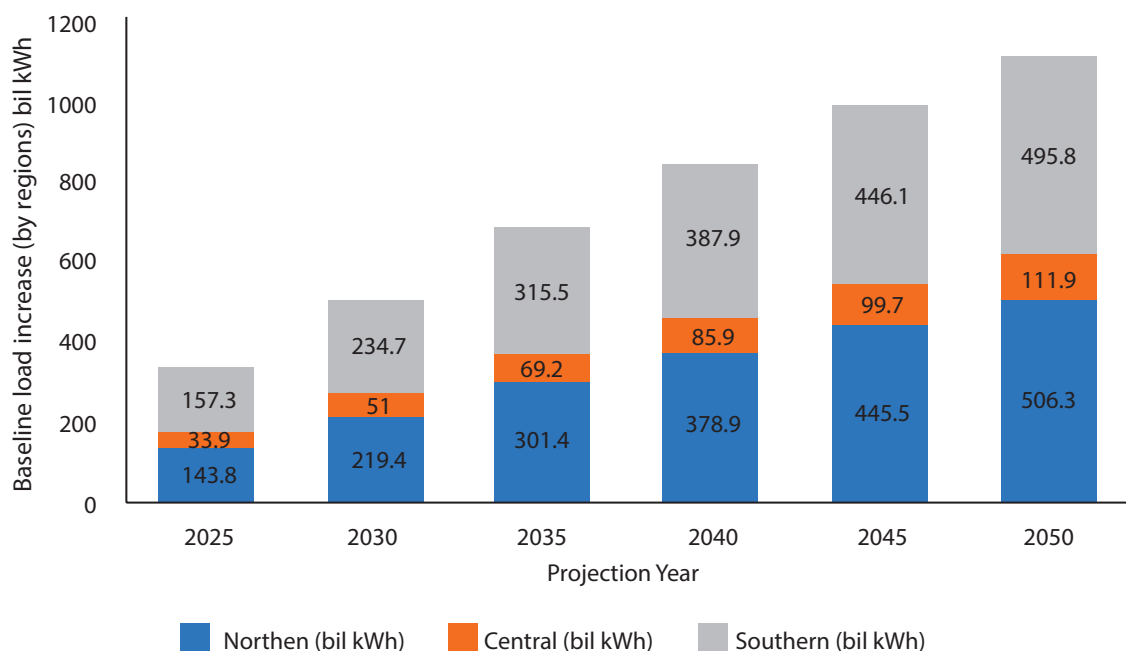
Electricity produced by coal-fired thermal plants impacts air, water, and land pollution more than energy produced from any other source, and is highly subject to the volatility of global coal prices. In the short term, installing more filters in coal-fired plants will reduce emissions, which in turn these need to be disposed of carefully. However, in the medium-term, it is likely to be more economical, safe, and strategically resilient to switch to indigenous renewable sources and to seriously engage in energy efficiency.

Energy demand

When focussing more recently on just the last decade, energy demand in Vietnam has increased tremendously (an average of 9.7%/year) partly due to the enlargement of the industrial sector and foreign investment in industry, the total electricity generated in 2020 was at 216.8 billion kWh. The electricity demand of northern provinces has seen the highest increase (at 11.6%) compared to that of the Central and Southern provinces (at 6.9% and 8.7%)³. The load forecast for Vietnam until 2050 shows that the current trend will continue with Northern and Southern regions acting as the largest demand centers. However, current installed capacity mix for these regions differs widely. While the Northern region has approximately 50% coal-fired power, the South has approximately 30% coal-fired power and approximately 30% solar.

Figure 1, referenced from an Institute of Energy Report in May 2023, provides a reference to the forecasted energy demand of the Northern, Central and Southern regions.

Figure 5: Load prediction (by regions) towards 2050 (Source: PDP8 report - Institute of Energy May 2023)



³ Demand Response (DR) Potential Assessment in Viet Nam. Final Consultant Report Submitted to Asian Development Bank. 31 December 2022.

I. OPPORTUNITIES FROM THE EXPANSION OF THE RENEWABLE ENERGY

The expansion of the renewable energy industry, and the introduction of new technologies, storage, and a more extensive and efficient transmission system, will bring many advantages to Viet Nam. These include, however, are not limited to:

1. Provision of additional power generation options and transmission technologies to satisfy current and predicted energy demands.
2. Increased energy security in Vietnam to buffer the reliance on international fuels and uncertainties related to supply (availability) and changes in pricing.
3. Job creation/adaptation:
 - a. A large number of jobs will be created, with both blue-collar and white-collar workers at all stages of renewable energy projects (development, construction, operation & maintenance, and decommissioning).
 - b. Transitional nature of existing workforce, particularly from similar industries such as oil and gas, construction, ports and harbour, civil and electrical engineering, project management etc.
 - c. Upskilling of the existing labour force with training and knowledge sharing to enable organic growth of Vietnamese-skilled workforce.
4. Investment and maturation/expansion of the regional and national supply chain:
 - a. Supply chain opportunities to utilize, grow and evolve existing company capabilities.
 - b. Further foreign investment in Viet Nam's supply chain to increase capabilities and capacity to deliver for its home market needs.
 - c. Creation of one or more land-based offshore wind hub to serve multiple projects in Vietnam and attract numerous supporting businesses.
 - d. Utilize the strong existing supply chain, large labor force, good port infrastructure, and land availability to evolve into southeast Asia's supply chain hub to serve multiple other markets.

Employment and supply chain aspects will lead to both direct and indirect economic injection into the country, region and province. It must also be noted, that whilst there is immediate direct employment in renewable energy projects by the developers themselves or contractors/subcontractors, and the supply chain aspects utilized, there are numerous 'Tier 3' impacts that are also boosted from this foreign injection. Multiple existing sectors will get secondary economic injection and lead to expansion in terms of permanent/temporary accommodation, transport (land/sea/air), entertainment, catering, logistics etc.

Opportunities from Offshore Wind

Offshore wind power should be considered the lowest cost, least risky source of base-load large electricity capacity by 2050. Power Development Plan VIII (PDP8) has set a development target of 6GW for Offshore Wind (OFW) power by 2030. This is an ambitious goal, given that Vietnam's OFW industry is still in its infancy, and associated legislative mechanisms needed to support offshore wind progression (such as the revised Decree 11⁴, falling under the remit of MONRE to allow for offshore surveys) have yet to be finalised. MOIT should consider facilitating the development of OFW power by creating an internationally functional Power Purchase Agreement (PPA) and combining Permits, Licensing, and Master Planning into a single one-stop-shop, ideally with transparent processes and statutory timelines to allow developers to invest on a large-scale in an environment where risks are manageable.

⁴ Decree 11/2011/ND-CP dated 10 February 2021 of the Government on assignment of certain sea areas to organisations and individuals for exploitation and use of marine resources (Decree 11).

II. ENERGY REGULATORY FRAMEWORK

EuroCham congratulates the Government on finalising PDP8, which was approved on 15 May 2023. PDP8 provides the short-term targets and long-term goals for the energy mix.

Table 1 provides the predicted/planned power generation capacity for Vietnam by 2030 and the contribution that these energy projects as a percentage of the overall supply.

Table 1: Power generation installed capacity in 2030 according to PDP8

Power source	Installed capacity (MW) 2022	Installed capacity (MW) 2030	Share (%) 2030
Wind power onshore	3,980	21,880	14.5
Wind power offshore (not nearshore)		6,000	4.0
Solar PV plant	8,840	12,836	8.5
Rooftop solar PV	7,755		
Biomass and waste to energy	382	2,270	1.5
Hydropower	22,022	29,346	19.5
Pumped-storage Hydropower		2,400	1.6
Battery Energy Storage Systems (BESS)		300	0.2
Combined heat and power (CHP)		2,700	1.8
Coal-fired thermal power	24,100	30,127	20.0
Gas thermal power domestic	7,185	14,930	9.9
imported LNG		22,400	14.9
Flexible (fast ramp up; ancillary services)		300	0.2
Oil fired power	1,500		
Import	572	5,000	3.3
Total	76,336	150,489	100

To allow Vietnam to deliver on these targets, it is necessary to develop a long-term legal framework to achieve net zero emissions and ensure the transition from fossil energy to low-emission energy. The PDP8 Implementation Plan is expected to go some way to delivering this, however, will also need to be in synergy with other existing policies and regulations requiring updates, and potentially new regulation e.g., Renewable Energy Law, that would support progress in these areas.

Transition of coal power generation

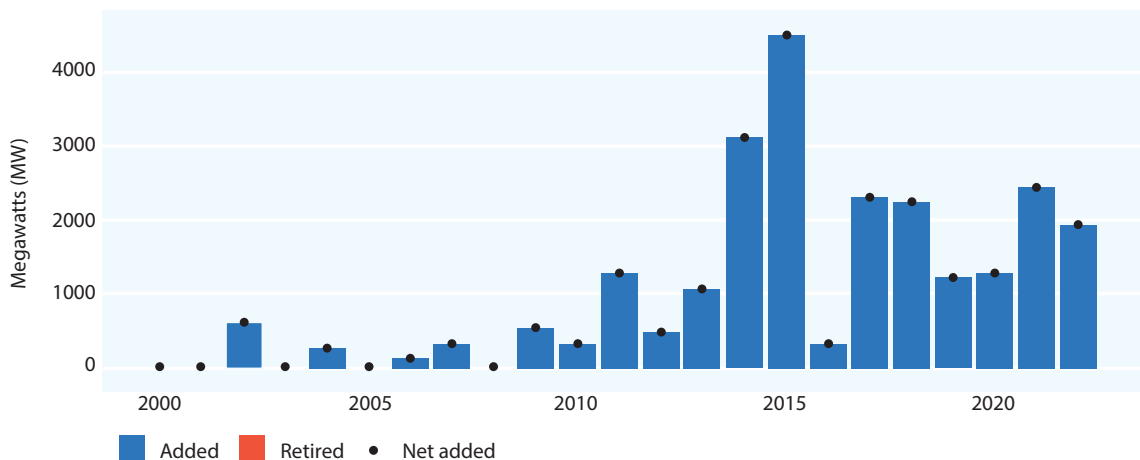
EuroCham is encouraged to see that no new coal power station investments will occur after 2030, as stated under PDP8, and fully support the suspension of coal-fired power plants that are delayed, e.g., failing to raise capital in time.

To support the coal power reduction goals, and to ensure further generation and transmission infrastructure can be effectively planned to fill the void left as coal power is removed from the system, an effective roadmap for

coal-fired power plant transition should be developed at a national level. This roadmap should consider the need to retain and ensure national energy security, whilst also linking to the development of the national Emissions Trade System (ETS).

Looking at the role of Vietnam's coal power fleet in the next 10-20 years is particularly important (as the fleet is very young - where the majority of the coal power station capacity has been added in the past 15 years), there are still many years of technical and economic lifetime ahead, which needs to be managed carefully. Figure 2 shows the comparison of added versus removed coal power capacity in Viet Nam since 2000, which reflects this. Partial reductions of coal power generation, and therefore fossil fuel usage, can be encouraged when considering the role of hydrogen (using ammonia as a solid fuel) to burn in conjunction with coal in a process known as co-firing. If this ammonia can be generated via renewable energy sources such as wind, then a form of green transition can commence at a thermal power level in parallel to new renewable energy.

Figure 6: Added (or retired) coal power capacity in Vietnam since 2000⁵



2. Renewable Energy industry development

PDP8 has been designed in a manner to consider multiple forms of renewable energy generation in-country, and also enable further opportunities for renewable energy import and export with neighbouring energy markets.

Wind Power (Offshore Wind is Scheme Priority)

Wind energy has been a source of recent development in the last 5-6 years in Vietnam, and once adequate regulatory framework and tariffs were established, a rapid increase in wind power plants has occurred throughout Vietnam. At the time of writing, Vietnam has limited the extent of its wind power plants to onshore locations, or those classed as nearshore (shallow-water). Nearshore has been considered as within 6 nautical miles of the coastline, and typically these power plants/wind turbines are connected to the shore by a series of bridges, though some are accessed via boat.

Wind power is still a relatively untapped industry in Vietnam. There is a relatively high potential for further onshore and nearshore project sites, however, when you look at wind speeds and the efficiency of wind power in terms of the load capacity that they can deliver in the form of energy generated, the true offshore wind opportunities have yet to be explored. PDP8 shows insight into understanding the role offshore wind can play in the energy mix for Vietnam, assigning a target of 6GW by 2030 and a vision of 70-91.5GW by 2050. Whilst targets are high, there is a relatively high availability of offshore wind areas to cultivate, however at this time the regulatory processes and ability to deliver these projects is unclear.

⁵ Global Energy Monitor. Available at < <https://globalenergymonitor.org/projects/global-coal-plant-tracker/dashboard/>>. Last accessed on 13 October 2023

Solar Photovoltaics (PV)

Early solar development, once tariffs were provided at a suitable level, led to a swift progression of commercial-scale solar and Roof Top Solar (RTS) being delivered. This massive expansion of the sector, delivering capacities far beyond the initial expectations has created issues for the grid and unexpected commercial demand for tariffs.

The solar industry still has a great deal of potential to deliver for Vietnam, and recognizing the concerns from the government, this can be structured in a way that ensures more effective management and control is established. Regulations need to be established to be able to deliver energy from solar projects direct to the end-user (rather than via EVN and the grid), with a direct offtake in the form of Direct Power Purchase Agreements (DPPAs), where a consideration on the benefit and availability of green energy can be discussed and delivered between solely the developer and consumer, on the understanding that this adheres to necessary legal and technical requirements. RTS has more of a role to play in Vietnam's energy progression, and a DPPA mechanism can provide further certainty. The ability to deploy solar PV roof top systems (which can be either grid connected and "behind-the-meter"), allows more flexibility depending on the energy needs of the province/region, or indeed the consumer e.g., on an industrial level.

Solar power can also be deployed in dual land-use settings, as has been shown globally when it has been associated with hydro power reservoirs in the form of floating solar (in turn this can be associated with aquaculture), symbiotic with certain forms of farming such as agriculture and grazing livestock etc.

3. Existing aspects restricting renewable energy growth and progress

Lack of Implementation Plan for PDP8

- **Unclear investor selection process** – Currently there is little visibility as to how investors will be selected for future energy projects. Particularly with new renewable energy technologies, if pilot mechanisms will be instigated and the criteria for these mechanisms, or the potential for an auction scenario.
 - + Offshore wind surveys and investor selection linkage – Lack of linkage and pathway for being approved to undertake offshore surveys (under Decree 11 – pending, under the management of MONRE), and then the benefits of securing and undertaking these with requirements from the Implementation Plan and Investor Selection process (under MOIT with support from provinces) as to how projects will be selected and to who.
- **Focus on immediate auctions will lead to delays and risk of non-delivery** – Concern that in the goal to implement a fully competitive process to drive down cost, the government will be tempted to instigate auction processes for new developments. Several markets, particularly for offshore wind, have shown that immediately triggering auctions at the start of a new renewable energy industry has led to delays, and the need to renegotiate tariffs as initial projects cannot be delivered for the pre-established price (examples include France and more recently the initial stages of the Japanese Round 1 offshore wind farms).
- **Retail market and power pricing reform** – A complete review and potential overhaul of the retail market and power pricing reform is required to provide further transparency and also allow more certainty (reduced risks) to encourage further investment from the private sector (developers) and their respective required supply chain industries.

A one-stop shop approach should also consider including the EVN National Power Transmission Corporation (EVNNPT) and all stakeholders in the development of a Strategic Grid Transmission Plan and allow private financing of the transmission assets to be managed and coordinated by the public energy company. Furthermore, MOIT should expedite the finalisation of the revised Electricity Law so this can be put into practice to consider allowing developers to build their own 220kV and 500kV transmission lines connecting to the national grid in accordance with stipulated grid code. To expedite the development of offshore wind, MOIT should consider initiating several pilot projects to be delivered by both state-owned enterprises and private developers, to then allow time for a well-defined power pricing roadmap for a transparent and efficient auction system that will be in force after these pilot projects until at least 2030. A transition mechanism could be initiated to focus the approach of such pilot projects. In this regard, as Vietnam adapts a robust auction process, it should ensure that only those companies/consortia with the financial and technical skills to deliver safe, stable, and cheap energy on time, should be allowed

to participate in the auction process. Likewise, it should offer fully defined packages of conditions and permissions that can be implemented immediately after the adjudication of the auction.

Clean energy, together with battery storage, has been shown to provide reliable and cheap electricity in other markets. We have raised this issue of battery storage before, and we welcome MOIT's inclusion of a Battery Storage System (BESS) in the energy mix with expected capacity of 300 MW in 2030. However, there is no existing regulatory framework on BESS. We suggest that MOIT should implement EuroCham's recommendations to allow storage on-site with solar power plants, with the relevant documents amended accordingly. In addition, EVN should also investigate the benefits of widespread storage capacity at clean energy plants of all types, including RTS power plants.

Grid Availability - Timely Upgrade and Certainty

One of the key aspects requiring certainty from renewable energy developers is the ability to rely on the offtake of the energy they generate/transmit, and therefore clarity and reassurance in the grid through EVN and/or EVNNPT is critical to allow these projects to occur. Key aspects include the need to consider and resolve:

- **Missing grid infrastructure detail and commitments** – Initial PDP8 (May 2023) did not contain recently detailed grid updates within the Annexes. A clear plan for how and when the necessary grid infrastructure and associated transmission systems will be updated to support the planned renewable energy build out on a provincial/regional level. Additionally, a more-defined commercial agreement with necessary compensation mechanisms is needed to be designed to ensure grid and transmission infrastructure is in place as agreed with the developer to avoid lost revenue and energy generation that cannot be utilized.
- **Constrained cross-country transmission and balancing systems** – Scalability for renewable energy generation is often able to reduce costs, however this must be balanced against the risks involved with new technologies in virgin markets. The ambitious energy plans established in PDP8 need a strategic and holistic approach to ensure that energy can be collected and delivered throughout the country (and even internationally) effectively. Appropriate balancing and delivery/storage/switching mechanisms and infrastructure are needed to avoid losses and maximize the opportunities that green energy brings to Vietnam.

Amended Electricity Law and Implementation

- Clarity on who is responsible for establishing and maintaining the onshore transmission system and then certainty on how the respected party will deliver this transparently
- Without private investment grid upgrades and new transmission infrastructure will likely be delayed, a clear format to allow developers to directly invest in the transmission network will alleviate financial pressures on EVN and provide the certainty developers need to deliver projects. It is critical that EVN are involved here to ensure suitable grid code is integrated and the wider energy system is delivered at the required quality and in a format that EVN can manage effectively and reliably.
- Without the enforcement and detail needed upon the recently approved Electricity Law, there is a restriction for connecting to more supportive grid infrastructure. Private involvement and investment can seek to resolve/support the resolution of this.
- Without a wider more strategic plan, which could require a significant amount of capital that may be accessed from the private sector, further renewable energy connections are likely to be prevented/delayed.

By allowing investors who meet the requirements to build 220kV and 500kV transmission lines enables promotion of the benefits to the power transmission and distribution system by continuing to support the growth of large-scale renewable power plants such as offshore wind.

Power Purchase Agreement (PPA) Functionality

At the time of writing, PPAs in their current format, create a great deal of uncertainty for developers and operators, with regards to how the owner is not in full control in relation to then being able to ensure a business case is profitable and predictable in the long-term. The independent nature of PPA negotiations between renewable

energy developers and EVN also allows for a wide variety of differing terms and tariffs between projects, which then can create bias and a more isolated approach to managing separate projects.

It is understood that throughout such a large country, the energy demand, generation and transmission capability levels have the potential to differ dramatically from province to province, and even district to district. However, a more aligned approach would benefit both EVN and developers/operators in the future. Uncertainties are greatest in the following areas:

- Curtailment – where the acceptance of local energy generation into the grid at the pre-defined tariff is subject to will Curtailment allowed and not capped
- Termination clause with lack of adequate compensation mechanism
- Need for an internationally recognized governing law if disputes arise
- Currency-indexed for offtake price stability

To place financial reassurance, a new Power Purchase Agreement specific for offshore wind should be considered that can address and resolve the following main issues of concern for international lenders:

- Curtailment should be kept at sustainable level with EVN to provide burden of proof in case of technical curtailment, and with specific definitions and list of force majeure events which should include unplanned grid outages
- Termination clause and lack of adequate compensation
- International arbitration process (utilising a recognized international court of law for such large-scale investments)
- Tariff in USD or at least currency indexation and stability
- Regional tariff approach, which may need to differ like solar, where wind speeds differ significantly between regions in Vietnam, should also be considered when assigning PPA offtake price

We also believe that the PPA 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 were not completely included under PDP8, and there should be a further defined clear Roadmap to Power Tariffs to 2025 – the PDP8 Implementation Plan should seek to deliver this. Furthermore, power consumers should be allowed access to clean energy by implementing DPPAs in pilot schemes and reducing the front-end regulatory barriers to behind-the-meter clean energy plants as intended in the Government's Resolution 68,⁶ tackling the red-tape challenge in Vietnam.

Direct Power Purchase Agreements (DPPA)

Developments in global and regional energy markets have increased the probability of a 2030 energy market being focused more 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 signaled 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. A certainty in securing ‘green energy’ addresses the need to deliver upon the corporate goals and investors demands.

The objective of “100% clean energy” is a challenging target. However, it is one that has become commonplace

⁶ 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.

for global companies, including those within the “RE100 Group”⁷. To support these initiatives, we would welcome the immediate implementation of the DPPA Pilot Scheme, not necessarily limited to a single project, with suitable criteria and effective procedure to select pilot projects and an easing of the regulatory burden on companies wishing to implement clean energy plants on-site “behind the meter”. Both these measures would help individual companies to achieve their own 100% clean energy supply targets.

Lack of Alignment Between Vietnamese and International Standards

One aspect that needs to be delivered with foreign investment and new large-scale high capital renewable investment, is to ensure that quality is adhered to for financing and insurance purposes. There is a need to incorporate international standards for Certification, Quality, Health and Safety, and Environmental considerations to meet the requirements of international financing and development companies, and the necessary insurance for these large projects. There will inevitably be some gaps and misalignments between the needs of Vietnam and the needs of foreign investments, therefore there will be the need to identify and address these.

III. POWER TRANSMISSION

Vietnam has established a promising pathway for energy transition through the national power development planning for 2030 with an outlook to 2050 (per the PDP8). The PDP8’s vision will contribute to achieving climate targets, enhancing energy security, and ensuring future supply competitiveness. PDP8 sets forth several targets, including developing 500 kV and 220 kV transmission grids to ensure efficient and reliable power supply. In line with these objectives, the investment scope for the transmission grid from 2021 to 2050 is as follows:

- Period 2021-2030: 49,350 MVA of new constructions and 38,168 MVA in renovations of 500 kV substations; 12,300 km of new constructions and 1,324 km in renovations of 500 kV transmission lines; 78,525 MVA of new constructions and 34,997 MVA in renovations of 220 kV substations; 16,285 km of new constructions and 6,484 km in renovations of 220 kV transmission lines.
- Period 2031-2050: 40,000-60,000 MW capacity of new construction of high voltage direct current (HVDC) stations and 5,200-8,300 km of HVDC transmission lines; 90,900-105,400 MVA of new construction and 117,900-120,150 MVA in renovations of 500 kV substations; 9,400-11,152 km of new constructions and 801 km in renovations of 500 kV transmission lines; 124,875-134,125 MVA new constructions and renovating in 105,375-106,750 MVA 220 kV substations; 11,395-11,703 km of new constructions and 504- 654 km in renovations of 220 kV transmission lines .

Vietnam Electricity National Power Transmission Corporation (EVNNPT) is responsible for investment, operation management, and maintenance of the national power transmission system. As of 2022, EVNNPT oversees the management of 74,370 kilometers km of 500 kV and 220 kV transmission lines, along with 184 substations with a capacity of 114,645 MVA. In 2022, EVNNPT achieved VND16,868 billion (US\$711 million) investment, 83.1% of the originally planned amount. Fitch Ratings upgraded EVNNPT’s credit rating from BB to BB+ in April 2023, whereas EVN’s credit rating has remained at BB since 2019.

During the period from 2016 to 2020, EVNNPT’s annual investment stood at approximately US\$0.8 billion, but during the pandemic, it declined to US\$0.5-0.6 billion per year. However, as per the approved PDP8, significant investments are required for the transmission grid development in the coming three decades. For the coming periods of 2021-2030 and 2031-2050, these sums respectively amount to US\$14.9 billion (annual investment of US\$1.5 billion) and US\$34.8-38.6 billion (annual investment of US\$1.7-1.9 billion). This means the transmission investment needs for 2021-2030 would require an almost threefold increase, necessitating new and attractive approaches to incentivizing capital injections in the country’s transmission segment. In addition to the investment needs, a transformation in terms of organization, processes and talent will be required, so that EVNNPT will be able to operate the existing assets and system while scaling and building the new infrastructure.

⁷ RE100 is the global corporate renewable energy initiative bringing together hundreds of large and ambitious businesses committed to 100% renewable electricity.

Barriers in expanding transmission and increasing efficiency of the network

Vietnam has experienced delays in transmission investment, exacerbating the reliability of the electricity supply in the country. The limited transmission development in Vietnam can be attributed to several barriers:

- i. Low transmission tariffs: Transmission tariff components in Vietnam have been relatively low compared to other countries, decreasing gradually in recent years. In 2022, the “uniform post stamp” transmission tariffs were 75.85 VND/kWh and even though it has just been slightly raised to VND79.08/kWh (excluding VAT) (~0.33 US cents (0.32 cents /kWh), which is equivalent to 25-30% of the tariffs in other countries. This has resulted in low profitability for the EVNNPT (owner of the assets), with a meager profit of VND43.4 billion (US\$1.83 million) in 2022 despite high total assets of VND83,519 billion (US\$3.52 billion). The unattractive investment returns associated with these projects discourage the participation of the private sector. EVN’s calculations indicate that a transmission tariff of at least VND170.61/kWh (0.72 cents/kWh) by 2025 is necessary for investment efficiency.
- ii. Limited financing mobilization: EVNNPT has sought external financing from national and international banks and institutions to meet the demand for transmission investment. Traditionally, EVNNPT had also relied on Official Development Assistance (ODA) loans for financial support, but these opportunities have been unavailable in the past few years due to the changes in the government ODA policies. However, EVNNPT’s equity, cash, and total capital are insufficient to fully meet commercial financing investment requirements. National banks are also reaching the credit ceiling for EVNNPT, limiting their ability to meet financing demand.
- iii. Difficult land acquisition: Land acquisition has become challenging due to significant increases in market land prices – which surpass government prices. EVNNPT must adhere to the government’s land prices, further complicating the land acquisition process. Moreover, acquiring forest land also involves a significant amount of time and effort due to extensive procedural hoops. By contrast, the private sector enjoys more flexibility as it can negotiate and determine compensation directly with affected individuals during land acquisition.
- iv. Unexpected demand for transmission expansion due to renewable energy development: The rapid addition of solar and onshore wind projects to the national power grid, primarily in the Central Region with low local demand, has led to unforeseen transmission constraints to integrate intermittent renewable energy generation. Although the heavy curtailment of renewable energy production in 2021 and 2022 might question the ambiguity between the cause of the transmission network limitation and the economic problem of minimizing the cost of purchasing electricity from high-priced power sources in the context of EVN’s loss crisis, to some extent it has also pressured EVNNPT to invest in more transmission projects to accommodate this excess renewable energy capacity. Enhancements to the limited transmission interconnection capacity between the North and the Central regions are becoming increasingly critical. It is necessary to upgrade and develop the transmission system infrastructure to ensure the security and continuity of the power supply in these regions.
- v. Lack of private investment regulations: The 2022 amendment to the Electricity Law allows for the participation of all economic sectors, including private investment and public-private partnerships (PPPs), in transmission power grid projects. However, private investment and PPPs in the transmission segment are subject to limitations related to state monopoly, with no instructions for EVNNPT to operate and maintain the private transmission projects under Build and Transfer model. The specific scope of the transmission grid for the private sector and EVNNPT will be determined in a draft PDP8 Implementation Plan currently under preparation by the Ministry of Industry and Trade (MOIT) to be released within 2023.
- vi. Absence of regional power market: Vietnam and its neighbouring countries have a diversified installed capacity of different generation resources. The opportunity to optimize the resources on a regional level instead of a national level will provide additional flexibility and economic optimization. Interconnectors create a “pooling” effect to smooth out domestic fluctuations. Each renewable energy source has its own unique characteristics, but, fundamentally, it is essential to diversify these resources within a region, not within a country. A meshed grid will mitigate variability and increase the overall capacity factor; thereby ensuring a more stable and reliable energy supply for the region as a whole. As such, a regional power market is essential rather than an option for energy security, without which energy transition solely on a country-by-country basis would be either unattainable or too expensive making electricity unaffordable for the most vulnerable populations.

EuroCham encourages and supports the implementation of the smart grid development roadmap to enhance the ability to integrate renewable energy into the power system, reduce power losses, with deployment of high-quality transmission infrastructure (cables, sub-stations, disconnectors etc) and Supervisory Control and Data Acquisition (SCADA) systems.

It is noted that Vietnam is seeking to promote grid connections with countries in the region to enhance power exchange and take advantage of countries' resource strengths. This will be highly beneficial if executed in a coordinated manner, as it should serve to balance and support energy transmission of a broader spectrum, and be particularly useful for managing intermittencies that occur as a result of some forms of renewable energy generation.

IV. JUST ENERGY TRANSITION PARTNERSHIP (JETP)

Following the launch of the JETP agreement (announced 14 December 2022), MONRE has been nominated to lead the JETP Secretariat and has held several meetings. The IPG (International Partners Group) bodies have supported MONRE in establishing the draft Resource Mobilisation Plan (RMP); the final JETP RMP has been approved and was launched by the Vietnamese Prime Minister at COP 28 in Dubai, UAE on 01 December 2023. This RMP includes within it an Annex showing lists of many projects/workstreams seeking financial and technical support.

EuroCham is very happy to see JETP being established in an agreement between EU, UK, G7 and many other countries to support Vietnam's green transition. Funding has been proposed within the RMP to focus investment on both financial and technical support areas. At this time, it is very noticeable that JETP is largely driven by and supported under by one ministry (MONRE), and EuroCham would encourage further engagement from the likes of MOIT, MOF, MPI and others. It may also be beneficial to create more of a role for the State Bank of Vietnam here. Additional cross-ministerial dialogue and collaboration is needed if JETP is to be effective.

Whilst EuroCham can understand that Vietnam as a country has a concern related to the large amount of funding that is in the form of loans rather than grants (and therefore the concern about what this would do to the countries debt), and therefore concerns arise about increasing Vietnam's debt-to-GDP ratio. However, as a country, Vietnam's debt-to-GDP ratio is extremely low when compared globally (approx. 40%); for reference in mid-2023 Japan had 266%, Greece 166%, US 128%, France 111%, Denmark & Sweden 30%. One area EuroCham would advocate for Vietnam to explore further in relation to JETP-funding is to consider raising debt-to-GDP ratio to support additional debt from JETP loans.

Finally, as one of the largest chambers in Vietnam, with over 1400 members, EuroCham Vietnam would propose to support the JETP secretariat (via MONRE) and the IPG to provide input from the private sector in relation to the many green services that our members represent. This can serve as a 'knowledge bank' for the secretariat and IPG to draw upon, and seek to allow open dialogue to provide access to information, and understand what the private sector can provide/support with, to identify any barriers that exist which JETP funding may be able to remove to allow further foreign direct investment (FDI).

V. CONCLUSIONS

Key take-aways in terms of what EuroCham would seek to propose to the Vietnamese government and its ministries, to meet green energy targets and to capitalize on the benefits that Vietnam as a market has, are as follows:

- Prioritise transparent and effective mechanisms to stimulate investment by all power consumers in energy efficiency measures to achieve the national energy efficiency strategy goals. This includes reducing subsidies to electricity prices.
- Maximise the contribution of solar, biomass, small hydropower, wind, and offshore wind power within the energy system, by clarifying a timely and coordinated approach to allocating projects (e.g., creation of a one-stop shop approach where one assigned authority/agency has the authority and capability to manage the consent and permitting for renewable energies) and ensuring grid availability.

- Revise the PPA between EVN and clean energy producers to meet international standards to harvest the full cost-reduction benefits of the planned auction processes in exchange for full take-or-pay and key provisions which address concerns of international lenders:
 - PPAs need to remove the risks of unjustified curtailment and termination clauses with specific definitions and list of force majeure events and focus on establishment of international arbitration and stable currency indexation.
 - Enhance energy security with the inclusion of natural gas as a transition fuel to temporarily replace coal in the short term.
 - Focus on the short-term ability to deliver projects included within PDP7 and PDP7-revised.
 - Implement the intention to halt any new coal-powered plants in PDP8, with a clear roadmap on how and where the injection of new renewable capacity will be incorporated into the grid, to replace areas previously but no longer considered for coal power. The timing and process for necessary grid upgrade plans should accompany this.
- 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.
 - Establish a clear tariff or funding mechanism in a transparent risk-free format where initial agreed prices can be relied upon for the lifetime of the project.
 - Suitable criteria and effective procedure to select pilot projects
 - Remove barriers for on-site renewable generation and consumption from roof-top solar or small-scale onshore wind/onshore solar.
 - Provide official criteria and recognition of renewable electricity certificates (RECs – both international and domestic certificates) as recognized transitional solutions in efforts to achieve 100% clean energy as well as greenhouse gas (GHG) emissions reduction of businesses.
- Expand the pilot project scheme (especially for offshore wind to kick start this industry), encourage private investment in the important power transmission network, and allow investors who meet the requirements to build 220kV and 500kV transmission lines to do so on their own.
- Define the industrial and commercial power tariffs required under PDP8, in a clear Roadmap to Power Tariffs to 2025.
- Increase the ambition of the Nationally Determined Contributions (NDCs) on greenhouse gas emission reductions reflecting increased targets for clean energy and better energy efficiency measures.
- Promote the benefits of decreased pressure on the power transmission and distribution system by continuing to support the growth of rooftop solar power plants for self-consumption/local sale.
- Give priority to the development of offshore wind power and seek to enhance the ability to deliver initial projects with some form of fast-track mechanism or pilot projects.
- Expand the initial MARD C-PFES pilot scheme to the national level and continue to use the financial benefits entirely for increased forest habitat and wildlife protection.⁸
- Allow storage on-site with solar power and other forms of renewable energy generation.
- 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

8 “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 9 GREEN GROWTH

OVERVIEW

The Green Growth Sector Committee (GGSC) was established in May 2014 to help develop the 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, as well as donors and multilateral organisations.

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), Ministry of Agriculture and Rural Development (MARD)

The “Circular Economy” is a new model of production and consumption. It involves sharing, leasing, redesigning, recovering, reusing, repairing, refurbishing, recycling and upcycling¹ existing materials and products for as long as possible. It is a more sustainable model of growth than the linear economy of “produce – use – discard” as it reduces waste to a minimum and uses discarded materials productively again and again in a different form. In doing so, it reduces the need for new raw materials and removes most waste and pollution from production.

We appreciate the progress of the new Law on Environmental Protection, especially the introduction of Extended Producer Responsibility (EPR). The role of the new Environmental Protection Fund (VEPF) is still to be clarified and we recommend that the Government enable more participants (the private sector, NGOs, and Producer Responsibility Organization (PROs)) to organise efficiently the move toward circularity. In particular, we recommend that the private sector is involved in decisions prepared and taken by the EPF.

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.² However, most waste is still dumped into landfill 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.^{3,4} Unsanitary waste disposal not only causes environmental hazards and nuisance. It 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 could be a bridge to help reach the next phase. On the other hand, Vietnam generates over 20 million tons of organic waste per year, accounting for 60 per cent of the municipal solid waste in Vietnam. Organic waste can pollute the air and water, attract pests, and contaminate soil and water. Composting would help solve the landfill crisis, while at the same time producing biogas and clean fertilisers. We welcome Decision 491⁵ setting clear targets for the management of waste towards 2025 with a vision to 2050 and Decision

1 Upcycling waste is the process of transforming by-products, waste materials, useless, or unwanted products into new materials or products perceived to be of greater quality, such as artistic value or environmental value. Upcycling differs from recycling in that it involves the creation of a new product with a higher value, rather than the breaking down of materials into their raw components to be used again.

2 Law 72/2020/QH14 of the National Assembly on environmental protection (Law on Environmental Protection).

3 “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.

4 “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.

5 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 (Decision 491).

849⁶ 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 is, in our view, paramount to the success of, for example, combatting plastic waste. We suggest establishing a public-private partnership committee to discuss and direct green growth projects to put the revision of the legal framework into practice.

Multinational corporations (MNC) 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 and segregation at source. It is essential that all dangerous and harmful waste be destroyed with no spillage into the environment and no cross-contamination. It is also important to increase public awareness of solid waste management, especially segregating discarded materials at household or company level, as is done in the EU, and to promote reduce – reuse – recycle. To do this, it would be relevant to legalise the secondary material marketplace, so it is done responsibly.

Potential gains/concerns for Vietnam

The goals of Decision 491 and action plans in Decision 849 are ambitious. To achieve these, all ministries and authorities will need to cooperate in implementing a regulatory framework that incentivises the public and private sectors. Regarding the legal framework, many of these goals require existing laws to be amended. Therefore, it is important to identify these laws and draft a plan to ensure their compliance as soon as possible. Besides, regulations need to differentiate solid waste from ordinary waste and state whether recycled material should be classified as waste (e.g., fly ash or recycled plastic for use as raw material in construction).⁷

Rapid urbanisation means that Vietnamese households – particularly in big cities – are discharging increasing amounts of waste into the environment. Municipal Solid Waste (MSW) generation per capita will reach 1.6 kg/person/day in 2025.⁸ The most basic components of solid waste are organic and inorganic waste.⁹ 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 general environment – must be held accountable. This is necessary to create a successful and compliant waste management industry. We appreciate how the Government has dealt with violations until now. However, there is always room for improvement.

Recommendations

- Continue strict enforcement of waste regulations and fair results-oriented prosecution for non-compliance;
- Complete the legal framework on waste management, especially waste classification and segregation at source;
- Legalise the secondary material marketplace;
- Continue to provide a conducive business environment for compliant waste management businesses;
- Increase public awareness of solid waste management;
- Set up a public-private committee to propose solutions; and
- Provide clear guidance and support infrastructure for waste segregation-at-source at household and companies.

6 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 (Decision 849).

7 “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.

8 “State of the 3Rs in Asia and the Pacific”, *United Nations Centre for Regional Development*. Available at: <[www.uncrd.or.jp/content/documents/5696\[Nov%2017\]%20Vietnam.pdf](http://www.uncrd.or.jp/content/documents/5696[Nov%2017]%20Vietnam.pdf)>, last accessed on 4 March 2021.

9 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.

2. Addressing plastic pollution

Issue description

Plastic pollution remains a major issue. Unfortunately, Vietnam is the fourth-largest contributor to marine plastic pollution globally.¹⁰ Only 27 per cent of plastic in Vietnam is recycled. Meanwhile, the amount of plastic waste is increasing by up to 200 per cent each year.¹¹ This situation poses serious impacts not only to marine life but also to sustainable economic development, the livelihoods of coastal residents, and potentially to food security. This is further complicated by containers of imported waste being sent for recycling to Vietnam and its neighbours.

Recycling alone is not a complete solution. The majority of plastics dumped are of too low value. Therefore, they would need to be compacted and used as cheap and long-lasting material, for example, to make roads or as construction materials. Furthermore, most plastics in Vietnam are non-compostable, called OXO plastic. Under the sun and wind, they break down into smaller and smaller fragments and can persist for hundreds years. Those smaller than 5mm, known as micro-plastics, can be found in the air, water, soil, can be ingested by wildlife and block the digestive systems of animals and create problems in the ecosystem and threats to human health.¹² It is notable that OXO biodegradable plastic and biodegradable plastic are not clearly differentiated in the market, when products from OXO biodegradable plastic are still listed on the label as “biodegradable”. Meanwhile, reality shows that disposable items made from OXO-degradable plastic when put into the environment, the plastic is still plastic, even if it disintegrates into small pieces. In Vietnam, many companies produce disposable products made from plastic and sold in supermarkets, most commonly are bags, cups, spoons, forks, etc. However, they are ambiguous when labeling those products as “biodegradable” with no distinction between completely biodegradable plastic and OXO plastic. This has led consumers to mistakenly believe that OXO biodegradable plastic is environmentally friendly, but in fact, it is harmful to the environment¹³. Many countries have banned or are considering banning the use of oxo-degradable plastic, such as the United Kingdom, France, the United States, and Germany. Thus, reducing the production and use of single-use plastic items, or recycling those that have economic value, is key. 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. Vietnam could refer to the Sustainable Packaging Guidelines of the World Packaging Organization and relevant EU policies when building the legal framework for packaging. 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, wood, clothes, and electrical items.

In light of the EVFTA, it is important that Vietnam complies with EU regulations, especially with new revisions in the EU Green Deal¹⁴ on technical standards, safety, etc. to ensure that products originating from Vietnam can enter the EU markets as well as the international supply chains and support the Circular Economy globally. The first step would be to evaluate the practical impact of these rules and their implementation. Vietnam has targeted a complete ban on single-use, non-compostable plastic packaging products in the period of 2025-2030 under the Law on Environmental Protection. Stringent regulations are required to achieve this and, as a gradual approach, we suggest Vietnam finalises policies and mechanisms to limit the production and use of these items and develops the production of compostable plastic that can be certified using EU and US standards. This can be encouraged, initially, via increased taxes for the use of single-use plastic bags and the promotion of outreach programmes to raise public awareness. Experience in other countries, such as Rwanda¹⁵, has shown that a complete ban of these products, supported by widespread behavioural change, will contribute significantly to tackling plastic pollution. Vietnam has now developed to such a level that it can follow suit.

10 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.

11 “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.

12 Op cit. Plastic waste inputs from land into the ocean p.14.

13 “Nhựa tự hủy OXO - Đừng nhập nhèm mang danh “Nhựa tự hủy sinh học””, Ministry of Resources and Environment Online Newspaper, 22 May 2022. Available at <<https://baotainguyenmoitruong.vn/nhua-tu-huy-oxo-dung-nhap-nhem-mang-danh-nhua-phan-huy-sinh-hoc-340359.html>>, last access on 20 October 2023.

14 Waste, Electrical, and Electronic Equipment (WEEE), the Restriction of Hazardous Substances (ROHS), and Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH).

15 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.

Under Law on Environmental Protection Tax,¹⁶ it is already possible to raise tax. However, this has not yet achieved its objective.¹⁷ We believe that the tax rate should be increased for using single-use plastic bags. Pilots can be used before this is implemented on a national scale. All plastic bags, regardless of size or thickness, should be imposed tax to people to bring their own reusable bags when shopping or the use of eco-friendly solutions. This should also apply to plastic packaging to encourage businesses to use less packaging and to choose more sustainable packaging materials. The next step will be a complete ban on these products. Household domestic waste should be classified and segregated at source to enable cost-effective recycling and treatment, accompanied by comprehensive policies that favour private investment. If waste is separated into two groups (organic and inorganic), or three groups (organic, plastics, and glass/metal), it will enable more cost-effective treatment of domestic waste and allow for private investment. In the EU, electronics, paper, used oil, and clothes are other “differentiated” collection categories. The classification of domestic waste can be piloted in one or two big cities before being replicated more widely. 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 transition period. The private sector and relevant government authorities should work hand in hand to implement the EPR.

Potential gains/concerns for Vietnam

Decision 491 states 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 2030¹⁸ aims to reduce plastic waste discharged into the sea and ocean by 75 per cent, 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 of Decision 491 and Decision 1746 are ambitious. However, they have been challenging in practice. Hence, to achieve these objectives, 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 global supply chains.

Recommendations

- › Implement existing regulations and ensure strict enforcement;
- › Promote legislation to incentivise Vietnamese and multinational companies to comply with EU regulations to allow the country to enter global supply chains;
- › Ban OXO-degradable technology and introduce compostable plastic that can be certified under international standards to prevent greenwashing;
- › Promote investment in composting facilities and dedicated recovery supply chains to reduce the use of single-use plastics linked to organic waste;
- › Incentivise cost-effective recycling and treatment of domestic waste at the household level through classification to facilitate the implementation of the EPR law;
- › Set up the EPF as a public-private committee to propose solutions;
- › Provide tax-incentivized mechanic for compostable plastics packaging and recycled plastics packaging to encourage transition to environmental-friendly materials and promote local recycling industry; and
- › Ban single-use plastic and promote an alternative solution. Work with businesses to develop a plan for phasing out single-use plastic products. This would give businesses time to adjust their operations and to find alternative products to offer their customers.

¹⁶ Law 57/2010/QH12 of the National Assembly dated 15 November 2010 on Environment Projection Tax (Law on Environmental Protection Tax).

¹⁷ “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.999>>, last accessed on 8 December 2020.

¹⁸ Decision 1746/QĐ-TTg dated 4 December 2019 of the Prime Minister approving National Action Plan on Ocean Plastic Waste Management by 2030 (Decision 1746).

3. Water supply and Wastewater issues

Declining water quality has become a global issue as populations grow, industrial and agricultural activities expand, and climate change threatens to cause major alterations to the hydrological cycle. Over the last decade, the Government has taken action to deal with water-related challenges and has achieved remarkable results.

Issue description

Despite undeniable progress in water and sanitation, Vietnam's future development is threatened by severe challenges arising from climate change, rapid industrialisation, and "home-made" environmental problems.

Potential gains/concerns for Vietnam

Vietnam's development comes at a cost. The country's natural resources are under immense pressure, resulting in water-stress and subsequent threats to human well-being and biodiversity. In the long run, Vietnam will face severe financial losses if no action is taken to mitigate the current water and environmental crises. If the water sector is to continue supporting the nation's rapidly-expanding economy, it will need to overcome critical challenges. Water management will need to be more efficient to meet rising demand; income per unit consumed will need to increase; the quality of construction and public awareness will need to rise; and threats from "too dirty, too little, and too much" water will need to be reduced. At the same time, policies, institutions, law enforcement, and financing will need to be improved, and international commercial participation will need to be allowed in water and sanitation services.

Recommendations

Make the water crisis a top-level issue and embark on an all-inclusive journey to protect Vietnam's water resources, aquatic life, and biodiversity. In particular:

- Synchronise existing environmental policies to ensure a coherent political framework by better integrating the existing legal basis;
- Improve the situation on the ground by increased transparency and controlling the implementation of environmental policies on provincial and local levels; strengthen law enforcement and the willingness to take regulatory action;
- Listen to grass-root levels and encourage local environmental groups; support the actions of citizens to control the implementation of the State's policies;
- Introduce and endorse water-sensitive urban design and take advantage of Blue-Green Infrastructure, including modern storm water management;
- Information – Communication – Education is key for a cleaner environment, so improve and adjust school and university curricula by integrating "green" issues; public awareness, in general, needs to be improved;
- Take advantage of the knowledge and experience of international water companies through open, transparent, and fair public tenders;
- Encourage the reuse of wastewater by providing legal frameworks, guidelines, and standards to share quality water for applications like irrigation and industrial production;
- Adjust domestic and industrial wastewater fees to full cost recovery, implementing the "polluter-pays-principle";
- Foster sustainability-driven, water-wise tourism that will attract wealthy and nature-minded tourists; prevent the destruction of valuable ecosystems by uncontrolled tourism development;
- Consider Blue-Green infrastructure for dealing with climate change; and
- Consider and endorse green financing to increase capital flows from the public, private, and non-profit sectors to sustainable development priorities.

4. Air quality control

Issue description

The air quality in Vietnam's major cities has reached dangerous levels and become a critical health concern¹⁹. 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. The Vietnam National Economics University found that air pollution has cost the Vietnamese economy US\$10.8-US\$13.6 billion per year since 2012. Meanwhile, the number of days where the air quality index reached hazardous levels in 2019 and 2020 was higher than in previous years. According to IQAir, Hanoi ranked 11st in the most-polluted cities in the world²⁰. It is, therefore, important to revise the Law on Environmental Protection, particularly with regard to air pollution. Furthermore, 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, in 2019, the Government launched a national action plan for air quality management by 2020 with a vision to 2025²¹ (Decision 985a). Also in 2019, MOH issued a 14-step guide to help deal with air pollution, the first-ever public advisory on this subject.²² The Vietnam Environment Administration is required to set emissions targets²³. 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, especially during "lock downs", indicates that there are ways to improve air quality.

Recommendations

- Accelerate the revision of the Law on Environmental Protection, 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 with power stations; and
- Accelerate the development of a non-polluting public transportation sector.

II. GREEN AND ENERGY-EFFICIENCY 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)

19 "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 27 November 2023.

20 World Air Quality Ranking", IQAir. Available at: <www.iqair.com/world-air-quality-ranking>, last accessed on 27 November 2023.

21 Decision 985a/QĐ-TTg dated 16 September 2022 by the Prime Minister on the national aquaculture development program for the period of 2021-2030 (Decision 985a).

22 Health ministry issues first public advisory on air pollution", VnExpress, 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 26 November 2023.

23 "Vietnam sets 2020 emissions targets as nation chokes on smog", VnExpress, 23 September 2016. Available at: <<https://e.vnexpress.net/news/news/vietnam-sets-2020-emissions-targets-as-nation-chokes-on-smog-3472995.html>>, last accessed on 26 November 2023.

Issue description

In recent years, urbanisation in Vietnam has accelerated and its population continues to grow. Urban development has become a key factor in the socio-economic development of Vietnam, with over 70 per cent of the nation's GDP coming from cities and metropolitan areas²⁴. In 2022, Deputy Prime Minister Le Van Thanh has signed Resolution 148²⁵, setting the target of raising the urbanisation rate to over 50 per cent and the number of urban areas nationwide to about 1,000-1,200 by 2030. By 2045, Vietnam aims to have at least five international urban areas connected with regional and global networks. According to this action program, the urban economy is expected to contribute some 75 per cent of the national GDP by 2025 and about 85 per cent by 2030. The Ministry of Construction has also set a target of raising the urbanisation ratio of the country to 53.9 per cent in 2023²⁶.

As a driver of environmental degradation and climate change, urbanisation in Vietnam for residential dwellings and industrial expansion focuses on flatland, coastal, and flood-prone areas. Cities play a significant role in climate change as urban activities are significant contributors to greenhouse gas emissions. According to estimates, cities produce 75 percent of the world's CO2 emissions, with transportation and construction making up two of the biggest sources²⁷.

The construction industry is predicted to gain more focus and investment, in light of the increasing demand for buildings in Vietnam. However, this industry is unarguably one of the main contributors to global warming and the largest polluter affecting the environment. According to the Ministry of Construction, Vietnam's housing demand will increase by 70 million square meters each year, equivalent to 17,500 buildings with 30 floors by 2030²⁸. As part of efforts to decrease greenhouse gas emissions, the country has issued a range of policies and programmes, including the National Determined Contribution (NDC) where Vietnam has committed to reducing greenhouse gas emissions by 9 per cent by 2030.

Promoting green, energy efficient buildings is essential. Investors, project owners, and enterprises must also take responsibility for investing in, constructing, managing, and operating projects according to standards on energy-efficient and green buildings and urban areas. The ultimate aim should be to increase quality and convenience, ensure user health and energy efficiency, and protect the environment. We welcome the development of smart cities, as this shows that the country is moving toward green growth and sustainable development. However, by September 2023, Vietnam has just over 300 green building projects, LEED certified, but no construction projects designed, built, managed and operated that meet the criteria of net-zero emission²⁹. This is a small amount to pursue the ambitious targets of the NDC. Vietnam should aim much higher, 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. Green Building's Legal Framework

Compared to the current growth rate of the construction sector, the number of recognised green buildings in Vietnam is modest compared to other countries in the region. Besides, the legal policy is also a significant barrier that deters many businesses from setting up green buildings. The draft law submitted by the Institute of Architecture of the Ministry of Construction, to approve the "Development of green and energy-efficient buildings to 2030", includes a policy that all new construction or renovation projects must meet the National Technical Regulations on Energy Efficient Buildings. This includes apartment buildings, offices of other agencies and public buildings invested in and operated by the State budget with a gross floor area greater than 2,500 sqm.

24 Vietnam Country Report 2023, United Nations Human Settlements Programme (UN-Habitat), 2023. Available at: <https://unhabitat.org/sites/default/files/2023/06/7_vietnam_country_report_2023_final.pdf>, last accessed on 28 November 2023.

25 Resolution 148/NQ-CP dated 11 November 2022 on the issuance of the action programme that was devised to implement the Politburo's Resolution No. 06-NQ/TW dated 24 January 2022, which covers urban planning, construction, management and development by 2030 with a vision towards 2045 (Resolution 148).

26 "Urbanisation ratio expected to reach 53.9% in 2023", Vietnamplus, 25 January 2023. Available at: <<https://en.vietnamplus.vn/urbanisation-ratio-expected-to-reach-539-in-2023/247084.vnp>>, last accessed on 27 November 2023.

27 "Cities and climate change", UN Environment Programme. Available at: <<https://www.unep.org/explore-topics/resource-efficiency/what-we-do/cities/cities-and-climate-change#:~:text=At%20the%20same%20time%2C%20cities,being%20among%20the%20largest%20contributors.>>, last accessed on 27 November 2023.

28 "Increased housing demand, apartment complex price cannot be reduced", Government News, 6 February 2023. Available at: <<https://baochinhphu.vn/nhu-cau-ve-nha-o-tang-gia-chung-cu-tai-cac-do-thi-lon-kho-ha-nhiet-102230206093134945.htm>>, last accessed on 27 November 2023.

29 Nhi Anh, "Vietnam only has 300 green building projects", *VNEconomy*, 19 September 2023. Available at: <<https://vneconomy.vn/viet-nam-moi-chi-co-300-cong-trinh-xanh.htm>>, last accessed on 27 November 2023.

This has been rejected due to a lack of provisions on “Green Building” in the subsidiary and ancillary regulations that back up it. To promote the development of green buildings in Vietnam, it is necessary to quickly complete and/or update the legal framework and raise awareness of relevant stakeholders, mainly Government agencies, as the current legal system in Vietnam is almost devoid of incentives for developers.

2. Passive Design and Building Certification

Construction and buildings are the main users of electricity, accounting for up to 40 per cent of national consumption. As such, buildings in Vietnam need to become more energy-efficient. This would increase construction costs by only around 3 per cent. However, it would also help reduce operational costs by up to 36 per cent. 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. In this process, architects ensure that it can be applied from the design phase, with passive design and environmentally-friendly materials, to energy-efficient devices during construction. This process also applies to urban master planning. We encourage all buildings to achieve the minimum standards of the Vietnam Energy Efficiency Building Code (or a simplified version) in order to receive the Building Licence at the 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. This could include a commitment that at least 75 per cent of existing Governmental buildings will be Green Building certified up to 2030, rising to all new buildings from 2024 onwards. Many certification options are available in the market.³⁰ We support a move to recognise multiple systems in Vietnam, letting the market determine which are practical. These could be licensed for operation based on a set of simple criteria such as transparency, reliability, and coherence according to recognised norms. However, 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 local government can do at an individual building level should be integrated into a holistic urban vision. Linking all of it together in a smarter and more liveable environment helps reduce temperatures and absorb emissions. This macro-level programme of incentives and policies could support Vietnam in developing smart and sustainable cities. The Vietnam Energy Efficiency Building Code (VEEBC), amended and published in 2017, provides a basis to resolve difficulties in localities in applying standards. MOC has organised several training sessions for officials at Departments of Construction to improve their capacity. However, the code could be more widely shared and applied. 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. Green buildings investments remain far too low to address current environmental concerns.

Policies encouraging the development of energy-efficient and green buildings should be developed and include construction with public investment. They should 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 (EPDs) should be further promoted.

Potential gains/concerns for Vietnam

The absence of proper policy backing, a dearth of green building expertise, and higher initial investment are the main barriers to the adoption of green buildings in Vietnam. According to the Vietnam Green Buildings Council, misinformation about the cost of developing green buildings has contributed to Vietnam’s earlier adoption of them being delayed.³¹

30 These include the United States Green Building Council’s Leadership in Energy and Environmental Design (LEED), the International Finance Corporation’s Excellence in Design for Greater Efficiencies (EDGE), and Vietnam Green Building Council’s LOTUS.

31 Thu Nguyen and Siddharth Bhatla, “Green Buildings in Vietnam: How sustainable are they?”, *Vietnam Briefing*, 28 March 2022. Available at: <[WHITEBOOK 2024 | BOOSTING INVESTMENT FOR A GREENER AND MORE SUSTAINABLE ECONOMY | 135](https://www.vietnam-briefing.com/news/green-buildings-in-vietnam-how-sustainable-are-they.html/#:~:text=As%20per%20VGBC%2C%20misinformation%20was,up%20to%20five%20percent%20more>”, last accessed on 28 November 2023.</p>
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Recommendations:

- Integrate “Green Building” wording in subsidiary and ancillary construction laws;
- Enforce and promote the application of sustainable building materials solutions through the Vietnam Association for Buildings Materials;
- Apply a comprehensive life-cycle approach;
- Promote green labels and EPDs;
- Provide greater transparency on the timing of the introduction of market-based pricing for electricity;
- Remove subsidies on fossil-fuel-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 the licensing of certain types of buildings regardless of their use and incentivise higher levels of certification; and
- Prepare a clear urban planning showcase, including not just green buildings but also water, waste, traffic, and environmental livelihood improvement solutions.

3. Circularity in Construction

One way to limit the use-dispose linear approach is to replace it with a reduce-reuse-recycle circular approach. The building’s design, operation and deconstruction maximize value over time using:

- Durable products and services made of secondary, non-toxic, sustainably sourced, or renewable, reusable, or recyclable material;
- Space efficiency over time through shared occupancy, flexibility and adaptability;
- Materials with longevity, resilience, durability, easy maintenance and reparability; and
- Disassembly, reuse or recycling of embedded material, components and systems.

Recommendations

- Create regulations to remove barriers and facilitate market entry of secondary building materials from demolition/deconstruction;
- Provide incentives to promote materials and building recovery and reuse, including using financial mechanisms, e.g., planning fee rebates, and reduction in development cost charges where reuse thresholds are met; and
- Create a Circular Economy Roadmap for Buildings that outlines the tools needed to deliver these policies, including the development of local supply chains with material reclamation facilities, databases, and capacity building across the value chain.

III. EXTENDED PRODUCER RESPONSIBILITY

(The text below reflects the collective comments from four EuroCham Sector Committees, including Green Growth, Nutritional Foods Group, Mobility and Wine & Spirits).

Relevant authorities: Ministry of Natural Resources and Environment (MONRE), EPR Council, EPR Office, Vietnam Environment Protection Fund (VEPF)

Issue description

EuroCham always supports and highly appreciates the Government and the Ministry of Natural Resources and Environment's efforts to protect the environment, promote recycling of products and packaging towards green growth and the development of circular economy in Vietnam. We highly appreciate relevant authorities' endless efforts in developing and defining legal frameworks as foundation for enterprises to fulfill Extended Producer Responsibilities (EPR) for products and packaging. To ensure manufacturers and importers to effectively implement the EPR as regulated in the Decree 08³², we, EuroCham Sector Committees, including Green Growth, Nutritional Foods Group, Mobility and Wine & Spirits would like to give some proposals contributing to the implementation of EPR effectively and sustainably, while harmonizing the goals of environmental protection and business development.

Potential gains/concerns for Vietnam

The proposed Fs³³ rate

The current proposed Fs is still high compared to the actual recycling situation in Vietnam, and haven't followed the circular economy principles by not deducting recoverable materials value, which in turn shall lead to increased product costs and negatively impact consumers. While we understand that MONRE had used several studies when drafting Fs, we urge that the ministry continue to engage and consult with impacted stakeholders to have concrete empirical evidence, transparent benchmarks and understand more deeply the practical conditions in Vietnam. We also support conducting studies on countries with similar socio-economic conditions as Vietnam to have a more accurate and comprehensive view.

Regarding materials that have higher recoverable value than the recycling fee, recyclers are, at the moment, having big profits such as aluminum, iron, cardboard packaging.

The formula for calculating Fs does not follow circular economy principles because it has not deducted the value of recovered materials. In the proposed recycling rates, the Ministry of Natural Resources and Environment has introduced rates for materials with high recovery value such as iron, aluminum and cardboard, which has recognized the principle of circular economy but has not yet fully receptive.

In fact, iron, aluminum and cardboard recyclers are all making big profits. The cost of recycling iron as calculated by the Ministry of Natural Resources and Environment is VND 9,000/kg, the current steel price on the market is about VND 13,000-14,000/kg³⁴, but iron packaging rate is 0.4 and manufacturers must contribute an additional VND 3,672/kg. Aluminum has a recycling cost of VND 12,000/kg, the current market price of aluminum is about VND 57,000/kg³⁵, but aluminum packaging still has 0.2 rate and the manufacturer must contribute an additional VND 2,448/kg. Cardboard has a recycling cost of VND 9,500/kg, the current market price of pulp on the market is about VND 13,680/kg³⁶, but paper packaging still has 0.2 rate and the manufacturer must contribute an additional VND 1,938/kg. These contributions to support recyclers increasing profits are not consistent with the circular economy.

32 Decree 08/2022/ND-CP dated 10 January 2022 of the Government elaboration of several articles of the Law on Environmental Protection (Decree 08).

33 EPR fees are determined by multiplying volume of plastic waste (V), compulsory recycling rate (R), and reasonable recycling cost for a unit volume of packaging (Fs)

34 "Steel price today October 10: Increase 3 Yuan/ton on the trading floor", Kinh te Do thi, 10 October 2023. Available at: <<https://kinhtedothi.vn/gia-thep-hom-nay-10-10-tang-3-nhan-dan-te-tan-tren-san-giao-dich.html>>, last accessed on 23 December 2023.

35 "Aluminum price today", Thi trung Hang hoa. Available at: <<https://www.thitruonghanghoa.com/gia-hang-hoa/gia-nhom-the-gioi?period=3m¬ation=3&compare=2023>>, last accessed on 23 December 2023.

36 Monthly Newsletter June 2023, VPPA. Available at: <http://rippi.com.vn/files/assets/TapchiBantin/bantinhang_so_6-2023.pdf>, last accessed on 23 December 2023.

Therefore, with aluminum, iron, and cardboard packaging, because the value of recovered materials is higher than the cost of recycling, the Fs rates should be recalculated according to circular economy principles. We recommend that the rate be set at 0.1 to support collection in remote areas, not to support recyclers that are making large profits.

Regarding glass packaging

One notable point is recycling glass packaging. This would require the existing infrastructure for glass packaging collection and recycling in Vietnam as well as the specific characteristics of glass packaging. Without first conducting a thorough impact assessment along the supply chain and considering the state of Vietnam's glass packaging collection and recycling ecosystem, the EPR framework will become overly difficult for producers and importers to implement. Consequently, it would have a minimal impact on reducing landfill waste while imposing sharp and significant costs to producers and importers. To address this, the industry is conducting in-depth studies on glass recycling in Vietnam and stands ready to share the findings with MONRE in its development of the EPR framework.

Regarding battery electric vehicles (BEV)

Furthermore, the current Fs rate for the batteries in Battery Electric Vehicles (BEV) is still high. Promoting E-vehicles is one of the main objectives until 2030, as stated in Decision No.876³⁷ of the Prime Minister, thus putting high cost shall negatively affect the market for electric vehicles and defer Vietnam's green transition in transportation. With the same rationale, the timeline to implement recycling and the Fs rate for the batteries in BEV should be similar to vehicles and motorcycles (1 January 2027) so producers and importers have enough time to make appropriate preparations.

Timeline

Article 77 of Decree 08 stipulates: "Manufacturers and importers shall be responsible for recycling packaging and battery products; lubricants; tires and tubes: from 1 January 2024", after that the EPR office has instructions "Before 31 March 2024, manufacturers and importers shall declare the contribution amount for 2024 calculated by total actual product, packaging which were marketed and imported in 2023."

In practices, considering the tough economic times, paying an advance contribution (estimated at many trillions) to the Environmental Protection Fund from the beginning of 2024³⁸ while this money will be in the fund until the end of 2025 before being actually disbursed shall cause huge burdens to businesses.

In legal terms, we believe that the guidance from the EPR office is not in line with Decree 08, as products manufactured or imported in 2023 are not obligated to fulfill recycling responsibilities yet. If considered as an advance submission, it is also not reasonable, as the Law on Environmental Protection and Decree 08 do not have any provisions regarding the declaration and advance submission for the volume to be produced and traded in the same year.

Therefore, we propose that businesses should start to submit the contribution by 2025 based on the actual import and production finalisation of 2024 to facilitate businesses to overcome difficulties, (similar to the method of submitting corporate income tax), in line with Decree 08 regulations.

Incentives to eco-friendly or recycled packaging

The existing legal framework in Vietnam focuses on legalise responsibilities of recycling only while there haven't been clear mechanism to encourage the usage of recycled materials. Once EPR takes effect, the local recycling sector will experience rapid growth, leading to the introduction of a substantial quantity of recycled materials into the market. However, currently, no regulations have been established to incentivize the adoption of recycled materials in product and packaging. One of the two important elements of EPR policy is an incentives mechanism

37 Decision 876/QĐ-TTg dated 22 July 2022 of the Prime Minister on Approving the action program for transition to green energy and mitigation of carbon dioxide and methane emissions from transportation.

38 According to the regulations of the Ministry of Natural Resources: before 30 September 2024, promulgate support criteria; by 30 December 2024 to review the level of support; Disbursement according to the actual annual recycling volume, ie until the end of 2025, will be disbursed, while the money to support enterprises has started to close from April 2024.

for manufacturers who have considered environmental protection factors in product design. This view is recommended by the OECD, widely recognized and applied in the implementation of EPR policy in the world.

The current framework may lead to a fact that the recycling industry will focus mostly on the stages of collecting and recycling only, without paying adequate attention to the stages of developing the output market for recycled materials, developing technology and solutions to use more of recycled content to bring them back to the cycle of manufacturing and consumption.

EuroCham involvement in the EPR progression

We appreciate that the National EPR Council has representatives from the government authorities, environment protection organization and business community³⁹. However, foreign enterprises are not involved as such, despite of the fact that imported goods will also be impacted. Looking at the model of Taiwan, which shares the same mechanism, we observe that their Recycling Management Committee, the counterpart of Vietnam's National EPR Council, consists of government departments, NGOs, responsible industries and experts. We strongly recommend this model to get more insights from the impacted industries and stakeholders for a more comprehensive EPR framework.

EuroCham stays committed to supporting Vietnam in sustainability effort in general, and to support MONRE in the EPR development progression in particular. We hope to be involved in any further process of implementing EPR and/or revising the Law on Environment by providing our European insight and expertise.

Vietnam Environment Protection Fund (VEPF)

We appreciate that MONRE is preparing a Circular on the activities of VEPF, and believe that this shall be an important document in the implementation stage. We urge for greater clarity in the usage of the VEPF: the distribution of funds to recycling facilities, capacity building, technology investment or other supporting activities, should be publicized fully and regularly on EPR Portal for increased transparency to all parties. An independent auditing agency is also recommended to increase transparency – we recommend MONRE to have a clear set of criteria to choose a suitable auditor, and the auditing results should be shared with the public. We understand that companies need governmental support in recycling, thus the fund should follow a cost-covering principle.

Recommendations for effective implementation of EPR

For automotive industry

For the automotive industry to be officially designated as a recognised solid waste collector and recycler, suitable waste collectors and recyclers need to be recognised based on the size of the ageing vehicle fleet countrywide.

The current recycling approach for intricate items like automobiles and motorcycles, which relies on the proportion of “reusable parts or usable scrap as production materials of industries” divided by material types, is inefficient and costly to manage.

Details about the efficient execution of the waste disposal credit mechanism and potential penalties for non-compliance are still pending discussions with automotive companies. Vietnam's authorities have yet to establish a framework that obliges all stakeholders in the circular economy to undertake the collection and recycling of discarded product. This includes purposes, objectives, roadmaps, legal frameworks, constituent elements and stakeholders. Drawing from European experiences, such initiatives can take some time.

Vehicle ownership in Vietnam fluctuates over time, with only commercial vehicles having a defined end-of-life. Financing the recycling or disposal through financial contribution, whether targeting producers, retailers, or customers, is challenging due to the evolving ownership of vehicles.

³⁹ The National EPR Council was established according to the Decision 252/QĐ-BTNMT.

Recommendations

- Fs rate should be re-calculated to better reflect the practical recycling situations in Vietnam, and haven't followed the circular economy principles by not deducting recoverable materials value, especially materials which has higher value of recovered materials than the cost of recycling, such as aluminum, iron, and cardboard packaging, because We recommend conducting a new study with clear criteria and/or consult more studies to have a comprehensive view.
- EPR framework should be implemented in phases, beginning with a transitional period of at least 2 years from 2024. Under this trial period, enterprises should not be subjected to administrative penalties if they fail to meet their required recycling rate. Focusing on trial implementation without any penalties to strengthen the legislative framework and effective guidelines for businesses.
- Fs rate and implementation time for batteries in BEV should be similar to that of vehicles and motorcycle.
- For automotive industry, we suggest collaborate with the auto industry to build an apt ecosystem. 2030 is a feasible year to apply recycling norms for automotive and motorcycle-related discarded products, inclusive of an enforcement mechanism for compliant companies and penalties for breaches. Drawing inspiration from Europe, the regulation should pivot on the ratio between the total material volume and reusable value after product disposal compared to the product's original volume. In addition, preliminary dialogues with automotive assemblers and importers about vehicles' battery recycling and management guidelines for seamless implementation should be engaged.
- Have preferential policies in recycling contributions for packaging and products using recycled materials to create output for recycled materials, specifically for the part using recycled materials calculated with a coefficient of 0 for Fs.
- The distribution of VEPP should be publicized for transparency.

ACKNOWLEDGEMENTS

EuroCham Green Growth Sector Committee

For Extended Producer Responsibility section:

- Green Growth Sector Committee,
- Nutritional Foods Group,
- Mobility Sector Committee, and
- Wine & Spirits Sector Committee

CHAPTER 10 TOURISM AND HOSPITALITY

OVERVIEW

The Vietnamese tourism industry has shown signs of marked improvement. In the first nine months of 2023, Vietnam received 8.9 million international travellers, exceeding the goal of 8 million set back at the beginning of this year and recovering 69 per cent of international arrivals in 2019. The Ministry of Culture, Sports and Tourism plans to increase the target by 56 per cent since at least 1.2 million visitors are expected to arrive each month for the remainder of the year, raising the target to 13 million for 2023.¹

This recovery is attributed to strong tourism demand after the end of the COVID-19 pandemic, provincial programs to boost tourism and the congratulatory adjustments of the visa policies. EuroCham is committed to supporting Vietnam through our continuous collaboration with provincial authorities by providing international experience and expertise, such as our strong connection with the Ho Chi Minh Department of Tourism and our recent discussion with the Binh Thuan Department of Culture, Sports and Tourism.

There are critical issues to be addressed in the Vietnamese tourism industry, for Vietnam to be positioned competitively in ASEAN, and to develop tourism into a resilient and sustainable key economic sector. We believe the recommendations presented below are pertinent and their early implementation will lead to sustainable tourism development in Vietnam.

I. ENTRY VISA POLICIES & ADMINISTRATIVE PROCEDURES

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

Issue Description

Since 15 August 2023, a number of new regulations on immigration management took effect: (1) Implementing the issuance of electronic visas for citizens of all countries and regions territory; (2) The electronic visa duration is increased from no more than 30 days to no more than 90 days and is valid for 1 time or multiple times; (3) The temporary residence period for citizens of 13 countries that are unilaterally exempted from visas by Vietnam has been extended to 45 days.

These are ground-breaking policies, affirming that the Vietnamese Government continues to implement the open-door policy for foreigners coming to Vietnam, creating favourable conditions in terms of visas, entry and exit, especially for foreigners who come to Vietnam for the purpose of working, investing, market exploration and tourism. This provides opportunities for middle – and high-end customers in Europe, including retirees with long-term travel needs, to spend more time experiencing in-depth Vietnamese culture and exploring the landscape. Visa extension will also open the door for a wide range of tourists, especially digital nomads and long-term visitors as it offers flexibility for remote working conditions, together with Vietnam's affordable living costs and vibrant cities.²

While the visa policy does support attracting more foreign tourists, their journeys start not from their presence in Vietnam, but from the visa application and immigration procedures. As such, the administrative procedures, especially the e-visa portal, should be timely updated and upgraded to meet the increasing visa applications and improve user satisfaction. This also applies to immigration procedures, especially in Hanoi and Ho Chi Minh City, where visitors often have to wait for hours to complete entry procedures. EuroCham has been advocating for the

¹ "Government eyes raising tourist arrival target to 13 million", VnExpress, 3 October 2023. Available at: <<https://e.vnexpress.net/news/travel/government-eyes-raising-tourist-arrival-target-to-13-million-4660166.html>>, last accessed on 28 October 2023.

² "Vietnam's free visa extension a boon for inbound recovery", TIG Asia, dated 6 October 2023. Available at: <<https://www.ttgasia.com/2023/10/06/vietnams-free-visa-extension-a-boon-for-inbound-recovery/>>, last accessed on 21 November 2023.

introduction of special lines to reduce the workload, such as having business lines and lines for handicapped, seniors beyond 70 and families with infants.

Recommendations

We would like to make the following recommendations:

- Expand the list of visa-exempt countries to all EU countries;
- Provide short-stay visa exemption in certain situations, in particular in support of forums, exhibitions, and sporting events;
- Ensure consistency between the Vietnamese and English versions of the e-visa portal; and
- Create specific lines for business class and handicapped, seniors beyond 70 and families with infants.

II. DESTINATION MARKETING

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

Issue Description

The importance of provincial cooperation

Currently, each province and city promote their attractions in a different way with limited collaboration with other areas, which makes it hard to appeal to foreigners when Vietnam does not have a common message or strategy to promote Vietnam as a whole. Furthermore, Vietnam tourism promotion is still limited abroad. We highly appreciate initiatives like the “Vietnam Pho Festival” in Japan on 7 October 2023 – it’s a great example how Vietnam’s unique trait could attract more foreign tourists. We suggest that Vietnam use the same format to promote its unique handicrafts, landscapes, fruits and other attractions at festivals or fairs overseas, and in such events, airlines, tour companies and local carriers can offer their exclusive packages to Vietnam for visitors.

We believe that collaboration between provinces is of utmost importance in destination marketing, as most destination management issues in Vietnam need to be addressed at the provincial level. EuroCham highly supports forums such as the Linkages Conferences, aiming to connect the various regions and provinces in Vietnam with the major outbound hubs of Hanoi and Ho Chi Minh City. With the increasingly developed transportation system, travelling between provinces is becoming more and more convenient, creating opportunities for inter-provincial tourism. Phan Thiet, for example, is now only a two-hour trip from Ho Chi Minh City and is a great choice for a weekend get-a-way for local tourists or can be easily included in a trip of foreign businessmen, thus, a tight cooperation between Phan Thiet and Ho Chi Minh Department of Tourism, together with support from the private sector, would create more inter-provincial tours and promote tourism activities in both areas.³

Hospitality towards foreigners

With the aim of Vietnam improving its low rate as a recurring tourist destination, it is very important to achieve maximum satisfaction from tourists when they visit the country, so that they become disseminators of the experience among their family and friends, but at the same time that they preserve the memory of the pleasant time that they experienced during their trip, and especially of the hospitality and cordiality received by the population.

When the levels of return to visit Vietnam for the second or successive times are not significant, it shows that the positive experience that tourists receive when they interact with the population should be increased.

³ We also discussed this initiative with the Binh Thuan Department of Culture, Sports and Tourism in our visit back in August 2023, and received positive feedback from the province.

Cinema as a marketing tool

We congratulate the initiative of having the “International Conference on Investment Promotion for the Development of Tourism Brand through Cinema 2023” in June 2023. Vietnam is a country that possesses many beautiful natural landscapes, rich in history - culture, and is an ideal destination for domestic and international filmmakers.

According to the Ministry of Culture, Sports and Tourism, over the past time, the world’s major movie channels have chosen to feature a lot of Vietnamese films, which is the best way to spread the images of tourist destinations in the country. International crews also chose Vietnam as a filming location,⁴ and these destinations have become indispensable stops on the journey to explore Vietnam by international tourists. However, there is currently no mechanism to encourage global movie productions to film in Vietnam.

Since 2018, Thailand has a scheme to encourage foreign production tax rebates, and the country has recently approved a new scheme, raising the basic tier of rebate to 20 per cent while the bonus is doubled to 10 per cent, making a potential total subsidy of 30 per cent of the production spend in Thailand. The maximum rebate allowed also rises to THB150 million (4.50 million US dollars). Foreign actors also receive the waiver of personal income tax for five years.⁵ This is a great approach that Vietnam could consider to attract both international film crews to nurture a stronger combination of cinema and Vietnam tourism, and to join the competition as a competitive filming location in Southeast Asia.⁶

Explore new tourism markets

Vietnam is a potential country to develop Halal tourism, with many attractive, rich and diverse destinations. Vietnam also has a Muslim community of about 80,000 people, mainly concentrated in the South and Central Highlands.⁷ Statistics from the Vietnam National Authority of Tourism (VNAT) under the Ministry of Culture, Sports and Tourism show that the number of tourists from Muslim countries visiting Vietnam has increased remarkably in recent years, especially travellers from India (up 240 per cent in September this year). While Muslim tourism arrivals from Southeast Asian nations such as Singapore and Indonesia have also sharply risen, businesses should also focus on the Middle East region, which is known for affluent tourists who are willing to spend on high-end services.⁸ However, Vietnam still faces many difficulties and challenges in exploiting this market, such as lack of information, understanding and awareness of Islamic culture; lack of Halal certification for products and services; lack of cooperation and association with Halal organizations and businesses; lack of strategies and policies to promote Halal tourism. Therefore, Vietnam needs specific solutions to overcome these limitations and take advantage of opportunities from the Halal tourism market.

Recommendations

We would like to recommend as follows:

- Create specific advertising campaigns aimed at business owners and their employees who normally interact with tourists, such as local shops, local restaurants, public transportation, so that they understand the value of tourism in Vietnam, the meaning of cordiality, smile and the affectionate attention to tourists;
- Create educational campaigns in schools and universities, where the values of friendship, cordiality and hospitality are disseminated as icons of Vietnam, explaining to students that helping a tourist has the value of showing the world that Vietnam is a hospitable country, pleasant and welcoming to those who want to know the country, its customs and unique cultural identities;

4 Sa Dec town (Dong Thap), Ha Long Bay (Quang Ninh), Hoi An ancient town (Quang Nam), Notre Dame Cathedral (Ho Chi Minh City), made a strong impression on tourists through famous films such as “Lover” (L’amant), and “The Quiet American”.

5 Michael Rosser, “Thailand boosts film production incentive to 30% to remain competitive”, *Screendaily*, 9 February 2023. Available at: <<https://www.screendaily.com/news/thailand-boosts-film-production-incentive-to-30-to-remain-competitive/5178964article>>, last accessed on 21 November 2023.

6 “Movies as a tool of Vietnamese tourism marketing”, *Vietnam Plus*, 2 June 2023. Available at: <<https://en.vietnamplus.vn/movies-as-a-tool-of-vietnamese-tourism-marketing/256220.vnp>>, last accessed on 21 November 2023.

7 “Explore the Halal tourism market in Vietnam”, *Vietnam.vn*, 25 August 2023. Available at: <<https://www.vietnam.vn/en/khai-pha-thi-truong-du-lich-halal-tai-viet-nam/>>, last accessed on 21 November 2023.

8 “Halal tourism ‘gold mine’ for Vietnam to tap into”, *VnExpress International*, 16 October 2023. Available at: <<https://e.vnexpress.net/news/travel/halal-tourism-gold-mine-for-vietnam-to-tap-into-4665191.html>>, last accessed on 21 November 2023.

- › Foster provincial collaboration for tourism opportunities;
- › Simplify licensing procedures, incentives for film crews to borrow loans with low-interest rates, modern facilities, and preferential policies in support of locations and accommodation;
- › Create tax initiatives for international movie productions and actors; and
- › Build prayer places in public areas, restaurants, hotels, and entertainment spots; provide Muslim-friendly food and drinks with certification stamps.

III. RETIREMENT AND MEDICAL TOURISM

Relevant authorities: Ministry of Education and Training (MOET), Vietnam National Administration of Tourism (VNAT), Ministry of Health (MOH)

Issue Description

"Retirement tourism," also known as "senior tourism" or "retiree tourism," refers to attracting retirees from other countries to spend their retirement years in a new destination. Southeast Asia has become an attractive destination for global retirees due to its tropical climate and affordable living expenses. Vietnam ranks 40th best country in the world for foreigners to enjoy their "comfortable retirement," behind neighbours such as Thailand (18th), the Philippines (27th), and Singapore (29th), among the 5 countries that provide visas specifically for global retirees.⁹

Together with that, retirees often require healthcare services, so an ideal place for this group is a country that can accommodate their medical needs. They form a great category in the "medical tourism" sector.

Over the past few decades, new patterns of healthcare service production and consumption have emerged as a result of the expansion of international trade in medical technology, capital funding, and regulatory frameworks. The movement of patients across borders in search of health care and medical treatment - a practice known as "medical tourism" - has become a significant new component of the expanding healthcare industry. Patients from wealthier, more developed countries are increasingly travelling to less developed ones to receive medical care.¹⁰ Many ASEAN countries have issued medical visas, such as Singapore, Malaysia and Thailand.

The Ho Chi Minh City Department of Tourism stated that there has been a consistent and notable increase in the number of tourists seeking medical services in Vietnam with medical tourism estimated to generate 2 billion US dollars annually.¹¹ Vietnam currently attracts an average of 300,000 foreign visitors each year for medical examination and treatment, with Ho Chi Minh City the preferred destination for 40 per cent of these medical tourists.¹² In 2023, Ho Chi Minh City collaborated with travel agencies and medical institutions to build more than 30 medical tourism products, ready to be introduced to different markets.

Potential gains/concerns for Vietnam

Implementing retirement and medical tourism will bring many advantages to Vietnam, including but not limited to:

- › Economic growth: retirees often have stable pensions and savings, allowing them to spend on living expenses, medical services and leisure activities. Similarly, foreign patients coming to Vietnam will need

9 "Southeast Asian countries with retirement visas for foreigners", *VnExpress*, 22 July 2023. Available at: <<https://e.vnexpress.net/news/travel/5-southeast-asian-countries-with-retirement-visas-for-foreigners-4631860.html>>, last accessed on 21 November 2023.

10 Medical Tourism: Treatments, Markets and Health System Implications: A scoping review. Available at < <https://www.oecd.org/els/health-systems/48723982.pdf>>, last accessed on 21 November 2023.

11 "HCM City: Building 30 medical tourism products to be introduced to citizens and tourists in 2023", *Ho Chi Minh City Party*, 13 June 2023. Available at: <<https://www.hcmcpv.org.vn/tin-tuc/tphcm-xay-dung-30-san-pham-du-lich-y-te-gioi-thieu-den-nguoi-dan-va-du-khach-trong-nam-2023-1491909796>>, last accessed on 21 November 2023.

12 "Receiving 300 thousand foreign tourists for medical tourism every year, Vietnam gains 2 billion USD", *Vietnam Finance*, 16 June 2023. Available at: <<https://vietnamfinance.vn/moi-nam-don-300-nghin-khach-ngoai-den-chua-benh-viet-nam-thu-ve-2-ty-usd-20180504224285495.htm>>, last accessed on 21 November 2023.

to spend a long time for medical treatments, which requires accommodations, transportation, and other services. This influx of foreign currency can stimulate local businesses and create job opportunities;

- Extended Tourism Seasons: Retirement tourists may choose to stay for extended periods, and patients coming regardless of the tourism seasons, can help balance seasonal tourism demand, leading to more stable year-round economic benefits; and
- Business development and job creation: the influx of foreign retirees and patients fosters the growth of related industries and leads to a growth in demand for jobs in various sectors. These include hospitality, real estate, pharmaceutical, and may more.

Recommendations

We would like to recommend as follows:

- Provide medical visa and visa specifically for global retirees;
- Enhance collaboration between travel agencies, hotels, hospitals to build medical tourism products;
- Advertise Vietnam as a destination for retirement and medical tourism in both domestic and international channels; and
- Provide training for relevant stakeholders to meet international standards.

IV. LONG-TERM PROSPECTS AND SUSTAINABILITY EFFORTS

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

Issue Description

The traveller's mindset is changing, and sustainable travel is becoming more and more popular as people look to reduce the negative environmental effects of tourism (or over-tourism, in some situations). Vietnam's tourism is mainly based on available natural and cultural resources, so ensuring its green development and responsibility to the environment and society is the only way for the sector to grow and become a national spearhead economic sector.

The Sustainable Travel Report 2023 of Booking.com, with 33,228 respondents across 35 countries and territories, shows that Vietnam is among the top 4 countries that confirm travelling more sustainably is important and 83 per cent of Vietnamese tourists want to have a regenerative approach to travel and search for vacations with maximum positive impact¹³. This mindset is also shared by international tourists. The Eurobarometer survey on Attitudes of Europeans towards tourism shows that a large majority of EU citizens (82 per cent) are prepared to change some of their habits to support more sustainable tourism, for example, by consuming local products (55 per cent), choosing ecological means of transport (36 per cent) or by paying more to protect the natural environment (35 per cent) or to benefit the local community (33 per cent).

Potential gains/concerns for Vietnam

The Strategy for Viet Nam's tourism development until 2020, vision to 2030 emphasizes: developing cultural tourism, linking tourism development with preserving and promoting heritage values and identity, native culture; Identifying cultural tourism as one of the important product lines of Vietnamese tourism; Striving that by 2030 cultural tourism accounts for about 30 per cent of the total revenue of about 130 billion US dollars from tourists.¹⁴

¹³ Sustainable Travel Report 2023, Booking.com. Available at: <<https://globalnews.booking.com/download/31767dc7-3d6a-4108-9900-ab5d11e0a808/booking.com-sustainable-travel-report2023.pdf>>, last accessed on 21 November 2023.

¹⁴ "97% Vietnamese tourists want more sustainable tourism", *VnEconomy*, 24 April 2023. Available at: <<https://vneconomy.vn/97du-khach-viet-muon-di-du-lich-ben-vung-hon.htm>>, last accessed on 21 November 2023.

However, many cultural heritage values are now over-commercialized, reducing traditional cultural values due to over-development and mass tourism.

The trend of sustainable tourism development in Vietnam is currently more focused, as evidenced by the fact that businesses organize tourism development around the principle that it must be accompanied by profits for the community, raising environmental protection awareness, and balancing tourism development and nature conservation.

Sustainable tourism helps economic growth by providing local communities and governments with steady and equitable income. Simply leveraging the cultural peculiarities of a place is an example of a sustainable tourism model in Vietnam; local people in the area can have more income and improve their lives by having tourists visit, use tourism services, and buy products typical of the region and the region.

Recommendations

We would like to make the following recommendations:

- Put a nationally coordinated action plan in place to keep beaches, cities, and cultural heritage sites clean;
- Establish effective recycling campaigns to reduce plastic that ends up in the environment and be consistent in fining those that don't abide by the law;
- Create a national plan to remove single-use plastic entirely from hotels, travel companies, airlines, and hospitality service providers;
- Prioritise sustainable, diverse developments over large-scale projects often focusing on the condotel second-home market only;
- 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;
- Encourage experiences enabling travellers to interact with local people in meaningful ways and allowing the development of community-based tourism initiatives; and
- 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.

ACKNOWLEDGEMENTS

The EuroCham Tourism and Hospitality Sector Committee.

CHAPTER 11 **TRANSPORTATION AND LOGISTICS**

OVERVIEW

Vietnam, with its favourable location, labour force, and stable political system, has seen strong growth in its manufacturing sector and corresponding import and export volumes in recent years. High-quality logistics infrastructure, along with effective and efficient customs procedures, are two key goals Vietnam needs to achieve to continue attracting FDI; increase its competitiveness; connect local companies to global supply chains; and 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), Ministry of Public Security (MPS) and Ministry of Construction (MOC).

EuroCham members support Decision 708 of MOIT approving Plans for the Improvement of Vietnam's Logistics Performance Index.¹ Transport infrastructure is one of the key factors the Government should address to reduce logistics costs. We also appreciate Decision 1012.² This provides measures to develop the current transport infrastructure system; modernize stations, ports, and warehouses; and ensure the efficient use of land. 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.

Issue description

MOIT's plans to improve the Vietnam's Logistics Performance Index to address the majority of the current concerns. However, more could be done in the specific areas of environmental impact and safety, as these points have received limited attention in the outlined plan. 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 meters to 15.5 meters of the Cai Mep-Thi Vai fairway. This has already been budgeted for in the MOT 2021-2025 medium-term budget plan. Therefore, no additional funding needs to be found. This upgrade will allow for larger vessels to call at 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, the development of the Lach Huyen 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.

Meanwhile, specifically related to the issue of dredging, the current process to obtain licenses to carry out regular dredging for terminals is time-consuming. This process should be simplified by giving dredging clearance for a 10-year period rather than only on a case-by-case basis.

A second barrier to the logistics safety & security is the fire safety approval.³ Although the fire safety is very

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 (Decision 708).

² Decision 1012/QĐ-TTg dated 3 July 2017 of the Prime Minister approving nationwide logistics centre system development plan to 2020, vision to 2030 (Decision 1012).

³ "Supervision of fire prevention and fighting needs to remove inflammations in the regulations on fire prevention and fighting to create conditions for enterprises", National Assembly, 23 July 2023. Available at: <<https://quochoi.vn/tintuc/Pages/tin-hoat-dong-giam-sat.aspx?ItemID=78153>>, last accessed on 30 October 2023.

important and needs to be complied without compromise, in consideration of the new standards set forth in Circular 06,⁴ it is very hard for warehouses that were already built to be in compliance with the existing standards to upgrade to such new standards of fire protection (especially in-rack sprinklers for racking higher than 5.5 meters which is very costly and was not required in the previous standards). This has raised a lot of concerns from many EuroCham members who are logistics services providers. To temporarily resolve the issue, Vietnam Fire and Rescue Police Department under the MPS issued the Official Letter 1091⁵ which did help to solve the current challenges in the adoption of Circular 06.

We highly appreciate MOC's effort in issuing the Circular 09⁶ in order to amend Circular 06. Notably, Circular 09 permits to apply foreign standards in construction operations in Vietnam provided that this must comply with Vietnamese principles, regulations on firefighting & prevention as well as regulations on application of foreign standards⁷. Standards and minimum requirements are very clear in developed countries, companies can easily understand and follow these requirements as part of their investment without having to seek step-by-step guidance on what is required as well as waiting for delayed and unclear feedback. To avoid challenges to occur in practice when businesses applying foreign standards as set forth in Circular 09, the Circular needs a clear guidelines especially for the remaining requirement of higher than 5.5 meters for racking.

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 competition in the market, as warehousing and operation options are limited and controlled by a few 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 that 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 emphasized 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.

Recommendations

We would like to make the following recommendations:

- Issue implementation documents of Decision 1012;
- Simplify the dredging procedure for terminals and allow for a 10-year dredging approval license rather than case-by-case approvals; and
- Standards in firefighting and fire safety regulations need clear guidance. The authorities need to develop a racking standard that clearly states the specification of in-rack sprinklers for racks over 5.5 metres and below 14 metres high. This is then a single standard that is clearly required and only dangerous goods (DG) would need higher requirements.

4 Circular 06/2022/TT-BXD dated 30 November 2022 of the Ministry of Construction on the QCVN 06:2022/BXD, National Technical Regulation on Fire Safety of Buildings and Constructions (Circular 06).

5 Official Letter 1091/C07-P3, P4, P7 dated 11 April 2023 of the Ministry of Public Security of Vietnam on resolving difficulties in fire safety and firefighting operations (Official Letter 1091).

6 Circular 09/2023/TT-BXD dated 16 October 2023 of the Ministry of Construction issuing amendment 1:2023 of QCVN 06:2022/BXD on National Technical Standards on fire safety of Housings and Construction Works. This Circular will become effective from 01 December 2023 (Circular 09).

7 Please see the amendment to Point 1.1.7 in Circular 09.

II. CUSTOMS

Relevant authorities: Ministry of Finance (MOF), General Department of Customs (GDC), Ministry of Industry & Trade (MOIT)

Issue Description

Market access has been significantly opened for more foreign investment and the import of goods of preferential and non-preferential origin. Therefore, importers need to assess risks and protect their benefits at the customs gate. Customs valuation remains one of the most crucial elements of customs-related matters. In addition, in line with Vietnam's ambition to become a global transshipment hub, shipping lines and container terminals require easier change of vessel discharge/loading points both within a customs zone and in a second phase across customs zones. This applies to both empty and laden containers. This flexibility will optimize the current port infrastructure while also making it easier for shipping lines to reroute both international and domestic cargo.

1. 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 to apply different tariffs corresponding to each imported good. As such, 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 exempt from import tax. If importers would like to domestically consume these materials rather than use 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 will be subject to penalties.

On the reverse side, Vietnam is becoming a more and more potential and favourable country of sourcing globalization procurement. Numerous FDI enterprises have started collaborating with Vietnamese suppliers and factories. Therefore, FTA plays an important role in increasing the competitiveness of the products Made-in-Vietnam and Originate from Vietnam. In parallel, to accelerate and adapt to the development of Importing Countries in the EU and other markets, the digitalization and transformation of governmental processes and systems are the key to helping FDI optimize cost and lead time. Paperless C/O will reduce the cost, lead time and human mistakes in business.

Recommendations

We would like to make the following recommendations:

- 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;
- Implement the policy linked to customs procedures of ports to ease the transfer of goods from one port to another (both within as well as in a second phase across customs zones) in case of operational requirements by the terminal or the carrier's vessel; and
- MOIT to work on the process of digitalization on issuance & approval of E-C/O for EU and other countries having FTA with Vietnam.



2. Custom Valuation - Price Consultation

Issue description

In 2020, following the Prime Minister's Directive 11⁸, 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 authority to determine the appropriateness of values declared for goods imported into Vietnam. During these price consultations, customs authority will typically refer to their own databases of values. These are then used to challenge the veracity of the values declared by the importer. Importers are frequently requested to provide explanations for the gap between customs authority's reference prices and those declared. If importers cannot do so, then declared values are uplifted to match those of the customs authority's database. This is despite customs authority assurances that database values are only a reference point.

When importers, during the price consultation, requested customs authority to provide the supporting rationale behind reference prices,⁹ this was refused. The refusal to provide importers with the rationale behind 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 1304¹⁰ on the "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.

We understand that by February 2023 the General Department of Customs had approved the Project on reforming customs valuation management until 2023 to improve and enhance the quality of customs valuation management as well as to meet international integration requirements in the context of modern technology application.¹¹ However, it appears that this Project has not been shared publicly. We hope that EuroCham and its TLSC could participate in a similar Project in the coming time under which we could share international experiences to help the General Department of Customs to finalize the custom valuation framework according to international standards and in particular the WTO's Agreement on Customs Valuation.

Recommendations

- Let customs officers, who conduct price consultations, hold the supporting rationale behind the values on the database, and authorize them to disclose that information to importers enabling a more transparent and effective price consultation process; and
- Ensure that the price consultation process will be valid for a 12-month period, provided that declared values in this period do not move outside an acceptable threshold (e.g. +/- 5 per cent), then no further price consultation should be required.

3. HS Code classification: Rulings/Notifications

Issue description

We recognise the efforts to drive consistency in applying HS codes nationally. For instance, Decision 583 regulates the export and import of goods at risk of classifying and applying tax rates.¹² However, there is still concern over the lack 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 also enable companies to self-assess applicable HS codes of goods imported into and exported from Vietnam. In

8 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 (Directive 11).

9 For example, what was the relationship between buyer/seller; how were the prices negotiated; trading model; volume of business; specific types of goods etc.

10 Decision 1304/QĐ-TCHQ dated 29 April 2020 of the General Department of Customs approving a one-time consultation pilot project, using consultation results many times (Decision 1304).

11 "Reform customs value management to meet integration requirements", Customs Online, 13 February 2023. Available at: < <https://haiquanonline.com.vn/cai-cach-cong-tac-quan-ly-tri-gia-hai-quan-de-dap-ung-yeu-cau-hoi-nhap-171493.html> >, last accessed on 24 September 2023.

12 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 (Decision 583).

doing so, it will reduce the burden on the issuance of guidance on HS code classification, especially when Decision and Circular releases without Clear instruction and the Good application from local authority.

In addition, with the digitalization in Public area and Private area, this practice requires the synchronization of Customs data from one to another area in very short and sharp timing to not interrupt the business of Enterprise. However, the issuance date is in the very short time before application and effective date, is a major obstacle for businesses to proactively comply. In fact, the synchronization on system Customs is sometimes not aligned with the due date, it brings confusion and unintentionally creates the non-compliance of importer and exporter in the transition period.

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, including those that were listed and committed to be published in Article 6 of Circular 14, but preferably all those within the last five years;¹³
- A more reasonable timeline between the decision issued date, instruction availability date and effective date. The Guidance shall be issued 30 days at least before the Effective date with clear information, and instruction to related parties (GDC, Department of Customs in province/ city, enterprise). Related training and seminar need to be organized in between with question and answer to have active exchange from customs authority and enterprises after the guidance and instruction released, in order that Enterprise have enough time to prepare, and be ready for D-day; and
- When the customs data to be declared and proceeding on system only, the new tariff and data after the modification must be ready at least 07 working days before the Effective date to synchronize with Enterprise's process and data, having no waiting time for the Enterprise.

4. On-spot Import and Export procedures

Issue description

Since Law on Commerce ¹⁴ with a series of decrees of the Government and Circulars of the Ministry of Finance are promulgated from 2005 until the resolution Decree 08,¹⁵ on-spot export and import are allowed. It has created convenience and competitiveness to FDI by having factories in Vietnam to increase the localization rate of "Made in Vietnam" without having to import ingredients from other countries. On-spot exporters & importers save on costs and lead time, increase the readiness and availability of goods in the context of Time to Market, Nearshoring.

In the globalization context, international brands that do not have a presence in Vietnam prefer to develop raw materials and accessories in Vietnam so that they can use those raw materials to produce the final products. During the past time, the three-way trade relationship between the producers of raw materials and accessories in Vietnam (holding technology, skills and processes to develop raw materials for the brand), the factory(ies) producing finished products in Vietnam (signing processing or export production contracts for brands) and international brands (not present in Vietnam) has brought much more benefits to Vietnam business environment in general and local enterprises in particular.

Specifically, Vietnam's on-spot import and export policy helps to reduce logistics costs and delivery time, attracting foreign direct investment from international brands to set up factories into Vietnam as well as increasing Vietnam's import-export volumes due to preferential tax rates under its signed free trade agreements (FTAs).

¹³ 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 (Circular 14).

¹⁴ Law on Commerce 36/2005/QH11 dated 14 June 2005 of the National Assembly (Law on Commerce).

¹⁵ 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 (Decree 08).



Potential gains/concerns for Vietnam

The abolition of import-export policy as referred in Article 35.1 of the Decree 08 including its Point c will increase manufacturers' input costs, leading to increased costs of goods produced and processed in Vietnam. Further, delivery of goods through bonded warehouses instead of directly among factories (when applying on-site import and export) or having to import from abroad will increase operating costs for businesses and shipping time, reducing the competitiveness of goods produced in Vietnam. Consequently, Vietnam could no longer become one attractive destination for investment of international brands.

Recommendations

- To keep the effectiveness of Article 35.1 of Decree 08 including its Point c to allow the continuation of the current on-spot import/export practices.

III. SUSTAINABILITY

Relevant authorities: Ministry of Industry and Trade (MOIT), Ministry of Planning and Investment (MPI), Ministry of Transport (MOT), Ministry of Natural Resources and Environment (MONRE)

Issue description

Many multinational companies have made commitments to sustainability goals covering all aspects of their business including upstream sourcing and downstream supply, end of product life, etc. In logistics, the main goals are CO₂ reduction. Meanwhile, the long-term goal 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 has been relatively limited. However, many multinationals 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 share ideas for 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 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 being 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 economy;¹⁶ 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, and a commitment to nationwide enforcement of plans and timelines, etc. These plans will also need to include Biogas (generation 2 & 3); Electric RE fleets (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,

16 "A European Strategy for low-emission mobility", *European Commission*. Available at: <https://ec.europa.eu/clima/policies/transport_en#tab-0-0>, last accessed on 18 October 2023.

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 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 transportation and logistics) and to identify the key stakeholders within central government and provincial authorities. This should include a timeline to reach net-zero carbon and what steps must be taken to achieve this. Finally, businesses' support should be obtained, and measures prepared to work with central and provincial authorities to navigate 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.¹⁷ 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.¹⁸ There are many secondary benefits to such a progressive approach. These include synergizing with future health benefits, attracting premium tourism, reducing environmental impacts and potential future costs, and generally raising the quality of life, particularly in towns and cities. 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.

Figure 7: 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 <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 	Transport modes are smartly used and combined <ul style="list-style-type: none"> • Increase use of rail and ocean / water transport • Optimize multi-modal • Reduce Air transport 	Fleets & assets are energy efficient <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 	Fleets & assets use lowest emissions energy source feasible <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

17 "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 October 2023.

18 "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 October 2023.

Recommendations

- › Set up a forum with all stakeholders to support a review of opportunities and to share ideas for 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 transportation and logistics);
- › Identify the key stakeholders within both central Government and provincial authorities;
- › Prepare a timeline to reach net-zero carbon and identify what steps must be taken to reach this; and
- › Obtain businesses' support and instigate measures to work with central and provincial authorities to navigate the changes required to deliver the triple bottom-line (people, profit, and planet).

ACKNOWLEDGEMENTS

EuroCham Transportation and Logistics Sector Committee

CHAPTER 12 HUMAN RESOURCES AND TRAINING

OVERVIEW

The EuroCham Human Resources and Training Sector Committee would like to express our sincere appreciation for the positive changes and the efforts taken by the Government and relevant Ministries in terms of improving regulations regarding labour, employment, and training over recent years. We fully support the increased dialogue and consultation with the business community.

Vietnam's Socio-Economic Development Strategy (SEDS) 2021-2030 defines promoting high-quality human resources/skills development as one of the three strategic breakthrough areas. The lack of necessary skills in primary industries and sectors remains the most significant challenge for Vietnamese workers, although training investment is increasing each year. Improving training, education, and the legal systems for managing labour will help meet the demand for a skilled workforce, improve productivity and promote a competitive and healthy investment environment.

We are very interested in the ongoing progress of labour quality, labour rights and labour commitment, especially since Vietnam has actively participated in global integration, signing and implementing many Free Trade Agreements (FTAs), including the EU-Vietnam Free Trade Agreement (EVFTA) with the European Union.

The EVFTA contains a robust and comprehensive chapter on Trade and Sustainable Development which deals, inter alia, with labour matters relevant to trade relations between the EU and Vietnam. The objective is to promote mutual supportiveness between trade, investment and labour policies as well as to ensure that increased business relations do not come at the expense of workers' rights. In this context, Vietnam has committed to the ratification and effective implementation of the fundamental International Labour Organisation (ILO) Conventions, of which only one remains to be ratified (Convention 87 on freedom of association). Under Decision 121¹ of the Prime Minister, such Convention will be ratified in 2023.

In order to effectively implement the EVFTA, Vietnam also needs to improve the country's working environment throughout preparations and enforcement of existing regulations (as presented in detail below) and passing new legislation.

PART 1: LABOUR AND HUMAN RESOURCES

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

For the first time, Vietnam has introduced the concept of "labour organisations at enterprises" (or new labour organisations) as defined under the Labour Code 2019², came into effect as of 1 January 2021. This is alongside the grassroots trade union (or "traditional union") part of the Vietnam General Confederation of Labour (VGCL) system. EuroCham's Human Resources & Training Sector Committee (HR&T SC) appreciates this remarkable effort to align Vietnam's labour laws with global standards and uphold employees' right to "freedom of association". As assigned by the Prime Minister, since 2020 MOLISA has been drafting a decree to guide the the Labour Code 2019 regarding

¹ Decision 121/QĐ-TTg dated 24 January 2019 of the Prime Minister on the Approval of the Plan to implement the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

² Labour Code 45/2019/QH14 dated 20 November 2019 of the National Assembly (Labour Code 2019).

employees' representative organisations at the grassroots level (Draft Decree). The Prime Minister recently issued an official letter urging MOLISA to expedite this and asked the Ministry of Justice to provide an update on the status of this document's issuance in August 2023.³ As of now, the Draft Decree has not been made available for public comments.

Potential gains/ concerns for Vietnam

Legislation on guiding the new labour organisations has been drafted for over three years and the Draft Decree hasn't been presented for public input. As a result, even the Labour Code took effect from 1 January 2021, no new labour organisation has been established due to the absence of comprehensive legal framework.

Moreover, the Labour Code 2019 doesn't clarify the relationship between a "new labour organisation" and a "traditional union", if both organisations exist within the same enterprise.⁴ In principle, since employees can choose their representative organizations freely, both types of organisations should have equal rights to represent their members. These roles would encompass all responsibilities and rights related to representation, such as (i) consulting on internal regulations, documents and processes relating to the employment relationship as required by law, (ii) attending and representing employees in communications, dialogue and discussions with the employers and with other union organisations, and (iii) collecting, utilising, and managing trade union fees and union membership fees. However, there is no provision under the Labour Code 2019 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 a "new labour organisation" and a "traditional union" in matters relating to employment relationships.

Financing for the "new labour organisations" is also ambiguous in the Labour Code 2019. 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".⁵ As such, it is unclear on the level of discretion that a "new labour organisation" 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 cent⁶ 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 VGCL⁷, an enterprise can only retain part of such an amount when there is a grassroots trade union within their organisation. This does not align with the principles of employees' freedom to collect, manage and use their financing structure.

In this light, it is important to ensure trade union laws indicate that the monthly employer-contributed trade union fees should go directly and entirely to the employees' representative organisations at a grassroots level, including both "new labour organisations" and "traditional unions", and the funds should not be shared with the upper-level traditional trade union. These funds should also be distributed 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 no employees' representative body exists yet, employers should hold onto the trade union fees and then transferred to the corresponding employees' representative organisations once such organisations 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.

³ Official Letter No. 692/TTg-PL dated 31 July 2023 of the Prime Minister

⁴ Clause 3, Article 3, Labour Code 2019.

⁵ Section g, Clause 1, Article 174, Labour Code 2019.

⁶ Clause 2, Article 26, Law on Trade Union 12/2012/QH13 dated 20 June 2020 of the National Assembly (Law on Trade Union).

⁷ Decision 1908/QĐ-TLĐ dated 19 December 2016 of the 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.

⁸ 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.

Recommendations

We would like to make the following recommendations:

- Announce the Draft Decree for public feedback.
- Clarify the role and relationship when both a “new labour organisation” and a “traditional union” coexist within a same enterprise in guiding regulations of the new Labour Code 2019 and the amended Law on Trade Union.
- Amend the financing regulations for both types of organisations to ensure clarity, prudence, equality and correctly reflect the rights of employees’ representative organisations.

II. WORK PERMITS FOR FOREIGN WORKERS

Relevant authority: Ministry of Labour, Invalids and Social Affairs (MOLISA)

Issue description

We commend the efforts of the Government’s and MOLISA in releasing Decree 70⁹ which amends Decree 152¹⁰ regarding work permits for foreign workers. This change has simplified the work permit application process, notably by (i) loosening the definitions of “expert” and “technician”, (ii) recognising a prior work permit as evidence for work experience, (iii) reducing the time for submitting foreign labour demand report, and (iv) providing more exemptions from obtaining a foreign labour demand approval. These modifications may expedite the work permit application process.

Yet, Decree 70 introduces additional challenges in the work permit application, such as new job post requirements, complex documentation for managers/ executive directors, and ambiguity in the roles of MOLISA and Departments of Labour, Invalids and Social Affairs (DOLISAs) in granting work permits. These challenges warrant immediate review and rectification.

Potential gains/concerns for Vietnam

First, from 1 January 2024, Decree 70 mandates employers to post a recruitment notice for Vietnamese candidates for roles that foreign employees are anticipated to fill on MOLISA or Employment Service Centre (ESC)’s website or relevant governmental portals at least 15 days before filing a foreign labour demand report. This new requirement adds another layer to the process, lengthening and complicating the application procedure, which could hamper business operations, especially when there is a pressing need for employing foreign employees.

Second, Decree 70 demands more intricate documentation to validate Manager/ Executive Director positions. Previously, depending on the requirements of each local DOLISA, the sponsoring entity can provide a certified copy of the establishment license or a document confirming the Manager/ Executive Director position or the enterprise charter to prove that the foreign employee is the Manager/ Executive Director. However, now three specific documents are mandated, including: (i) company charter or operating regulations; (ii) enterprise registration certificate or establishment certificate or establishment decision or other equivalent legal documents; and (iii) resolution or appointment decision. This requirement is not only cumbersome compared to prior practice but also impractical for entities because (i) several types of employers such as representative offices or branches do not have their own charter or operating regulations, and (ii) an establishment certificate normally states the name of the legal representative and/or the head of the organisation only, without mentioning other executive positions. Thus, the required documents for branches or representative offices should be more simplified.

⁹ Decree 70/2023/ND-CP dated 18 September 2023 of the Government on amending Decree 152/2020/ND-CP on foreign workers working in Vietnam and recruitment and management of Vietnamese workers working for foreign employers in Vietnam (Decree 70)

¹⁰ Decree 152/2021/ND-CP dated on 30 December 2021 of the Government on foreign workers working in Vietnam and recruitment and management of Vietnamese workers working for foreign employers in Vietnam (Decree 152)

Third, Decree 70's clarity on which body, MOLISA or local DOLISAs, has the authority to issue work permits remains ambiguous. Although Decree 70 provides that (i) MOLISA will grant work permits to foreign workers working for employers having their licenses issued by the Government, the Prime Minister, ministries or central authorities (for example: banks which are licensed by the State Bank of Vietnam, insurance companies which are licensed by the Ministry of Finance etc.); and (ii) local DOLISAs will grant work permits for the remaining cases.

Decree 70 is also unclear on whether MOLISA or DOLISA will have the authority to grant work permits if the employers having both licenses issued by central authorities and an enterprise registration certificate issued by the local Department of Planning and Investment.

This lack of clarity, coupled with the need for physical submission, can lead to unnecessary travel time and expenses for organisations seeking permits from MOLISA.

Recommendations

We would like to make the following recommendations to streamline the work permit application in Vietnam:

- Forego the recruitment post prerequisite before submitting foreign labour demand reports.
- Simplify required documentation for Manager/ Executive Director position at branches and representative offices.
- Allocate the authority to local DOLISAs to issue work permits in all scenarios.

III. EXPANSION OF TERMINATION RIGHTS FOR EMPLOYERS

Relevant authority: Ministry of Labour, Invalids and Social Affairs (MOLISA)

Issue description

Vietnam's labour regulations tend to favour employees, particularly concerning employment termination rights. Employees can easily end their contracts unilaterally, often without a reason or without proper notice in some cases.¹¹ While the Labour Code 2019 has extended circumstances where employment can be terminated and bolstered employers' rights, these rights remain limited. It is imperative to revisit and refine certain labour law provisions, especially those pertaining to redundancy terminations and dismissals for cause.

Potential gains/ concerns for Vietnam

Redundancies

Both the previous and current Labour Code dictate that retrenchment should be based on limited legal grounds, such as changes to the organisational structure or technology or economic reasons. In reality, reasons for redundancies are more varied than what's prescribed 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 decides to shift 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. This kind of business optimisation isn't explicitly recognised as valid grounds for redundancy. Such terminations risk legal challenges.

In general, we have observed that the authorities and courts 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/

¹¹ Section dd, Clause 1, Article 5, new Labour Code.

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 current Labour Code 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 the procedure for making 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. The Labour Code 2019, however, restricts dismissals to specific acts of misconduct, excluding many scenarios companies encounter.¹²

While former and current Labour Code do allow an employer to dismiss an employee based on the extent of damages caused, there is no clarity on what constitutes “seriously detrimental” or “posing a seriously detrimental threat”. This vagueness leads to varied interpretations by local DOLISAs during the registration of internal labour regulations, 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.¹³

Furthermore, the limited time frame to gather evidence and complete disciplinary actions, especially for covert misconducts, poses significant challenges for employers. 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

We would like to make the following recommendations:

- Revise regulations to recognise retrenchments stemming from a company’s business optimisation activities.
- Introduce a provision that allows retrenchment of one employee given the company adheres to legal procedures applicable to retrenchment of multiple employees.
- Expand the scope of acts of misconduct subject to immediate dismissal, such as 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 labour disciplinary actions from 12 months to 24 months¹⁴ and this period should commence from the date the employer becomes aware of the misconduct.
- Provide clear benchmarks to determine what qualifies as “seriously detrimental” or “posing seriously detrimental damages”, potentially by specifying a monetary threshold.

12 For instance, acts of aggression and hostility, fraud, giving or receiving bribes or kickbacks and violent behavior (including intimidation, attempts to instil fear in others or subjecting others to emotional distress) should also be subject to dismissal.

13 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.

14 Law on Cadres and Civil Servants No. 22/2008/QH12 of the National Assembly dated 13 November 2008.



IV. SOCIAL INSURANCE CONTRIBUTIONS FOR FOREIGN EMPLOYEES

Relevant Government authorities: Ministry of Labour, Invalids and Social Affairs (MOLISA), and Vietnam Social Security (VSS)

Issue description

As stipulated in Article 2.2 of the Law on Social Insurance¹⁵ and Article 2 of Decree 143¹⁶, from 1 January 2018, foreign employees in Vietnam are mandated to contribute to Social Insurance (SI) if they possess a valid work permit or practicing license and have a labour contract of at least one year. This SI scheme for foreigners parallels the one of Vietnamese citizens, encompassing five areas: sickness, maternity, labour accident, pension, and survivorship allowance. While contribution of the first three short-term regimes (sickness, maternity, and labour accidents) began on 1 December 2018, the latter two long-term regimes (pension and survivorship allowance) kicked in from 1 January 2022.

Foreign employees can claim a lump-sum SI allowance for the contribution period upon ending their contract or when their work permit expires, provided they no longer reside or work in Vietnam. This allowance and the process to claim it resemble the provisions for Vietnamese employees. However, the SI rules and claim procedures applicable for foreign employees appear impractical and warrant a review.

Currently, MOLISA is drafting an amendment to the Law on Social Insurance, scheduled for National Assembly's approval in 2024 (Draft SI Law). Regrettably, this Draft SI Law seems to retain the existing regulations on foreign employees' social insurance.

Potential gains/concerns for Vietnam

Mandating contributions to all five SI regimes may not be equitable or feasible for foreign employees who continue contributing to their home countries' SI. While the Government has been negotiating several bilateral agreements recognising social security contributions with certain countries and signed the social security totalization agreement with several countries (such as South Korea), none takes effect. This leads to augmented costs for both employers and employees, coupled with administrative hassles.

Furthermore, even if the Government could secure more bilateral agreements, they won't cover all nations from which foreign employees originate. Typically, foreign employees work in Vietnam for limited durations, often due to stringent oversight when Vietnamese authorities assess and approve labour quotas prior to work permit issuance. Although Decree 143 suggests these employees can request a lump-sum payment before departing Vietnam, the associated procedures will amplify administrative burdens for all parties involved. Also, the requisite documentation for foreign nationals, mandated to be translated into Vietnamese and notarised, can be lengthy.

These challenges, in terms of heightened costs and administrative hurdles, could detract from Vietnam's appeal as an investment destination.

Recommendations

The Draft SI Law should provide for the followings:

- Making contributions to the pension and survivorship regimes voluntary for foreign workers.
- Introducing a bilingual template for the lump-sum SI allowance application and facilitate online submission of the related application dossier.

¹⁵ Law on Social Insurance No. 58/2014/QH13 of the National Assembly dated 20 November 2014 (Law on Social Insurance).

¹⁶ 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 (Decree 143).

PART 2: EDUCATION AND TRAINING

I. STRATEGIC ENHANCEMENT OF EDUCATION AND TRAINING IN VIETNAM FOR A PROSPEROUS DIGITAL ECONOMY

Relevant Government authorities: Ministry of Education and Training (MOET), Ministry of Labour, Invalids and Social Affairs (MOLISA)

Issue description

Quality Technical Education

Quality technical education is pivotal, and the necessity of imparting essential skills that align with workplace demands cannot be overstated. This implies the necessity to maintain a reservoir of skilled educators and propagate an environment conducive to learning and growth. It involves the incorporation of progressive teaching methodologies and the embracement of IT skills and e-learning as crucial elements in the education landscape to sustain a well-trained and adept workforce.

Advocating Gender Diversity in Technical Disciplines

To truly realise a strong and diverse workforce in the tech industry, it is crucial to identify and address gender disparities within technical fields. Proposed legislative measures should encourage more girls in Vietnam to enter into disciplines during primary and secondary school which will lead them to tech careers.

Executive Education: The Catalyst for Change

The growth trajectory of Vietnam is intricately linked to foreign capital, emphasizing the quintessential subjects of “Added Value” and “Competitive Advantages.” The resolutions from the XII and XIII Congresses in 2016 and 2021 have delineated the strategic framework for transforming the historical model of business development in Vietnam. The executive education programs, offered by universities, business schools, and specific companies, serve as critical channels for enhancing the quality/ value of products/ services and are synonymous with the government’s priorities of “Added Value.”

Potential gains/concerns for Vietnam

Addressing the metamorphic effects of rapid digital development on the employment landscape is a complex endeavour. The wave of digital transformation is perceived as a double-edged sword, where on one side, it can lead to employment alterations, and on the other, it allows industries to gain a strategic advantage if effectively harnessed. Regions that cultivate strong educational infrastructure will have the capability to reap substantial benefits from digitization in the coming years.

Vietnam, with its high secondary enrolment rates, experiences a stark contrast when it comes to the pursuit of higher education, lagging significantly behind regional peers. The education quality, despite improvements, remains relatively low and is incongruent with the skills necessitated by the transforming economy. The education sector is yet to attain the targeted state budget spending of 20 per cent, with the total education expenditures between the public and private sectors remaining equivalent over the years.

Recommendations

We would like to make the following recommendations:

- Promulgate Gender-Inclusive Policies: Support legislative measures to create an environment that is conducive to learning and free from gender bias in tech-related subjects from an early age.
- Foster Extracurricular Technological Programs: Encourage programs focusing on technology and coding to develop interest and passion among girls in the field.

- Enhance Accessibility to Resources: Offer equal learning opportunities, scholarships, and incentives to facilitate and motivate girls to explore technical disciplines.
- Create Synergy with Tech Corporations: Leverage partnerships for facilitating
- Embrace and Customize Executive Education: Implement non-degree courses, aligning with market needs and offered at local pricing, to advance resolutions of the XII and XIII Congresses effectively.
- Elevate Education Quality and Accessibility: Aim for the attainment of the government's targeted education sector expenditure and elevate tertiary gross enrolment rates to align with regional counterparts.

II. PROMOTION OF EDUCATIONAL EXCELLENCE AND TECHNOLOGICAL INNOVATION

Relevant Government authorities: Ministry of Education and Training (MOET), Ministry of Labour, Invalids and Social Affairs (MOLISA)

Issue description

In line with Section II of the Labour and Human Resources part above, the international school sector is particularly vulnerable to hurdles and lack of clarity regarding work permits, both its customer base and for the teachers and school employees. Vietnam has done an excellent job in recent years in inviting FDI in the education sector. These institutions depend on a balance of Vietnamese and international students to provide the quality educational experience Vietnam seeks. We thus concur and reiterate Section II as it relates to the education and training sector, and hope Vietnam will continue to be an attractive destination for FDI investors and their families, as well as experienced and dedicated educators. Air quality also remains a concern for the education sector, for students and educators of all ages, and a deterrent to international families moving to Vietnam.

Potential gains/concerns for Vietnam

Vietnam's impressive, continued development can be reinforced through the intertwining of strong internet connectivity, competent skills development, investment in quality education, and dynamic governmental policies. The sturdy framework of a resilient digital economy is underpinned by secure and stable Internet connectivity, serving as its central nervous system. This infrastructure is crucial, delivering connectivity through 4G/5G mobile networks and fibreoptic networks to schools, corporations, and urban and rural communities. However, addressing and resolving the aspects of accessibility and affordability are vital to eschew the risk of a digital divide, ensuring that all segments of the population can benefit from digital advancements.

By meticulously implementing our extensive recommendations, Vietnam can significantly augment its educational ecosystem, leading to the cultivation of a technologically proficient and diversified workforce, thereby solidifying its position as a beacon of educational excellence in the rapidly evolving digital landscape.

Recommendations

We would like to make the following recommendations:

- Streamline Work Permit Procedures to support the continued inflow of qualified foreign workers and their families
- Augment Network Infrastructure: Enhanced nationwide connectivity and equitable access to 4G/5G networks are fundamental to avoiding a digital divide.

- › Fortify Regional and Provincial Cooperation: Encourage local authorities to collaborate with local digital competence centres to extend support widely.
- › Elevate Local Teacher Capabilities: Initiate collaborations with international institutions for teacher training and professional development, fostering an environment conducive to lifelong learning.
- › Prioritize Environmental Health: Enhancement of air quality in financial centres will accentuate the attractiveness of the education sector, promoting fruitful international collaborations.

ACKNOWLEDGEMENTS

EuroCham Human Resources & Training Sector Committee



CHAPTER 13 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. The current NSGE, effective from 2021 to 2030, sets new goals for gender equality across various aspects of Vietnamese society, ranging from achieving a more equal gender ratio at birth to increased female participation in politics.

Underpinning the NSGE is the Law on Gender Equality,¹ ensuring women's equal opportunity in a variety of fields, including politics, economy, labour and education. We note that the Government has taken recent action to better enforce the Law on Gender Equality, as it recently issued Decree 125.² Decree 125 increases the fines applicable for gender discrimination and describes acts considered to violate gender equality in detail.

However, there is still much work to be done. Women continue to shoulder a greater burden of unpaid care work, which perpetuates the gender wage gap. Vietnam's transformation towards digitalization presents tremendous opportunities for Vietnamese women, but if managed incorrectly, it could result in their deeper marginalization. We encourage the Government to carefully navigate its way forward towards the future to ensure women can also benefit from Vietnam's digital transformation.

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. Set out clear, concrete incentives encouraging employers to implement female-friendly policies

Issue description

Article 79.2(a) of Decree 145³ 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 85.⁴ 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 78⁵, employers

1 Law No. 73/2006/QH11 dated 29 November 2006 of the National Assembly on Gender Equality (Law on Gender Equality)

2 Decree 125/2021/ND-CP dated 28 December 2021 of the Government setting out penalties for administrative violations against gender equality (Decree 125).

3 Decree 145/2020/ND-CP dated 14 December 2020 of the Government on the elaboration of some articles of the Labour Code on working conditions and labour relations (Decree 145).

4 Decree 85/2015/ND-CP dated 1 October 2015 of the Government detailing a number of articles of the Labour Code in terms of policies for female employees (Decree 85)

5 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 (Circular 78).

within these industries employing between ten and 100 female workers who account for more than 50% of its total regular employees, or regularly employs over 100 female labourers who account for more than 30% 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.⁶

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 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% 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.⁷

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; and
- Implement a quota based on the number of female employees in upper-level management positions instead of the total number.

2. Paternity leave should be extended for men

Issue description

Under the current Social Insurance Law, men receive only 5 to 14 working days for paternity leave.⁸ In contrast,

⁶ 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 gynaecological 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.

⁷ 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 29 October 2023.

⁸ Law 58/2014/QH13 dated 20 November 2014 of the National Assembly on Social Insurance (Social Insurance Law) at Article 34.2.

women receive a minimum of 6 months maternity leave.⁹ While it is encouraging to see a long maternity leave period for women, it is unfortunate that men have such a short leave not only because this limits their opportunities to form a personal connection with their babies but also because of the resulting social impacts. The differential leave periods for men and women exacerbate the gender wage pay gap, as employers more readily hire men than women due to the risk that a young woman would take a long maternity leave while this risk does not exist for men; instead, their statutory leave period is equivalent to a short vacation. Another negative effect stemming from the differential leave periods is that women form a much stronger bond with the children so that even in later years, assume the role of the primary caregiver while the father takes a more subordinate role in caring for the children. This often means that the mother assumes much more of the household responsibilities, limiting her ability to pursue her career.

Several studies have found a direct relationship between shrinking the gender wage pay gap and implementing a paternity leave policy which provides extended leave for men on a “use it or lose it” basis. For example, Iceland introduced The Icelandic Act on Maternity/Paternity and Parental Leave (2000) in 2000 which provided both the mother and father with 3 months of leave, and then an additional 3-month period which they could divide between themselves as they saw fit. Under policies of this nature, there has been a dramatic decrease in the gender wage pay gap. It appears that these types of policies level the playing field in terms of recruitment, allow women opportunities to return to their careers sooner, and in general, create a household environment where both working parents more equally share household responsibilities.

Potential gains/concerns for Vietnam

Vietnam’s General Statistics Office (GSO) estimates that the gender wage pay gap in Vietnam is at 29.5% on average; with a 21.5% gap in urban areas and a 35.2% gap in rural areas.¹⁰ A policy change such as extended paternity leave may have a big impact. Reducing the gender wage pay gap should be prioritized for Vietnam, considering its obligations to promote gender equality under the EVFTA.

In addition to reducing the gender wage pay gap, extended paternity leave is also beneficial for child development, as it is very positive for children to have a strong relationship with their fathers. Fathers will benefit as well, as they will have the opportunity to build strong bonds with their young children.

Recommendations

- Increase paternity leave to one month in the new Social Insurance Law, as an incremental step towards a policy which more equally divides maternity leave between the mother and father.

II. ENSURING GENDER EQUALITY IN VIETNAM'S DIGITAL TRANSFORMATION

Relevant authorities: Ministry of Labour, Invalids and Social Affairs (MOLISA), Ministry of Education and Training (MOET), Ministry of Science and Technology (MOST)

1. Encourage women and girls to enter careers in innovation and tech industries

Issue description

The world is progressing towards a digital transformation. By 2050, 75% of jobs will be in the fields of Science, Technology, Engineering and Mathematics (STEM).¹¹ While this transformation presents many opportunities, it also presents the risk that these changes will exacerbate existing inequalities between men and women. According to

⁹ Social Insurance Law at Article 34.1.

¹⁰ “Vietnamese women continue to get less pay, face discrimination: report”, 28 October 2021, Vietnam Express. Available at: < <https://e.vnexpress.net/news/news/vietnamese-women-continue-to-get-less-pay-face-discrimination-report-4378415.html> > last accessed on 29 October 2023.

¹¹ “DigitALL: Innovation and technology for gender equality in Viet Nam”, Policy Brief, United Nations Vietnam, February 2023. Available at: <https://vietnam.un.org/en/221387-policy-brief-digitall-innovation-and-technology-gender-equality-viet-nam> > (UN Policy Brief) last accessed on 29 October 2023.

certain studies, automation and technological advancements are forecasted to cause a rapid decline in demand for unskilled and low-skilled labor. Nearly 80% of women working in Vietnam are low-skilled or under-skilled.¹² These types of jobs are those most susceptible to being replaced by automation, and a study by the International Labor Organization found that women were 2.4 times more likely to be replaced by machines compared to their male counterparts.¹³ The United Nations anticipates that women will lose five jobs for every one gained through Industry 4.0, compared to the loss of three jobs by men for every one gained.

At the same time, girls and women are greatly underrepresented in STEM educational programs and careers. Women represent only 36.5% of university graduates in STEM fields,¹⁴ and another study showed that women comprised only 11% of those studying information and technology fields.¹⁵ The innovation and tech sectors have the greatest gender imbalance of all sectors, with its workforce comprising of only 37% women.¹⁶ Moreover, of this 37%, the majority of women are not performing technical roles such as software developer, but are instead performing supporting tasks such as testing, marketing, sales, administration and human resources.¹⁷ Based on the current status of women's participation in STEM, women will be left behind in Vietnam's digital transformation and excluded from the prestigious and well-paying jobs of the future.

The Vietnamese Government has embraced digitalization, and is mapping Vietnam's path to the future through several key policy documents:

- National Strategy on the Fourth Industrial Revolution Towards the Year 2030, issued with the Decision 2289/QĐ-TTg dated 31 December 2020 of the Prime Minister (National Strategy on the Fourth Industrial Revolution);
- National Strategy on the National Digital Transformation Program through 2025, with orientations toward 2030, issued with the Decision 749/QĐ-TTg dated 3 June 2020 of the Prime Minister (National Strategy on Digital Transformation); and
- Business Support Program for Digital Transformation in 2021-2025.

However, none of these policy documents, or the legislation implementing them, provide any comment or focus on the dimension of gender. Accordingly, we recommend for the Government to substantively interpret Article 15 of the Law on Gender Equality which provides that men and women shall have equal access to science and technology and training in these fields. We encourage the Government to consider the barriers to women and girls from accessing these fields due to gender stereotypes within society and the educational sector, and to put policies in place to help women and girls overcome these obstacles and join the workforce of the future.

Potential gains/concerns for Vietnam

If Vietnam succeeds in encouraging more women to enter the tech sector, it may lead to more technological innovations since research shows that diverse teams generate innovation.¹⁸ Moreover, studies demonstrate that adding women to the workforce complements men – the increases in productivity are greater than those which may be gained through an all-male workforce. The International Monetary Fund (IMF) found that in respect to the bottom half of countries in its sample in respect to gender equality, if the gender gap were closed, GDP could increase by an average of 35%.¹⁹ The advantages gained in respect of innovation and productivity by creating an inclusive workforce would help Vietnam transform its economy from one focused on manufacturing to one based on innovation and technology.

12 Ibid.

13 "Sinh Viên Nữ Trong Khối Ngành Stem Trên Thế Giới và Việt Nam - Thực Trạng và Bài Học" (Female Students in the Stem Industry in the World and Vietnam - Current Situation and Lessons), Tạp Chí Công Thương, 17 September 2021. Available at: < [https:// tapchicongthuong.vn/bai-viet/sinh-vien-nu-trong-khoi-nganh-stem-tren-the-gioi-va-viet-nam-thuc-trang-va-bai-hoc-83675.htm](https://tapchicongthuong.vn/bai-viet/sinh-vien-nu-trong-khoi-nganh-stem-tren-the-gioi-va-viet-nam-thuc-trang-va-bai-hoc-83675.htm).> (Female Students in STEM) last accessed on 29 October 2023.

14 UN Policy Brief.

15 Information Technology Human Resources Market 2020" of VietnamWorks InTECH, as quoted in Female Students in STEM.

16 UN Policy Brief.

17 "Gender equality in digital transformation in Vietnam: Opportunities and challenges", Lao Dong & Xa Hoi, 3 March 2023. Available at: < [http:// laodongxahoi.net/gender-equality-in-digital-transformation-in-vietnam-opportunities-and-challenges-1326472.html#:~:text=In%20recent%20years%2C%20women%20have,of%20the%20world%20\(25%25\)>](http://laodongxahoi.net/gender-equality-in-digital-transformation-in-vietnam-opportunities-and-challenges-1326472.html#:~:text=In%20recent%20years%2C%20women%20have,of%20the%20world%20(25%25)>), last accessed on 29 October 2023.

18 "Economic Gains from Gender Inclusion: Even Greater than You Thought", International Monetary Fund (IMF), 2018. Available at: <https://www.imf.org/en/Blogs/Articles/2018/11/28/blog-economic-gains-from-gender-inclusion-even-greater-than-you-thought>, last accessed on 29 October 2023.

19 Ibid.

On the other hand, if women continue to be underrepresented in STEM education and careers, the gender wage gap will continue to grow, and women will become more marginalized. As mentioned above, currently the majority of the female workforce works in low-skilled jobs that will be the first to be replaced by automation in Industry 4.0. Innovation in Vietnam would also not meet its full potential.

Recommendations

We would like to make the following recommendations:

- Gather data on female participation in STEM educational programs and careers to ensure that the Government has an accurate perception of the actual STEM gender gap;
- In issuing future policies in respect to Vietnam's digitalization and modernization, or amending existing ones, ensure that the issue of female underrepresentation in STEM and the information and technology sector is addressed;
- Issue legislation implementing national policies on digitalization and modernization which include measures to foster greater female participation, which are time-bound, specific and measurable;
- MOET should cooperate with stakeholders such as tech companies and potential investors to determine a specific direction for STEM education, which ensures the quality of training and that students are being taught the skills which will ultimately be required, as well as addressing negative social norms and gender stereotypes that often discourage girls from pursuing STEM studies from an early age;
- MOET and MOLISA should develop vocational programs targeting the reskilling and upscaling of skills of female workers towards digitalization, particularly those in industries susceptible to replacement by automation; and
- Implement campaigns and inspirational activities to change social awareness about the role of women in STEM professions.

ACKNOWLEDGEMENTS

EuroCham Women in Business Sector Committee



HEALTH AND BEAUTY

CHAPTER 14 PHARMACEUTICALS

OVERVIEW

Pharma Group represents the voice of the innovative pharmaceutical industry in Vietnam, with 22 member companies who all share the same mission: to ensure fast and sustainable access to safe, high-quality, and innovative medicines for patients in Vietnam.

Operating on the basis of science and research, we believe in the power of innovation to help address the challenges facing our healthcare system and to drive the socio-economic development journey. We fully embrace the ambitious goals outlined in Resolution 20¹, Resolution 29,² Resolution 36,³ and most recently, Decision 1165⁴ approving the National Strategy for Vietnam's Pharmaceutical Industry Development by 2030 and vision by 2045.

To achieve such vision, we wish to contribute our proposals in this chapter across three key pillars:

1. Improve Patient Access to Innovation;
2. Foster the adoption of sustainable Healthcare Financing policies for innovation; and
3. Incentivise the development of an Innovative Pharmaceutical Ecosystem.

2024 will be a critical year as key legislations shaping the pharmaceutical sector for the next decade are being revised. We hope the chapter can add value to evidence-based policymaking and foster further consideration for investments in a resilient healthcare system and an enabling ecosystem in which further innovation can thrive.

Embarking on a new chapter following 25 years of partnership in Vietnam, Pharma Group renews its dedication to partnering with the Government and all actors in the healthcare system to achieve our shared goals for a healthier and more prosperous Vietnam.

I. IMPROVE PATIENT ACCESS TO INNOVATION

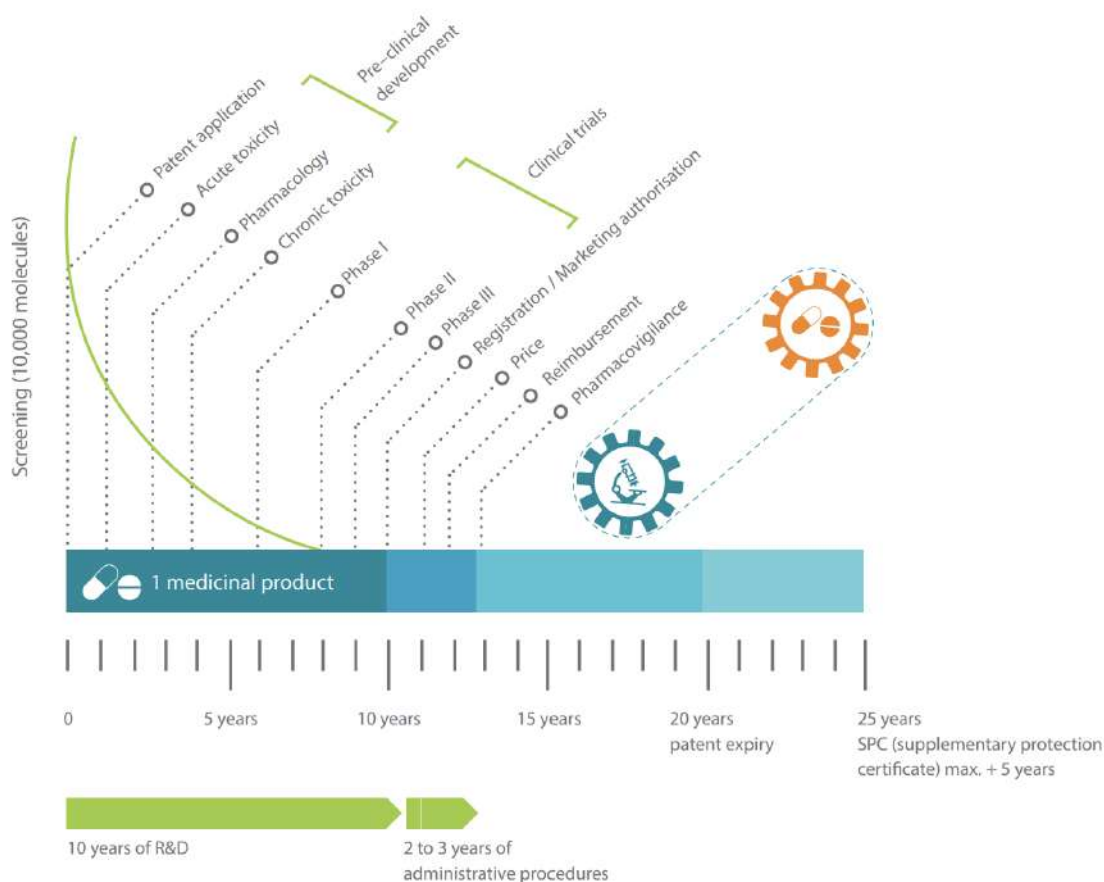
Relevant authorities: Ministry of Health (MOH), Vietnam Social Security (VSS), Ministry of Planning and Investment (MPI)

Issue description

All new medicines introduced into the market are the result of lengthy, costly, and risky research and development conducted by pharmaceutical companies. By the time a new medicine reaches patients, an average of 12-13 years will have passed since the first synthesis of the new active substance, and an estimated investment of US\$2 billion. On average, only 1 to 2 out of every 10,000 laboratory-synthesized substances will successfully complete all stages of R&D to become a marketable product.⁵ In light of the global health concerns, it is of critical importance for the innovative industry to be able to deliver safe and high-quality diagnostics, vaccines and treatments to patients as fast as possible.

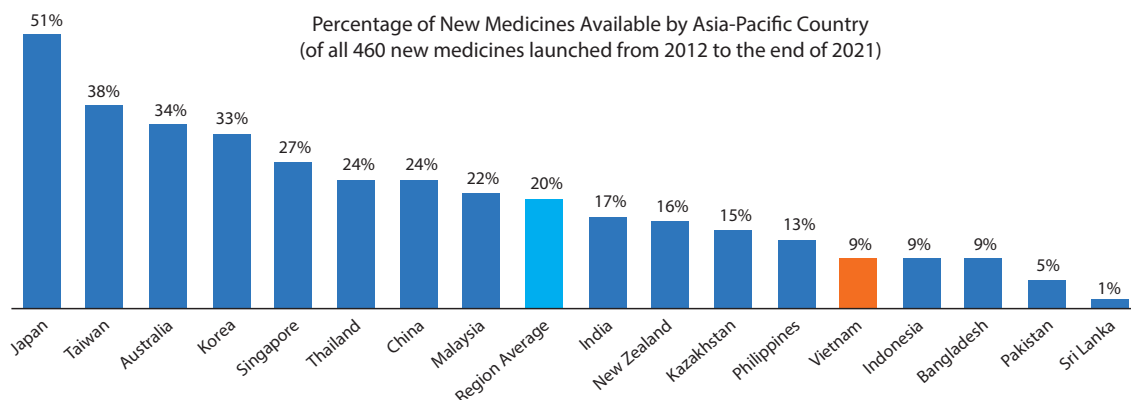
1 Resolution 20-NQ/TW dated 25 October 2017 of the Party Central Committee on enhancement of citizen's health protection, improvement, and care in new situation (Resolution 20).
 2 Resolution 29 - NQ/TW dated 17 November 2022 of the Party Central Committee on continuing to promote industrialization and modernization of the country to 2030, with a vision to 2045 (Resolution 29).
 3 Resolution 36 – NQ/TW dated 30 January 2023 of the Party Central Committee on development and application of biotechnology for sustainable development of the country in the new situation (Resolution 36).
 4 Decision 1165/QĐ-TTg dated 9 October 2023 of the Prime Minister approving the National Strategy for Vietnam's Pharmaceutical Industry Development by 2030 and vision by 2045 (Decision 1165).
 5 "The Pharmaceutical Industry in Figures", EFPIA, European Federation of Pharmaceutical Industries and Associations, 20 June 2023. Available at: <<https://www.efpia.eu/media/rm4kzdlx/thwe-pharmaceutical-industry-in-figures-2023.pdf>>, last accessed on 19 December 2023.

Figure 8: Phases of the Research and Development process (Source: EFPIA, 2023)



The significant investment and speed of innovation in the last decade provides an important opportunity to improve patient health outcomes. All actors involved in healthcare – from patients to doctors, researchers, manufacturers, regulators, payers – want to see patients across the globe benefit from advances in treatment. However, a significant number of new medicines are not yet available in several countries, including Vietnam. A recent report revealed that only 9 per cent - equivalent to 42 out of 460 – of the new medicines launched globally between 2012 and 2021 are available in Vietnam, compared to the Asia-Pacific average of 20 per cent.⁶ Of this 42 new medicines, only 27 per cent are accessible in the public hospital channel through the National Reimbursement Drug List (NRDL). The industry shares concerns about the late market entry and unavailability of medicines, which are not unique to Vietnam. These are caused by different factors ranging from lengthy regulatory processes to reimbursement delays.

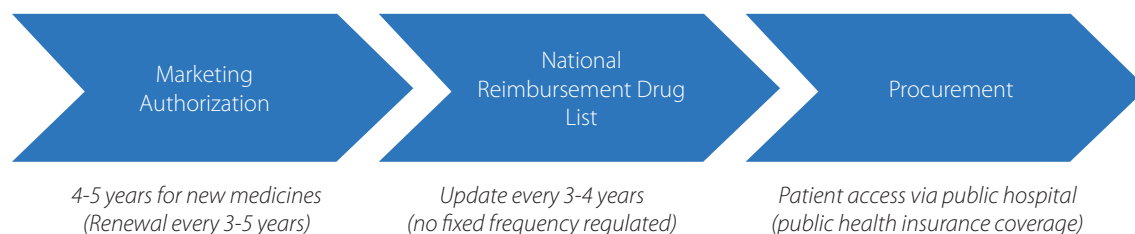
⁶ PhRMA analysis of IQVIA MIDAS and country regulatory data. October 2022. Note: New medicines refer to new active substances approved by FDA, EMA and/or PMDA and first launched in any country between January 1, 2012, and December 31, 2021

Figure 9: In 2022: 9 Per cent of new medicines are available in Vietnam (Source: PhRMA, 2022)

Vietnam has an opportunity through the upcoming revision of major legislations, including the Pharma Law and the Health Insurance Law, to improve patient access to innovation. Beyond direct benefits to individual patients, faster access can translate into long-term societal benefits – people live longer, healthier and more productive lives, contributing to the economy and easing the impact on caregivers. Having new medicines readily available can also benefit Vietnam in the long term as the country aims to position itself as a regional destination for medical tourism.

From our perspective, many of the challenges today can be resolved through policies and implementation commitments from all stakeholders.

Our recommendations focus on accelerating patient access, including proposals to speed up the regulatory procedures for market entry, to enabling medicines to reach patients when and where they need them.



Potential gains/concerns for Vietnam

- It takes **8-9 years** on average for a new medicine already approved for circulation by stringent regulatory authority(ies) to reach patients in Vietnam via the public health insurance scheme. This includes the **4-5 years** it takes to obtain Marketing Authorization in Vietnam, and **3-4 years** for such medicine to be considered for inclusion in the NRDL;
- Throughout the product's lifecycle, delays in approval of changes (variations) or MA renewals can often lead to **supply disruptions and medicine shortages** as seen in recent years. Urgent measures granted by the National Assembly in recent the Resolution 80⁷ temporarily addressed the medicine shortage issue, however **thousands of backlogged dossiers** remain, which require longer-term solutions;
- Among our membership, **76 new medicines** across **13 therapeutic areas**, including cancer, cardiovascular... and other life-saving medicines, are waiting for NRDL review; and

⁷ Most recently Resolution 80/2023/QH15 dated 9 January 2023 of the National Assembly regarding continuation in implementation of certain COVID-19 management policies and use of marketing authorization licenses of medicines or pharmaceutical materials expired from 1 January 2023 to 31 December 2024.

- Every year, patients in Vietnam spend approximately **US\$2 billion** on outbound medical tourism to gain access to treatment solutions that are out of reach at home.

Recommendations

We would like to make the following recommendations:

- **Speed up the availability of new medicines by reducing the Marketing Authorization approval timeline** (*revision of the Pharma Law*)
 - a. **Regulatory reliance**, as recommended by the World Health Organisation (WHO), allows an authority to use the work of other trusted regulatory authorities when making its own decision. This can help reduce workload and prioritize resources. We strongly recommend adopting this mechanism in Vietnam to speed up the Marketing Authorization decision for new medicines, post-approval variations, and vaccines' batch-release testing, to enable timely access for patients while still ensuring the quality, safety and efficacy of medicines and maintaining Vietnam's regulatory responsibilities for decision-making.
- **Prevent medicine shortages of medicines via reduction of administrative barriers and regulatory harmonization** (*revision of the Pharma Law*)
 - a. **Renewal**, which is mainly an administrative procedure to be streamlined per Decision 1661⁸ in 2021 should be made automatic to reduce the workload of both companies and the authority and most importantly, avoid supply disruptions as seen in recent years.
 - b. **Ensure a transitional measure is in place and in effect at the end of 2024** to maintain the validity of thousands of Marketing Authorizations extended by the National Assembly's Resolution 80 dated 9 January 2023, in case their renewal dossiers could not be reviewed on time and the automatic renewal mechanism is not yet in effect.
 - c. **Post-approval site change** should be classified as a Major Variations to harmonize with the ASEAN Variations guideline instead of a new registration dossier as currently stipulated in the Pharma Law, to reduce the significant administrative burden and approval timeline.
- **Improve patient access to new medicines in public hospitals via timely National Reimbursement Drug Listing** (*NRDL Circular*)
 - a. **Issue a comprehensive update of the NRDL in 2024**, after a 5-year delay, to include more advanced medicines.
 - b. **Enable more frequent updates of the NRDL**. The update process should be initiated **at least once a year**, in line with the Government's direction⁹ to ensure faster and more equitable access to advances in treatment solutions, and help reduce household direct out-of-pocket expenditures per Resolution 20.
 - c. The process of proposing drugs for inclusion in the NRDL can be carried out at the time of Marketing Authorization submission. Product license owners, manufacturers or authorized entities are allowed to directly participate in providing information related to products in the process of submission for inclusion into the NRDL to ensure accuracy, completeness, timeliness, scientific soundness and transparency.
 - d. The requirement for **Health Technology Assessment** (HTA) should be considered carefully in the context of Vietnam, as building relevant databases and expertise will take time to ensure the quality, efficiency and transparency required. We recommend taking a flexible approach to HTA, in which cost-effectiveness evidence should serve only as a reference and not a deciding factor.

⁸ Decision 1661/QĐ-TTg dated 4 October 2021 of the Prime Minister approval of a plan to reduce and simplify regulations related to business activities under the scope of management functions of the Ministry of Health (Decision 1661).

⁹ Official Letter 294/TB-VPCP of the Office of Government dated 23 September 2022 regarding the conclusion of Deputy Prime Minister Vu Duc Dam at the meeting on implementing the Program to develop the pharmaceutical industry, domestically produced medicinal materials and early access to new drugs (Official Letter 294).

- **Ensure patient continuous access to innovative medicines in public hospitals** (*Tender regulations*)
 - a. Ensure the **stability of procurement policies** by maintaining the brand name bidding package for originators and by effectively implementing the price negotiation mechanism to ensure continued patient access to the highest quality treatments and a predictable, sustainable investment environment.
- **Enable medicines' availability for out-of-pocket payment at public hospitals** (*Decree guiding Tender Law*)
 - a. Provide a detailed guideline for healthcare establishments to effectively procure medicines which are not covered by the health insurance fund, and vaccines used for on-demand vaccination services, to address the major long-standing gap whereby patients at public hospitals with needs and with the ability to afford are not able to use the medicines¹⁰ as per their demand.

II. FOSTER ADOPTION OF SUSTAINABLE HEALTHCARE FINANCING POLICIES FOR INNOVATION

Relevant authorities: Ministry of Health (MOH), Vietnam Social Security (VSS)

Issue description

95 out of every 100 hospital beds in Vietnam are in public hospitals, illustrating the crucial role that Health Insurance (HI) plays in the country's public health. Up to now, Vietnam has been steadily expanding Universal Health Coverage (UHC), achieving nearly 93 per cent, and aiming to reach 95 per cent by 2025.

However, ensuring the sustainability of the Health Insurance Fund remains a significant challenge, with the rapidly aging population and a rising demand for advanced treatment solutions. A few notable issues:

- Difficulties in maintaining the public health insurance participation to achieve the UHC's 2025 goal while ensuring the sustainability of the Health Insurance fund due to the potential risk of 'adverse selection' where individuals join HI only during medical needs, or people opt out of public HI for other alternative options such as private insurance, out-of-pocket, etc.
- On the other hand, the proportion of out-of-pocket spending of Vietnamese people accounted for over 40 per cent in total health expenditures and could reach 55 per cent by 2025. This is much higher than the WHO-recommended rate and surpasses the levels observed in other ASEAN countries such as Thailand, Malaysia, Indonesia.

Through recent dialogues, the industry is encouraged to see the Government's determination to reform healthcare financing via the Health Insurance Law revision, to realize the goals outlined in Resolution 20 by 2025: (i) improving access to quality care and (ii) reducing out-of-pocket expenses for all citizens. Investing in innovative solutions and proactive reform of healthcare financing policies is crucial to navigate the shift towards a middle-income country with an aging population and safeguard healthcare for Vietnam citizens in the future.

Potential gains/concerns for Vietnam

Globally, the pursuit of UHC has been marked by a surge of innovative interventions that aim to improve life expectancy, quality of life, and diagnostic and treatment options, while also enhancing the efficiency and cost-effectiveness of healthcare systems.

¹⁰ Medicines constitute preparations containing pharmaceutical substances or herbal materials for human use for the purpose of prevention, diagnosis, curing, treatment, alleviation, and modification of physiological functions of the human body, including chemical medicines, herbal medicines, traditional medicines, vaccines and biologics – as stipulated in Clause 2, Article 2 of Law 105/2016/QH13 (Pharmacy Law) and reference to the concluding remarks made by Deputy Prime Minister Vu Duc Dam at the meeting on medicine supply to hospitals in Notification 275/TB-VPCC dated 2nd August 2018.

In the context of Vietnam, with the long access timeline as mentioned above, coupled with the rising demand for new treatment advances, it is important to empower innovation activities and access. Putting in place health financing policies that focus on improving access to innovation, at the same time diversifying the insurance packages to provide more choices, increase the scheme's attractiveness and help to release the burden on HI fund. Furthermore, this will also help to sustain HI participation and in turn, reduce the rate of households' out-of-pocket health spending to 35 per cent by 2025, and 30 per cent by 2030.

Recommendations

We would like to make the following recommendations:

- **Regulate the Supplementary Health Insurance package** (*revision of the Health Insurance Law*) to diversify the HI packages, enable optionality for patients and release the HI fund burden for the Government, in line with the direction in Resolution 20.
- **Develop new financing mechanisms**, including: the novel pricing models such as Market Entry Agreements tailored to the Vietnam's context to accelerate patient access while providing sufficient incentives for innovation; consider to facilitate new mechanisms that follow international experience (including financial and non-financial) such as to transfer revenues generated from excise duty imposed on products harmful to health (e.g. alcohol, tobacco) to the health insurance fund; expand and encourage the implementation of patient drug assistance programs...
- **Leverage health data to drive innovation and sustainability**: Regulate linkages, partnerships, and data exchanges between social health insurance and commercial health insurance actors. Consider assigning the Government to regulate implementation guidelines.

III. INCENTIVIZE THE DEVELOPMENT OF AN INNOVATIVE PHARMACEUTICAL ECOSYSTEM

Relevant authorities: Office of Government (OOG), Ministry of Health (MOH), Ministry of Planning and Investment (MPI), Ministry of Science and Technology (MOST), Ministry of Industry and Trade (MOIT)

Issue description

Vietnam aspires to be among the regional leaders in testing, research and manufacturing of high-quality medicines, striving for the contribution of over US\$20 billion to national GDP by 2045. The new sector development approach (as mentioned in Resolutions 29/Decision 1165) focuses on innovation, technological advances and digital transformation as key drivers for success, will enable Vietnam to level-up its pharmaceutical sector.

In an era when countries, including those advanced economies who are world leaders in healthcare products and services, are competing to increase their attractiveness to pharmaceutical investment and innovation, it is critical that Vietnam builds on its own strengths, creates the right conditions for success and develops meaningful competitive advantages.

The seven key enabling factors to build an innovative

"Strategies are important, but implementation is key to success. First and foremost, it is critical to create a favorable investment environment for investors via attractive tax policies, good infrastructure, reliable regulations to protect IP and product development, train high quality human resources... Staying ahead of the curve, and being connected with the industry and having a knowledge base of the industry help open doors in the first instance."

Dr. Mary Harney, former Deputy Prime Minister, former Minister of Health & Children of Ireland at the EuroCham Pharma Group Healthcare Innovation Forum on October 18, 2023

sector, according to the report Building a Bioeconomy¹¹ which examines national strategies, innovation systems, biotech policies and sector development progress of 44 countries, are: *Human capital, infrastructure for research and development (R&D), intellectual property protection (IPP), policy and regulatory environment, technology transfer, market and commercial incentives, legal certainty (including the rule of law).*

Putting in place suitable conditions and a comprehensive set of forward-looking policies can help to generate ambitions into real-world outputs. One of the most relevant and notable example is the significant growth of the pharmaceutical industry in Ireland. Beginning as an agricultural country with the lowest starting point in the EU, The Republic of Ireland has evolved into a US\$100 billion export economy for life science products up to now. The country is now the largest pharmaceutical market in the EU, with pharmaceutical exports accounting for over 50 per cent of the net export value. Ireland achieved the status of the world's largest exporter of pharmaceuticals by 2020, hosting 10 of the top 20 pharmaceutical and biological companies globally. The Irish Government's continuous support through policies and initiatives, coupled with favourable factors like low corporate taxes, tax credits for research and development (R&D), and intellectual property protection, further enhance the industry's appeal.

From Pharma Group's perspective, Vietnam holds a lot of potential and has an opportunity to become the next regional hub for healthcare innovation. This includes activities in testing, clinical trials, R&D, technology transfer which in turn will foster the creation of a vibrant, innovation-driven pharmaceutical sector and create spill over effects for other industries.

The key starting point in our view would be to address the current critical issues relating to market access, create a more business-conducive environment, and put in place incentives in policies that are closely linked with market access in order to attract and sustain investment. Most of this can be achieved via the on-going revision of the Pharma Law which will be ratified by the National Assembly in the upcoming period.

Potential gains/concerns for Vietnam

- Healthcare Innovation is not only a matter of sector development but is also linked with societal benefits for patients specifically and the public in general.
- Level up Vietnam's competitiveness among other emerging markets.

Recommendations

We would like to make the following recommendations:

- **Enablers** (*revision of the Pharma Law*)
 - a. Enable Foreign Invested Enterprises with the right to import pharmaceuticals ("FIE Importers") to operate their legal entities more effectively, reduce complexities and cost of doing business, ensure smooth information flow throughout the supply chain and ensure continuity, efficiency, and timeliness of medicine supply.
 - b. Enable FIE Importers to decide on and carry out investment projects such as local manufacturing (contract manufacturing, technology transfer), clinical trials, etc. with local partners, e.g. the ability to import and transport products used in clinical trials.
 - c. Intellectual Property (IP) enforcement: Put in place policies and strict enforcement to protect clinical trial data, drug patents, and other confidential data during drug registration and circulation; Establish an IP enforcement agency to quickly and effectively resolve disputes, closely monitor and strictly inspect and handle cases of patent infringement, compromising clinical trial data, and counterfeit drug.

¹¹ "Building the Bioeconomy", Pugatch Consilium, 3 June 2019. Available at: <https://www.pugatch-consilium.com/reports/BIO%202019%20report_final.pdf>, last accessed on 19 December 2023.

- **Incentives** (*revision of the Pharma Law and other guiding regulations to implement the National Pharmaceutical Sector Development strategy*)
 - a. Develop a comprehensive set of incentives in policies, which should be based on the current advantages of Vietnam and well-align with, and even better than, existing incentives offered by other countries in the region. Stakeholder consultation is crucial throughout the development of these incentives to ensure attractiveness and feasibility.
 - b. Incentives should be closely linked with market access, such as fast-track Marketing Authorization, NRDL, and procurement.

ACKNOWLEDGEMENTS

The EuroCham Pharma Group



CHAPTER 15 INTERNATIONAL QUALITY MEDICINES (IQMED) – GENERIC AND BIOSIMILAR

OVERVIEW

Vietnam is ranked as the 16th most populous country in the World, with a population of approximately 99 million people as of 2023.¹ The percentage of the population aged 65 and above currently accounts for 9% and is expected to increase significantly from this level.² Meanwhile, Vietnam has reached middle-income economic status, has made significant progress over the past two decades on Universal Healthcare (UHC) coverage, and seeks a national coverage rate of at least 93.2% by 2023 and 95.15% by 2025.³ Growing disposable income will likely boost consumer spending on overall healthcare services and pave the way for innovative healthcare solutions. Given the above key economic factors, Vietnam requires pharmaceutical progress that can meet the ambitions of the government and the people's needs. Meeting these needs requires collaboration between policymakers and industry toward effective patient outcomes and strong sector development.

PART 1: GENERICS

I. ACCELERATE THE AMENDMENT OF LAW ON PHARMACEUTICALS AND RELATED LAWS AND REGULATIONS

Relevant authorities: Ministry of Health (MOH), Government (GOV), National Assembly (NA)

Issue description

Seven years have passed since Pharma Law 2016⁴ was passed by the National Assembly Session XIII. With the purpose of creating an important legal corridor to strengthen and improve the efficiency of state management, ensuring favourable conditions for Vietnam's pharmaceutical industry to develop and integrate internationally, and securing an adequate supply of quality drugs to the people, this paved the way for necessary changes.

Regardless, there is still work to be done to ensure that regulations are coherent and consistent with international best practices, reflect societal changes in the wake of the pandemic, and boost international integration.

Specifically, in the newly revised Pharma Law, two topics require amendments and supplements.

1. Extension of Marketing Authorisations (MAs)

Under the current regulations⁵, even if technical details of a drug remain unchanged during its extension, its MA applications must be evaluated and submitted to the Council for Granting Certificates of Marketing Authorisation. For years, numerous well-known, tried-and-true drugs have been distributed throughout Vietnam and around the world without any quality concerns. However, the current Pharma Law 2016 mandates a thorough registration process for these drugs, akin to that for new drug registrations. This step is unwarranted and excessive. Such procedures burden the responsible authorities, causing delays in appraisal and subsequently impacting the manufacture, distribution and accessibility of medicines.

1 "Vietnam population", *Worldometer*, 31 October 2023. Accessed at: Vietnam Population (2023) - Worldometer (worldometers.info), last accessed on 31 October 2023.

2 Population ages 65 and above (% of total population)-Viet Nam, *World Bank data*. Accessed at: https://data.worldbank.org/indicator/SPPOP65UP.TO.ZS?locations=VN&most_recent_year_desc=true, last accessed on 31 October 2023.

3 Value of Innovation, *KPMG*, 2022. Accessed at: *VOI-Refreshment_11082022_twopageview-Edited-reduced-size.pdf*, last accessed on 31 October 2023.

4 Law 105/2016/QH13 dated 6 April 2016 of the National Assembly on Pharmacy (Pharma Law).

5 Circular 08/2022/TT-BYT dated 5 September 2022 regulating the registration of drugs, drug raw materials (Circular 08).

In line with international best practices, the validity period of a certificate of MA of drugs and medicinal ingredients is 5 years from the date of first issuance or extension; and an indefinite validity period in the second extension unless the drug needs to be continuously monitored for safety and effectiveness on the basis of the advice of the Advisory Council. Furthermore, the license extension period for MA certificates should be strictly adhered to according to the one-step lifetime extension process. This would enable companies to send an extension application to the relevant bodies, ensuring approval by a set deadline. If authorities are unable to meet this deadline for any reason, the ending or already expired MA, together with the extension request, will stay valid until a fresh MA is provided. Such an approach resonates with the essence of the Prime Minister's Decision 1661.⁶

2. New drugs registration process

To facilitate, accelerate and broaden Vietnamese patients' access to new therapies and drug technologies, it is necessary to apply a rapid fast-track registration process for new drugs, especially those with new active ingredients, or new combinations of old active ingredients, drugs with old active ingredients but new strength, new dosage forms, new indications. Even though the active ingredients are old, but when developing new properties, it is necessary to apply high-tech processes, and carry out full studies depending on each product such as clinical studies, bio-equivalence studies, and stability at different temperature conditions. The research and development of these drugs is often faster and more economical because they are based on active ingredients that are available, have been on the market for many years, and have been proven to be safe and effective when used, thus meeting more and more diverse treatment needs for each individual patient.

The suggested approach is to follow the registration schedule outlined in Article 33.1 of Circular 08 for expedited appraisal, and Article 33.2 of Circular 08 for accelerated appraisal of drugs that have already been approved in at least one State Regulatory Authority (SRA) country. In terms of clinical data requirements, applications can be made in alignment with the clinical development guidelines established by U.S. Food and Drug Administration (FDA), World Health Organization (WHO), European Medicines Agency (EMA) or the regulatory authority of the respective SRA country.

For drugs containing new combinations of previously approved active ingredients, the proposal is to streamline the process by mandating only one pharmaceutical certificate (CPP) from any single SRA country. This requirement applies irrespective of whether the country in question is the manufacturing country responsible for MA, thus replacing the previous requirement of two CPPs (one from the manufacturing country and one from the SRA) as stipulated in Article 22.4.c of Circular 08.

Shortening registration times would benefit everyone, including:

- **Patients** - Would witness improved treatment outcomes from a broader array of affordable drugs and therapies.
- **Businesses** - Would see growth with the ability to register and market more products.
- **Vietnam's economy** - Would enjoy augmented investments, a growing cadre of pharmaceutical professionals, and a state-of-the-art domestic healthcare infrastructure ensuring patient safety.
- **Authorities** - Would experience workload reduction and fewer redundant tasks.

Potential gains/concerns for Vietnam

Prime Minister's Decision 1661 on streamlining administrative procedures under the Ministry of Health's purview paves the way for potential amendments to the Pharma Law 2016, specifically to endorse simplified lifetime MA extensions.

In recent years, significant collaborative efforts by the National Assembly, the Government, and the Ministry of Health have been made to prevent drug shortage for patients' treatment and prevention. The Drug Administration of the Ministry of Health has extended the validity of MAs for 10,243 drugs until the end of the year 2022, as

⁶ Decision 1661/QĐ-TTg dated 4 October 2021 of the Prime Minister on approval of simplification and deduction of administrative procedures of business operations under management scope of Ministry of Health (Decision 1661).

per Resolution 12⁷ of the Standing Committee of the National Assembly. However, these extensions expired on 31 December 2022. By the end of July 2023, another 11,291 drugs received extensions until the end of 2024, in accordance to Resolution 80 of the National Assembly.⁸ It is important to note that these extensions are only temporary measures due to the ongoing impact of the COVID-19 epidemic. There is still looming concern that the MAs extended under Resolution 80 will expire at the close of 2024 unless comprehensive and long-term solutions are put in place.

Incorporating a sustainable, long-term solution into the Pharm Law 2016 and related regulations is imperative. Such a solution should include a simplified process for lifetime MA extension and establish a mechanism to hold authorities accountable if extensions are not processed in timely manner. Furthermore, there is a need to revise the procedure for the initial registration of drugs to fully unlock the potential of the healthcare sector.

Recommendations

In the interest of the patients' wellbeing and as part of our mission, we recommend the following:

- Revise and redraft the Pharma Law 2016 with consideration for the comments and suggestions of the industry;
- Prepare clear guidelines regarding the introduction of a simplified MA extension process, along with clear transitional steps and implementation milestones;
- Amend first-time drug registration processes with a feasible timeline, transitional steps and milestones;
- Introduce the responsibility of authorities in the case of delays;
- Submit the new draft Pharma Law for National Assembly approval in October 2024;
- Implement regulatory coherence and adjust related regulations by January 2025; and
- A number of regulations, including the extension of MA, need to take effect immediately after the Pharma Law takes effect, to avoid drug shortages for patients' treatment and prevention.

II. EXPAND THE SCOPE OF FIE'S OPERATIONS

Relevant authorities: Ministry of Health (MOH), Government (GOV), National Assembly (NA); Ministry of Planning and Investment (MPI); Ministry of Industry and Trade (MOIT)

Issue description

According to Article 91.10 of Decree 54⁹, foreign-invested enterprises (FIEs) operating in the pharmaceutical industry are not allowed to engage in drug and medicinal ingredient distribution activities in Vietnam, except for those drugs and medicinal ingredients they manufacture within the country.

Under the current regulation, in the case of Contract Manufacturing (CMO) or toll manufacturing/technology transfer, FIEs acting as contract acceptors (manufacturers) are permitted to sell CMO or toll manufacturing/technology transfer products they produce. However, FIEs acting contract givers can only sell CMO products through registered wholesalers, typically local pharmaceutical companies, who subsequently distribute them to hospitals and pharmacies. Alternatively, FIEs must perform on-spot export and import procedures if they wish to sell their localized products directly. Both of these mechanisms result in a negative impact on patients, who end up paying higher prices to cover unnecessary additional costs, in order to access high-quality, safe and effective medicines.

7 Resolution 12/2021/NQ-UBTVQH15 dated 30 December 2021 of the Standing Committee of the National Assembly on permission to implement certain mechanisms and policies in the health sector in service of COVID-19 prevention and control practices (Resolution 12).

8 Resolution 80/2023/QH15 dated 9 January 2023 on regarding continuation in implementation of certain COVID-19 management policies and use of marketing authorization licenses of medicines or pharmaceutical materials expired from 1 January 2023 to 31 December 2024 (Resolution 80).

9 Decree 54/2017/ND-CP dated 8 May 2017 providing guidelines for implementation of the Law on Pharmacy (Decree 54).

In essence, foreign investors, despite going through costly technology transfer, manufacturing and registration procedures, are limited in their activities within the sector. This limitation makes investment in CMO, tolling, and pharmaceutical technology transfer for the production of patented drugs, specialised drugs, innovative generic drugs, vaccines, and biological products less appealing for foreign investors. More importantly, these regulations are not aligned with the spirit of Prime Minister's Decision 376¹⁰, which outlines strategies for developing the domestic pharmaceutical industry to reach level IV on the WHO classification scale. The goal is to have market value ranking among the top three ASEAN regions and enable the provision of affordable, high-quality, safe, and effective medicines.

Potential gains/concerns for Vietnam

With the expected development of diverse localized products, local manufacturers can obtain know-how technologies and apply them to produce their own products. On the other hand, FIEs' extensive expertise in drug development, sales, and marketing can be used to expand their business in Vietnam, domesticate high-quality drug manufacturing, and expand treatments for patients.

Recommendations

To incentivize CMO, toll manufacturing and technology transfer in Vietnam, we ask the government to consider the following recommendations:

- Expand the scope of the rights of FIEs'. Specifically, FIEs which are the contract giver or contract acceptor performing the CMO/technology transfer should be allowed to perform activities related to distribution of the localized products in Vietnam by themselves. This is a-must-have-regulation to boost the local manufacturing of high-quality, affordable, safe, and effective medicines in Vietnam;
- Revise Tender regulation for Tolling and Tech Transfer products following the classification of Marketing Authorization Approval. Tolling and Tech Transfer products should be classified as local products not foreign products; and
- Provide Tender & Procurement incentives for localized high-quality products that will attract more foreign investment in the Pharma industry in the coming time.

PART 2: BIOSIMILARS

I. INCREASING PATIENT ACCESS TO STATE-OF-THE-ART THERAPIES

Relevant authorities: Ministry of Health (MOH), Vietnam Social Security (VSS), National Assembly (NA) – Committee on Social Affairs.

Issue description

Biosimilars¹¹ serve as an innovative solution to enhance the accessibility challenges faced by patients in obtaining biologics, which are advanced treatment therapies. They not only generate healthcare system saving but also diversify treatment options for healthcare professionals.

10 Decision 376/QĐ-TTg dated 17 May 2021 on approving Development program for pharmaceuticals industry and domestically produced herbal ingredient until 2030 and vision to 2045 (Decision 376).

11 "Biosimilars", US FDA, 03/01/2023, Available at: <www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/>; last accessed on 7 September 2023

"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, S3; 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 U.S. – 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.

Potential gains/concerns for Vietnam

Benefit for Patients

With the global population on the rise and simultaneously aging, multiple chronic conditions (MCCs) are becoming increasingly prevalent, with nearly one in every three adults living with an MCC. Biologics are being used for a myriad of these MCCs, and with their prices surging, biosimilars present a more cost-effective yet equally efficacious alternative. By offering similar treatment outcomes as reference biologics in terms of quality, safety and efficacy, biosimilars amplify patient access to potentially life-changing medicines. Groups such as women, the elderly, and those in lower-income brackets stand to benefit immensely from biosimilars. At least 400 million people worldwide cannot access essential health services and more than two billion cannot afford to buy the medicines they need. The EU saw a 100 percent increase in the use of biologic treatments after the introduction of biosimilars. In the US, biosimilars have been used in 364 million days of patient therapy and supported 150 million incremental days of therapy that patients would otherwise not have received without biosimilar competition. An estimated 1.2 million US patients could gain access to biologics by 2025 because of increasing biosimilar availability.¹²

Benefit for Healthcare Practitioners

The introduction of biosimilars drives competition, resulting in increased treatment options and value-added services for patient care and the healthcare community, thereby allowing healthcare practitioners (HCPs) to administer top-tier biologics to a larger patient base while reducing costs. By 2029, with around 120 biologic medicines expected to lose their exclusivity, the potential for biosimilars grows.¹³ However, the true potential of biosimilars can only be unleashed with better educational endeavours around their safety and efficacy, and a clearer understanding among HCPs of their significance.

Benefits for Healthcare System

With increasing healthcare expenditures, particularly for MCCs, financial constraints on healthcare systems are tightening. The global spending on healthcare is expected to reach USD24.24 trillion by 2040 with the cost of biologic medicines accounting for a substantial proportion of this expenditure. There's growing evidence that biosimilars relieve the healthcare budget pressure and support more sustainable healthcare systems. The substantial savings realised can improve patient access by allowing more patients to be treated from the same budget. Thus, 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. By introducing competition with biosimilars, the savings generated could reach between USD44 billion and USD250 billion over a ten-year period in the U.S., with the value dependent upon the policy adopted in the coming years. Globally, the cumulative savings opportunity for biosimilars from 2021 to 2026 is estimated at USD285 billion.¹⁴ 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 which give healthcare systems a way either to save money or divert that money to solve other pressing healthcare problems, however more actions are required for the continued adoption of biosimilars, including ensuring long-term market sustainability for biosimilars and better educating healthcare professionals.

Recommendations

We would like to make the following recommendations:

- Consider the early issuance of guidance for biosimilar dossier technical appraisals;
- Include a specific definition for biologics that are not approved as a biosimilar, such as bioscopies and noncomparable biologics, in the Pharma Law to help healthcare professionals have accurate and complete understandings about circulating biologics;

12 "Biosimilars and Access to Treatment", Sandoz. Available at <<https://www.us.sandoz.com/our-work/biosimilars/biosimilars-and-access-treatment>>, last accessed on 09 October 2023.

13 "Value of Biosimilars", Sandoz available at <<https://www.sandoz.com/node/34211/printable/pdf>>, last accessed on 09 October 2023.

14 Global Medicine Spending and Usage Trends – Outlook to 2025", IQVIA Institute for Human Data Science. Available at <<https://www.fdanews.com/ext/resources/files/2021/04-30-21-IQVIA.pdf?1619810914>>, last accessed 09 October 2023.

- › Consider the early issuance of healthcare professional guidance for using biosimilars in clinical practise to improve patient treatment efficacy and safety; and
- › Increase biosimilar's medical educational and training activities to healthcare professionals and healthcare authorities for improving knowledge.

ACKNOWLEDGEMENTS

The International Quality Medicines– Generic and Biosimilar.



CHAPTER 16 MEDICAL DEVICES AND DIAGNOSTICS

OVERVIEW

The World Health Organisation (WHO) has consistently highlighted the significance of medical equipment in diverse medical interventions, ranging from minor injuries like sprains to more intricate procedures such as HIV/AIDS testing and organ transplantation. Medical equipment plays a pivotal role in patient care across numerous medical fields, encompassing intensive and grassroots medicine, primary healthcare, preventive measures, diagnostics, both acute and chronic treatment, palliative assistance, functional rehabilitation, and medical research. Consequently, medical equipment, along with medications and physicians, stands as one of the triad foundational elements in healthcare.

Medical Devices and Diagnostics Sector Committee was established in May 2016, acting as the representative of the global medical devices and in-vitro diagnostics industry. For over seven years, our objective has been to proactively engage with government bodies, regulatory agencies, payers, healthcare providers, and other relevant stakeholders to champion optimal practices, maintain the utmost industry criteria, and participate in the formulation of healthcare policies in Vietnam. In essence, our aim is to guarantee prompt availability of enduring, cutting-edge, and superior healthcare for every Vietnamese individual. Throughout our endeavours, we are honoured to have forged robust alliances, notably with the Ministry of Health (MOH), on various initiatives that resonate with our shared mission.

I. ACCELERATING THE MARKETING AUTHORISATION PROCESS FOR CLASS C AND D MEDICAL DEVICES

Relevant authorities: Office of Government (OOG), Ministry of Health (MOH)

Issue description

Decree 07¹ has prolonged the import license and marketing authorisation's expiration date to 31 December 2024. This extension allows the MOH more leeway to evaluate and issue marketing authorisation numbers for Class C and D medical devices as per Decree 98². However, the rate of approval for these devices remains noticeably low. Consequently, there is a significant backlog for Class C and D medical device dossiers. From September 2022 until now, 4,297 applications have been processed (including 2,374 applications that have been issued and are still valid; 04 applications have been withdrawn; 01 application has been refused to be appraised; 1,918 applications have been cancelled due to overdue or overdue additions or units registered for cancellation); Appraised with additional requirements: 4,417 applications; Under appraisal: 3,305 applications. At the same time, because there are no regulations on prioritizing processing for advanced medical equipment, systems and technologies, it must be reviewed after for previously submitted applications.³

Potential gains/concerns for Vietnam

Several factors contribute to this delay, such as recent upheavals in the healthcare sectors, including manpower shortage, inadequate legal frameworks, and challenges in adapting to the swiftly changing medical trends. This situation sparks concerns over possible supply chain interruptions if these medical devices are not approved by 1 January 2025.

Currently, Decree 98 and Decree 07 lack a distinct procedure for evaluating and issuing marketing authorisation

¹ Decree 07/2023/ND-CP dated 03 March 2023 of the Government on amending and supplementing some Articles of Decree 98/2021/ND-CP dated 08 November 2021 of the Government on Medical equipment management (Decree 07).

² Decree 98/2021/ND-CP dated 08 November 2021 of the Government on Medical equipment management (Decree 98).

³ Letter no. 722/HTTB-DKKD dated 21 December from Infrastructure and Medical Device Administration to the Drug Administration of Vietnam 2023 on responding to EuroCham's recommendations in 2024 Whitebook.

numbers for new Class C and D devices.⁴ This absence results in the delayed introduction of new technologies and new medical technologies and methods, restricting Vietnamese citizen's access to ground-breaking diagnosis and treatment options.

In addition, Decree 98 and Decree 07 do not have a mechanism to prioritize the assessment and issuance of marketing authorisation numbers for class C and D medical devices that have been granted import licenses or valid marketing authorisation numbers but have changes resulting in the submission of new marketing authorisation dossiers. This leads to the risk of not being able to continue importing and supplying these medical devices because existing licenses cannot be used.

Recommendations

We would like to make the following recommendations:

- Expedite the evaluation and authorisation processes for Class C and D medical devices to ensure uninterrupted availability and access to essential medical devices;
- Accelerating the issuance of marketing authorisations and crafting a dedicated procedure for new Class C and D medical devices will guarantee a steady provision of innovative and crucial medical devices, fostering sustainable care for the Vietnamese patients; and
- MOH should have a priority mechanism to issue marketing authorisation for products with valid import license/marketing authorisation but have changes that lead to a new marketing authorisation submission required.

II. THE TENDER OF MEDICAL DEVICES

Relevant authorities: Office of the Government (OOG), Ministry of Health (MOH), Ministry of Finance (MOF), Ministry of Planning and Investment (MPI), and Vietnam Social Security (VSS)

Issue description

The Vietnam National Assembly passed the amended Law on Tender⁵ on 23 June 2023 and formally enacted it on 10 July 2023. Set to come into effect on 1 January 2024, this law now recognises six models: instrument placement, cost per test, combined equipment and consumable procurement, equipment-only procurement, consumable-only procurement and outsourced lab services.

Potential gains/concerns for Vietnam

While this is a positive step, for a transparent and efficient bidding process, there is a pressing need to develop new decrees and guiding circulars. This would foster a more accessible and effective bidding system that serves all stakeholders involved.

Recommendations

We would like to make the following recommendations:

- Provide explicit guidelines on bidding procedures for medical devices, especially the cost per test model;
- MDDSC will accompanied with the MOH to organise workshop or training sessions to relevant parties to facilitate seamless implementation.

4 Article 4 of Decree 98/2021/ND-CP dated 08 November 2021 of the Government on Prescribing medical device management. Specifically, medical devices shall be classified into the following 4 classes according to their levels of potential risks related to their designs and manufacture: Class A: Low risk, Class B: Low-moderate risk, Class C: Moderate-high risk, and Class D: High risk.

5 Law 22/2023/QH15 dated 23 June 2023 of the National Assembly of Vietnam on Tender (Law on Tender).

III. SUPPLEMENTARY HEALTH INSURANCE AND HEALTH INSURANCE FUND/BUDGET FOR PREVENTION & PRIMARY HEALTH TO REDUCE THE BURDEN OF TREATMENT

Relevant authorities: Ministry of Health (MOH), Vietnam Social Security (VSS)

Issue description

Vietnamese healthcare system constantly seeks advancements aligned with global and regional best practices, adopting novel techniques to benefit patient diagnosis and treatment. However, some emerging medical devices, services and technology have not been updated/ listed in the existing reimbursement regulations due to their age (4-6 years old). This lack of regular updates can restrict Vietnamese patients from accessing state-of-the-art medical devices, services and technology.

Potential gains/concerns for Vietnam

Addressing this disparity is crucial to offer thorough healthcare coverage. Emphasis should be on extending insurance coverage for early diagnostic procedures, given their potential to drastically improve health outcomes.

Recommendations

- To ensure that Vietnamese patients can have access to new medical devices, services, and technology, we respectfully propose that the MOH speedily updates technical services/ medical devices list in the following circulars and release them:
 - Circular 04⁶ on promulgating the schedule, rates and conditions of payment of costs of covered medical supplies to health insurance participants.
 - Circular 43⁷ on providing for technical and professional levels in the network of health facilities and Circular 21⁸.
 - Circular 22⁹ replaced Circular 39¹⁰ promulgated from 2018 on unifying prices of medical examination and treatment services covered by medical insurance among hospitals of the same class across the country and guidelines for applying prices and payment for medical services in certain cases and Circular 13¹¹.
- Regularly update the list of Medical Technical Services and collaborate with Departments under MOH and Vietnam Social Security to complete the calculation of costs for these services and allow deployment at healthcare facilities nationwide; and
- Given that the Law on Health Insurance is under revision, we also respectfully request National Assembly to endorse reimbursement for early diagnostics, and screening of certain diseases, such as: cervical and breast cancer, and chronic diseases such as diabetic, high blood pressure. This can significantly reduce treatment burdens later on.

ACKNOWLEDGEMENT

EuroCham Medical Devices and Diagnostics Sector Committee

6 Circular 04/2017/TT-BYT dated 14 April 2017 of Ministry of Health on promulgating the schedule, rates and conditions of payment of costs of covered medical supplies to health insurance participants (Circular 04).

7 Circular 43/2013/TT-BYT dated 11 December 2013 of Ministry of Health on providing for technical and professional levels in the network of health facilities (Circular 43).

8 Circular 21/2017/TT-BYT dated 10 May 2017 of Ministry of Health on amending and complementing the Circular 43/2013/TT-BYT on providing for technical and professional levels in the network of health facilities (Circular 21).

9 Circular 22/2023/TT-BYT dated 17 November 2023 of Ministry of Health on unifying prices of medical examination and treatment services covered by medical insurance among hospitals of the same class across the country and guidelines for applying prices and payment for medical services in certain cases (Circular 22).

10 Circular 39/2018/TT-BYT dated 30 November 2018 of Ministry of Health on unifying prices of medical examination and treatment services covered by medical insurance among hospitals of the same class across the country and guidelines for applying prices and payment for medical services in certain cases (Circular 39).

11 Circular 13/2019/TT-BYT dated 05 July 2019 of Ministry of Health on amending the Circular 39/2018/TT-BYT on unifying prices of medical examination and treatment services covered by medical insurance among hospitals of the same class across the country and guidelines for applying prices and payment for medical services in certain cases (Circular 13).

CHAPTER 17 COSMETICS

OVERVIEW

The Cosmetics Sector Committee represents the voice of EuroCham business members engaged in importing, manufacturing and trading cosmetic products in Vietnam. Recently, the Cosmetics Sector Committee has been actively collaborating with management authorities to address challenges in business operations and propose policy changes to foster the growth of the Vietnamese cosmetics industry, increase its competitiveness in the region, and meet diverse trends and needs of the market.

At the conference on “The Current Situation and the Orientation of Cosmetic Management” held on 16 June 2023 in Hue City, the Drug Administration of Vietnam - Ministry of Health announced a plan to promulgate a Decree on cosmetic management to complete the legal framework for the cosmetics manufacturing and trading industry in Vietnam. The Cosmetics Sector Committee shares the same vision as the regulatory authority and aims to maintain our cooperating in drafting the Decree. We believe that the relevant authorities concentrate resources and strengthen post-market surveillance in cosmetic management; additionally streamline administrative procedures and reduce pre-market surveillance requirements to create favorable conditions and provide a robust impetus for the growth of businesses and the Vietnamese cosmetics industry.

Regarding antiseptic products, in 2023, the Health Environment Management Agency - Ministry of Health drafted a Decree amending Decree 91.¹ We acknowledge the open-mindedness of the management authority in considering businesses’ comments during the drafting process. However, there are still some issues that require further attention in order to promote the development potential of this product group.

I. SIMPLIFY ADMINISTRATIVE PROCEDURES IN COSMETIC MANAGEMENT - FOCUS ON STRENGTHENING POST-MARKET SURVEILLANCE

Relevant authorities: Drug Administration of Vietnam (DAV) & Department of Legal Affairs - Ministry of Health, Agency of Grassroots Culture - Ministry of Culture, Sports and Tourism

1. Removal of cosmetic advertising pre-approval procedures

Issue description

The plan to remove cosmetic advertising pre-approval procedures and change the cosmetic advertising management method from pre-market to post-market surveillance has received support from the cosmetics management authority since 2019.² The Drug Administration of Vietnam has also expressed its support by suggesting the abolition of the procedure for approving cosmetic advertisement content and coordinating with relevant authorities (Department of Legal Affairs - Ministry of Health, Agency of Grassroots Culture - Ministry of Culture, Sports and Tourism) to amend the document upon receiving their requests.³ The Prime Minister also promulgated Decision 1661,⁴ setting out a roadmap to completely remove this procedure in the period 2022-2025.

However, businesses are concerned that the revision of applicable regulations, which have been issued since 2019, has not yet been initiated.

¹ Decree 91/2016/ND-CP dated 1 July 2016 on management of insecticidal and germicidal chemicals and preparations for household and medical use (Decree 91).

² Official Dispatch 21305/QLD-MP dated 19 December 2019 of the Drug Administration of Vietnam.

³ Official Dispatch 9153/QLD-MP dated 16 September 2022 of the Drug Administration of Vietnam.

⁴ Decision 1661/QĐ-TTg dated 4 October 2021 on approving the plan to reduce and simplify regulations related to business activities under the management of the Ministry of Health.

Potential gains/concerns for Vietnam

Without changes in the regulations, businesses continue to be impacted by the requirement for pre-approval of cosmetic advertising. This pre-approval process does not hold much significance in terms of management compared to the actual advertising inspection of advertising, but it significantly hampers the progress of introducing products to the market and reaching consumers.

It is known that the Ministry of Culture, Sports and Tourism plans to revise Decree 181⁵ and eliminate the requirement for pre-approval of cosmetic advertising once the amendment to the 2012 Advertising Law is completed.⁶ However, such requirement is not specified in the 2012 Advertising Law and is only set out in Decree 181. Thus, the content of cosmetic advertising pre-approval requirement can be removed immediately regardless of the revision of the Advertising Law. The roadmap to amending the Law usually takes several years. We recommend that the roadmap to remove advertising pre-approval procedures proposed by the Prime Minister should not be dependent on the revision of the Law.

The Drug Administration of Vietnam has included the content of reducing administrative procedures for cosmetic advertising in the program for developing the Decree on cosmetic management. We appreciate this proposal and hope to receive support from the Agency for Foundation Culture to accelerate the revision of advertising regulations in the coming time, ensuring consistency with the content in the Decree on cosmetic management.

Recommendations

- The Agency for Foundation Culture removes the requirement for cosmetic advertising pre-approval in Decree 181 at the earliest opportunity.
- The content of reducing administrative procedures for cosmetic advertising should be incorporated in the Decree on cosmetic management.

2. Removal of requirement for a Certificate of Free Sale

Relevant authorities: Drug Administration of Vietnam (DAV) - Ministry of Health (MOH)

Issue description

Currently, the Certificate of Free Sale (CFS) is required by the Ministry of Health as a mandatory document for the notification of imported cosmetics products. We acknowledge that CFS does not contribute to ensuring the quality of cosmetic management but is rather an unnecessary administrative requirement that can be removed.

In reality, many cosmetics with CFS are not available in the country of issuance and CFS are issued by industry associations rather than management authorities in many countries. The CFS requirement has been removed for cosmetics produced in CPTPP countries since 2020; furthermore, starting from 2021, for cosmetics imported from ASEAN countries, the template for notification of cosmetic products can be used instead of CFS. Implementation to date has been smooth and has not caused consumer safety issues or regulatory difficulties. Imported products can still be traded safely when enterprises comply with the standards on factory and product safety and cosmetics can be managed in post-audit form. This proves that CFS is an unnecessary administrative requirement that can be abolished as it discriminates against EU imported products.

Potential gains/concerns for Vietnam

In the dialogues in 2019 and 2020 between EuroCham and the Office of Government, the representative of the Ministry of Health announced that after removing the CFS requirement for cosmetics produced in Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) countries, the Ministry of Health will work with relevant ministries and authorities to consider options for other areas, including the EU. At EuroCham's 2023 Whitebook launching ceremony, the Drug Administration of Vietnam shared that the Ministry of Health will study management requirements and, if appropriate, remove the CFS requirement for imported cosmetic products. The

⁵ Decree 181/2013/ND-CP dated 14 November 2013 of the Government detailing the implementation of some articles of the Advertising Law

⁶ Advertising Law 16/2012/QH13 dated 21 June 2012 promulgated by the National Assembly (2012 Advertising Law)

business community anticipates that the removal of CFS requirement for imported cosmetics will be included in the Decree on cosmetic management in the near future.

Particularly for cosmetics imported from EU countries, Vietnam has signed the Agreement on the ASEAN Harmonised Cosmetic Regulatory Scheme which has been developed according to the Regulation (EC) 1223/2009 of the EU on cosmetic products. Considering that CFS is no longer required for ASEAN Member States, it is reasonable to remove the CFS requirement for cosmetics imported from the EU. The EVFTA requires imported products from the EU not to be discriminated against other imported products and prohibits unjustified or unnecessary obstacles to trade.

Recommendation

- The content on removing CFS requirement for all imported cosmetics, especially those imported from the EU, should be included in the Decree on cosmetic management.
- No alternative should be required when the CFS requirement is abolished.

II. STRENGTHEN THE APPLICATION OF INFORMATION TECHNOLOGY AND E-GOVERNMENT IN COSMETIC MANAGEMENT

1. Nationwide cosmetic online management

Relevant authorities: Departments of Health (DOHs), People's Committees of provinces and cities; Drug Administration of Vietnam (DAV) - Ministry of Health (MOH)

Issue description

The process of notifying imported cosmetics to the DAV could be implemented online on the National Single Window linked to the customs system. However, due to occasional failures of the system, the application submission and receipt of notification numbers take a lot more time than the three-day period stated in the regulation,⁷ even up to several months, which has caused significant inconvenience for businesses.

In most local DOHs, the process of receiving applications for notification of domestically produced cosmetics still relies on hard copy documents. While some DOHs have online systems, they still require hard-copy dossiers along with the online applications. Each DOH also has its own system which varies in the level of accepting online applications and is not consistent with the imported cosmetics management system.

In addition, Circular 06 has some wording that can be interpreted as a requirement to submit hard-copy documents: "original or copy", "02 copies of cosmetic product announcement sheet"; "video disc, audio disc, soft file with 03 scenarios". Some DOHs refer to these terms to justify their refusal to accept online applications without hard copies.

Potential gains/concerns for Vietnam

The DAV and businesses have recently encountered numerous challenges as a result of failures in the imported cosmetics notification system. In addition, the DOHs' reliance on hard-copy dossiers is not aligned with e-Government development. The submission period is prolonged due to objective factors and the reception of dossiers by post.

In addition, information on management of imported cosmetics and domestically produced cosmetics is not synchronized on one system. DAV does not have a centralized database for nationwide cosmetics management. When a regulatory authority needs to access information about the number of products, both imported and domestically manufactured, from each enterprise, the number of products notified in each province or city, or the use of a chemical in an ingredient formula, etc., they must submit a written data request to each DOH and await the reports from the respective DOHs.

⁷ Circular 06/2011/TT-BYT dated 25 January 2011 of the Ministry of Health regulating the cosmetic management (Circular 06)

Recommendations

- To synchronously solve the problems, we propose the MOH develop online software to receive cosmetic notification dossiers nationwide. This system will consistently apply level 4 public services to both imported cosmetics (notified to the DAV) and domestically produced cosmetics (notified to the DOH). By doing so, we not only address the challenges faced by businesses but also facilitates efficient and transparent dossiers processing. Businesses in every province and city can apply the same online notification process and each province or city does not need to develop its own software. This system will serve as a comprehensive nationwide cosmetics industry database, allowing management authorities to easily access information and support post-market surveillance efforts.
- Revise the provisions on cosmetic notification process in the Decree on cosmetic management and remove any words that could be interpreted as requiring of hard-copy applications in Circular 06.
- When planning to upgrade the software, management authorities should notify businesses in advance of the expected time so that businesses can actively plan their upgrade accordingly.
- Propose all provincial DOH to apply a full online approval procedure for Cosmetic Notification and Cosmetic Advertising without requiring hard copy dossier submission.

2. Allow electronic labeling of some mandatory information on cosmetic labels

Relevant authorities: Drug Administration of Vietnam - Ministry of Health, Directorate for Standards, Metrology and Quality - Ministry of Science and Technology

Issue description

According to Circular 18⁸, electronic labeling has been implemented for some mandatory labeling information on product labels. However, Circular 18 does not apply to cosmetic products.

Potential gains/concerns for Vietnam

Because of their specific nature, cosmetic products are often small in size. Therefore, obtaining permission for electronic labeling will be of great significance in minimizing the label area to meet all legal requirements of labeling information or will reduce the number of labels that must be discarded or reprinted in case of minor changes in label content, thereby improving flexibility in production.

In terms of regulations, according to Circular 06 on cosmetic management and the Agreement on the ASEAN Harmonised Cosmetic Regulatory Scheme, there are nine mandatory information items that must appear on cosmetic labels. In case the primary container does not have enough space for all these nine information items, the product name and production batch number are required while other information may be shown on the secondary label. Among the information that can be placed on secondary labels, businesses propose allowing electronic labeling for the following information:

- Ingredients according to international nomenclature: Ingredient names according to international nomenclature are unfamiliar to most consumers. This content mainly facilitates management authorities and supermarkets in checking circulating goods and comparing with the ingredients listed in the template for notification of cosmetic products. Consumers and regulatory agencies with specialized knowledge can easily access this information electronically.
- Usage instructions: Cosmetics used by most consumers are common products in daily life such as shampoo, shower gel, toothpaste, hand soap, etc. and usually have no special instructions for use.
- Origin: Products' primary labels contain the name and address of the company in charge of product marketing - the entity responsible for quality and products in Vietnam. In terms of origin (place of manufacture), cosmetic

⁸ Circular 18/2022/TT-BKHCN dated 30 December 2022 of the Ministry of Science and Technology detailing a number of mandatory contents to be electronically displayed on labels of some groups of goods

businesses often have many factories in many countries producing with the same formula and following the same quality standards. Information of product origin should be presented in electronic form so that businesses do not discard the labels when they relocate any factory, thereby reducing waste discharged into the environment.

According to the discussion of the Cosmetics Sector Committee with representatives of the Drug Administration of Vietnam at the 2023 Whitebook launching event, this proposal has been acknowledged by management authorities to consider including in relevant regulations for cosmetic products.

Recommendations

- The Drug Administration of Vietnam incorporates electronic labeling into cosmetic labeling regulations in the Decree on cosmetic management.
- The Directorate for Standards, Metrology and Quality includes cosmetic products in the scope of application of electronic labeling in the updates of Circular 18.

III. DEVELOP A COMPETITIVE AND FAIR COSMETIC MARKET FOR CONSUMER SAFETY

Relevant authorities: Drug Administration of Vietnam (DAV) - Ministry of Health, Vietnam E-commerce and Digital Economy Agency & Vietnam Competition Commission - Ministry of Industry and Trade

Issue description

Currently, cosmetics produced, imported, and traded by individuals or private stores are widely sold, particularly on e-commerce platforms. Any individuals, regardless of being a brand owners, product manufacturers, or authorized distributors, can effortlessly sell cosmetic products without needing to comply with cosmetic notification regulations, register for advertising, pay taxes, or register for doing business, etc. when selling on e-commerce platforms. Because of these advantages, individual sellers can offer prices lower than the market prices to attract customers.

Potential gains/concerns for Vietnam

This situation has led to unfair competition in the business environment, significantly affected registered businesses, brand owners, and genuine distributors as well as resulted in tax losses for the Government. In addition, because the origin of cosmetic products sold by these individuals often cannot be clearly verified, consumers are at a high risk of purchasing fake and low-quality goods.

The available information on existing e-commerce platforms lacks clarity, making it difficult for consumers to differentiate between the legitimacy and safety of products sold in official stores and those sold in unofficial stores. Besides, the suggestion of products sold by unofficial stores may confuse consumers who are specially seeking for product information in an official store.

Recommendations

- The Ministry of Industry and Trade updates regulations related to e-commerce management and completes e-commerce management legal framework to upgrade the management level in line with the current development of e-commerce.
- The Ministry of Industry and Trade strengthens management on e-commerce platforms, especially for unofficial stores to build a fairer and healthier business environment.
- The Drug Administration of Vietnam and Departments of Health put more resources and focus on post-market surveillance of cosmetics traded on electronic platforms.

IV. STREAMLINE THE PROCESS OF REGISTRATION OF SKIN ANTISEPTICS WITH SIMPLE FORMULATION

Relevant authorities: Health Environment Management Agency (VIHEMA) - Ministry of Health

Issue description

Many skin antiseptic products, such as hand sanitizers, have simple formulation and are widely used in daily life with high safety level, which ensure people's health and hygiene. In Vietnam, the process of registering these products is the same as insecticidal products, which is complicated, depends on hard-copy dossiers, and usually lasts 4 to 6 months, even up to 12 months, much more complicated than other countries in the region and around the world.

Potential gains/concerns for Vietnam

EuroCham appreciates the purposes of the Ministry of Health's amendment to Decree 91, which are to suit management practices and facilitate production and business activities of enterprises. We acknowledge that VIHEMA agreed to allow submitting experiment test from the beginning for hand sanitizer containing safe active substances (ethanol and isopropanol) and accepting experiment tests from foreign qualified laboratory for imported antibacterial product. However, the latest revision only applies to minor of household skin antiseptics and does not cover for majority of skin antiseptic with simple formulation used widely in daily circumstances. The registration procedure have not yet been streamlined significantly.

Recommendations

We request that the MOH develop a separate notification for skin antiseptics with common formulas and active ingredients similar to other Asean countries (Singapore, Thailand, Philippine, Malaysia...) and reduce unnecessary document requirement. This group's safety risk is completely different from that of insecticides, so management requirements should be adjusted to accommodate businesses's and consumers' needs.

For these products, test results of overseas-qualified laboratories should be accepted for both import and locally manufactured antiseptic products. The guidance regulation on experiment procedures for antiseptic should also be revised and updated.

ACKNOWLEDGEMENT

EuroCham Cosmetics Sector Committee

An aerial photograph showing a dense, vibrant green forest canopy. The trees are closely packed, creating a textured pattern of various shades of green. Some darker patches are visible, suggesting shadows or different tree species.

D

CONSUMER CHOICE

CHAPTER 18 **FOOD, AGRI AND AQUA BUSINESS**

OVERVIEW

Stepping into 2024, Vietnam's agriculture sector has shown resilience amid global volatility. GDP of the entire sector is estimated to be at 3.83 per cent at the end of 2023 and the industry's export turnover reached over 53 billion USD.¹ This steady performance provides crucial food security and livelihoods, while also generating vital export revenue. However, continuous efforts are needed to boost productivity, sustainability and competitiveness, especially in 2024. Challenges remain, from climate change impacts to animal disease risks. But prudent policies have enabled agriculture to overcome immediate pressures, displaying tenacity despite global uncertainty.

There have been crucial government efforts such as Decision 300 of the Prime Minister approving the National Action Plan for sustainable food systems by 2030² and Decision 889 on strengthening animal disease control, have laid policy foundations for an innovative, climate-smart agriculture sector,³ and Decision 100, approves the scheme on the implementation, application and management of the traceability system, and defining the roadmap for promulgating standards and regulations.⁴ Nevertheless, fully realising the immense potential requires expanding this strategic vision into concrete programs, including training and education programs at all levels, investments and partnerships.

The recommendations in the following sections of this chapter aim to highlight key opportunities for elevating Vietnamese agriculture to the next level. Ideas are provided across dimensions like sustainable production practices, food safety standards, and innovative financing.

For instance, approaches like agroecology and organic production can improve quality and safety for domestic consumption and exports. Similarly, prudent antimicrobial use in animal production through a One Health approach will minimise risks and align with global best practices. Meanwhile, optimised financing options can provide the capital needed for critical investments into sustainability, technology and infrastructure upgrades. Incentives for working capital and Environment-Social-Governance (ESG) transitions will empower enterprises to embark on the modernization journey.

The resilience displayed in 2023 underscores Vietnamese agriculture's central role in national development. The ideas outlined in subsequent sections can help drive the sector forward to cement its strategic value and contribute even more robustly to Vietnam's continued growth and prosperity.

I. IMPLEMENTATION OF AGROECOLOGY AND ORGANIC PRODUCTION IN FRUITS AND VEGETABLES

Relevant authorities: Ministry of Agriculture and Rural Development (MARD), Ministry of Natural Resources and Environment (MONRE)

Issue description

Vietnam's agriculture sector is at a pivotal juncture. While conventional industrial farming has driven increased productivity, it relies heavily on external inputs like chemical fertilizers and pesticides. The resulting environmental impacts and risks to human health have sparked a global movement towards ecological sustainability. Agroecology

1 "Agricultural GDP grew at its highest level in many years", Quoc hoi TV, 25 December 2023. Available at: <<https://quochoitv.vn/amp/gdp-nganh-nong-nghiep-tang-truong-cao-nhat-trong-nhieu-nam-204249.htm>>, last accessed on 28 December 2023.

2 Decision 300/QĐ-TtG dated 28 March 2023 of the Prime Minister approving the National Action Plan for sustainable food systems by 2030 (Decision 300).

3 Decision 889/QĐ-TtG dated 25 July 2023 of the Prime Minister on approving the "National Plan to implement key tasks to strengthen capacity to manage and control animal diseases and ensure food safety of animal origin, period 2023 - 2030" (Decision 889).

4 Decision 100/QĐ-TtG dated 19 January 2019 of the Prime Minister approval of the project for implementation, application and management of the origin traceability system (Decision 100).

offers a promising alternative by applying nature's own principles to agriculture. As Vietnam looks to balance productivity gains with aligning to global quality standards, agroecology warrants consideration for its multiple benefits.

Agroecology emphasizes biodiversity, soil health, and synergies between plant and animal systems to optimize productivity. Techniques include crop rotation, intercropping, integrated pest management and zero budget natural farming. This reduces reliance on external synthetic inputs, thereby lowering costs and environmental footprints. Agroecology is well-suited for smallholder farmers, providing resilience against climate change through diversified production. Producing organically certified fruits, vegetables and commodities can also help Vietnamese farmers gain access to premium domestic and export markets.

Potential gains/concern for Vietnam

Transitioning to agroecology and biological approaches can pose some initial challenges. Yields may be lower compared to conventional intensive farming that uses synthetic fertilizers and pesticides. However, the long-term benefits include reduced input costs, improved safety and environmental sustainability.

In Vietnam, the small size of farms (averaging 2 hectares) presents difficulties for organic certification which can be expensive. Forming collaborative clusters and cooperatives allows groups of farmers to aggregate production and obtain a single organic certificate more feasibly. Many countries provide financial assistance for farmers transitioning to organic methods through grants, subsidized loans and certification cost-sharing.

While data is variable, some estimates suggest biological farming can achieve approximately 90 per cent of conventional yields.⁵ The 10 per cent yield gap can be mitigated over time by fine-tuning integrated farming systems. Robust research, training and policy support will be vital to smooth Vietnam's transition towards sustainable biological agriculture that uplifts farmer livelihoods while aligning with global quality and safety standards.

By comparison, the EU farmers are now abandoning step-by-step intensive agriculture (1 crop / large surface) to agroecology (smaller surface with many different crops and introduction of bio-diversity).

Recommendations

EuroCham's Food, Agri and Aqua Business Sector (FAABS) recommends the development of ambitious yet achievable targets:

- Encourage for the reduction of the use and risk of chemical pesticides. For example, the European Union proposed to aim to reduce the use and risk of chemical pesticides, as well as the use of the more hazardous pesticides, by 50 per cent by 2030 and to increase Organic farming total utilized agricultural area (UAA) from around 14.7 million hectares of agricultural land in the EU in 2020⁶ corresponding to 9.1 per cent to 25 per cent in 2023;⁷
- Furthermore, encourage the adoption of agroecology through increase of smaller-surface farming, intercropping, and crop-rotation;
- Incentivize the formation of collaborative clusters and cooperatives for ease of obtaining a single organic certificate;
- Provide financial assistance for farmers transitioning to organic methods;
- Increase effort and investment for research, training, and policy efforts for a smooth transition to agroecology; and
- Regarding molecules creating cross-contamination and hence potentially impacting food innocuity and

5 Ondrasek et al., "Land Resources in Organic Agriculture: Trends and Challenges in the Twenty-First Century from Global to Croatian Contexts", *Agronomy*, 2023, 13, 1544. Available at: <<https://doi.org/10.3390/agronomy13061544>>.

6 "EU's organic farming area reaches 14.7 million hectares", *Eurostat*, 22 February 2022. Available at <<https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20220222-1>>, last accessed on 23 September 2023.

7 "EU's organic farming area covered 15.9 million hectares", *Eurostat*, 22 June 2023. Available at: <<https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20230622-1>>, last accessed on 23 September 2023.

exports requirements, Vietnamese authorities could focus on some pesticides such as Cypermethrin, Permethrin, Acetamiprid, Mancozeb, and some more.

II. IMPLEMENTATION OF A ONE HEALTH APPROACH IN ANIMAL PRODUCTION

Relevant authorities: Ministry of Agriculture and Rural Development (MARD); Ministry of Health (MOH); Ministry of Natural Resources and Environment (MONRE)

Issue description

A renewed focus on food safety and discussions on how to ensure food safety is very important to take full benefits of the EVFTA. Indeed, European regulators require certain features such as no trace of antibiotics or forbidden substances. However, based on recent studies,⁸ annually in Viet Nam, it has been observed in animal production approximately 2751 tons of antimicrobials are used,^{9 10} and the highest amount of antimicrobials are found in pigs and poultry.¹¹ Additionally, in the country, there are high levels of antimicrobial residues in food products and antimicrobial resistance in foodborne zoonotic pathogens (e.g. non-typhoidal Salmonella). Several surveys suggest that prophylactic use of antibiotics is not yet completely eliminated in Vietnam.^{12 13} The World Health Organization (WHO) considers that in the top 10 global health emergencies affecting humanity with antimicrobial resistance is one of them,¹⁴ and antimicrobial use in animal production is one of its key drivers.

FAABS and EuroCham acknowledge the great efforts and achievements of Vietnamese government through Decree 13 of the Government¹⁵ which set out the roadmap for a complete ban on certain types of antimicrobials for prophylactic use on the basis of human health importance according to the WHO and in young terrestrial animals by 2026.¹⁶

Potential gains/concerns for Vietnam

The recently issued regulations on antimicrobial use restrictions in livestock and aquaculture in Viet Nam place the country at the forefront of efforts countries in Southeast Asia. When its roadmap reaches its final stage in 2026, antimicrobial use restrictions in Vietnam will be the same as those of EU countries. We advocate for maximum compliance with these legislations and that these legislations should be reviewed and refined periodically. We trust that success on this feed & food safety topic will bring full benefits from the EVFTA by maximizing exportation and business collaboration with European countries.

Recommendations

We would like to reinforce some recommendations:

- To further disseminate the regulations and monitor compliance through the enhancement of stakeholders' understanding regarding antimicrobial veterinary products and their WHO category; understanding the risks associated with the prophylactic use; and understanding of the classification of farming enterprise based on

8 JJ.Carrique-Mas, "Restrictions on antimicrobial use in aquaculture and livestock", *World Health Organization*, Viet Nam, 2023. Available at: <<http://dx.doi.org/10.2471/BLT.22.289187>>.

9 JJ. Carrique-Mas , M. Choisy , N. Van Cuong , G. Thwaites , S. Baker , "An estimation of total antimicrobial usage in humans and animals in Vietnam", *Antimicrob Resist Infect Control*, 2020, 14;9(1):16. Available at: <<https://doi.org/10.1186/s13756-019-0671-7> PMID:31956405 4>.

10 LTT. Ha, C. Rueanghiran, NTH. Giang, DP. Thuy, DH. Phu, B. Tuan Kiet, et al., "Antimicrobial usage surveillance through sales at veterinary drug shops intended for livestock in Vietnam", *Front Sustain Food Syst.*, 2021;5:784500. Available at: <<https://doi.org/10.3389/fsufs.2021.784500>>.

11 NT. Nhung, NTB. Van, NV. Cuong, TTQ. Duong, TT. Nhat, TTT. Hang, et al., "Antimicrobial residues and resistance against critically important antimicrobials in non-typhoidal Salmonella from meat sold at wet markets and supermarkets in Vietnam", *Int J Food Microbiol*, 2018. Available at: <<https://doi.org/10.1016/j.jfoodmicro.2017.12.015>, PMID:29275223>.

12 Ibid.

13 Duc et al., «Knowledge, attitudes and practices of livestock and aquaculture producers regarding antimicrobial use and resistance in Vietnam.», 2019. Available at : <<https://pubmed.ncbi.nlm.nih.gov/31553776/>>.

14 Op cit, JJ. Carrique-Mas, 2023 "Restrictions on antimicrobial use in aquaculture and livestock, Viet Nam".

15 Decree 13/2020/ND-CP dated 21 January 2020 of the Government elaboration of the Law on Animal Husbandry (Decree 13).

16 Huong et al. "Antibiotics use in fish and shrimp farms in Vietnam", *Aquaculture report*, 2021. Available at : <<https://www.sciencedirect.com/science/article/pii/S2352513421001277?via%3Dihub>>.

livestock units;

- Ensure better compliance and monitor of regulations with the use of antimicrobial-containing products through labelling and impact assessment of antimicrobial use and resistance;
- It would be desirable for the government to engage with the food animal production industry, encourage harmonization of antimicrobial regulations, and monitor potential impacts on disease and production in the region; and
- Encourage the alternatives to antimicrobial disease treatments such as biosecurity, vaccination, use of alternative solutions such as probiotic, prebiotics or others nature-based solutions that are used for decades in Europe should be promoted.

III. FINANCING OPTIONS FOR THE SUSTAINABILITY DEVELOPMENT OF FOOD, AGRICULTURE AND AQUACULTURE SECTORS

Relevant authorities: Office of the Government (OOG), Ministry of Agriculture and Rural Development (MARD), Ministry of Industry and Trade (MOIT), Ministry of Natural Resources and Environment (MONRE)

Issue description

Companies in the agriculture and aquaculture sector have become more agile and sophisticated in how they manage their treasury activities, moving away from cash transactions to digital platforms. They are also looking at ways to further optimize their working capital. Agriculture is already an encouraged sector and the State Bank of Vietnam (SBV) has capped the VND short-term lending rate at 4.5 per cent.¹⁷ One of the key factors for corporates (both domestic and foreign companies) to further invest in this space will be reliant on further schemes or incentives from the Government to ease financing options in terms of lending rates to optimise working capital and fund their capital expenditure expansion plans. In a broader context, investment in sustainable agriculture can also experience the indirect effect of a large-scale policy such as the Power Development Plan VIII (PDP VIII). Such a policy will have a horizontal impact that will influence the decisions of enterprises to enter Vietnam for investment. Therefore, the implementation roadmap for financing options should take into consideration such policies and programmes for holistic and long-term development.

Another key area of focus in the near future will be around the ESG or Sustainability agenda Policies in Europe, for agriculture industry, are now focusing more on this concept through novel approaches such as the Carbon Border Adjustment Mechanism (CBAM) and EU Deforestation Regulations (EUDR). These policies are a part of policy ecosystem that will set a business environment that ushers businesses to adopt and adapt to higher standards in sustainability. In EUDR, European consumers will not consume any products that contribute to deforestation.¹⁸ Furthermore, these policies will not only influence those in the EU, but countries that do trade with the EU will have to meet the latter's requirements on sustainability.

Currently, in Vietnam, there is no concrete specific scheme or incentive from the Government to help corporates on their transition to net zero or to enhance their capabilities to meet international standards. The progress around ESG is still mixed. We see a lot of companies taking the ESG agenda seriously and are working towards their sustainability ambition with clear priorities and plans but we also see a lot of companies being reluctant to proceed due to the high initial operating cost involved in investing towards their ESG goals. A Government incentive scheme would encourage more companies to embark and partake in their ESG agenda more seriously, especially for the agriculture industry which is the foundation of Vietnam's economy.

17 "SBV adjusts key interest rates", *State Bank of Vietnam*, 16 June 2023. Available at: <https://www.sbv.gov.vn/webcenter/portal/en/home/sbv/news/Latestnews/Latestnews_chitiet?dDocName=SBV570041&p=4&_afLoop=30418265732166023#%40%3F_afLoop%3D30418265732166023%26centerWidth%3D80%2525%26dDocName%3DSBV570041%26leftWidth%3D20%2525%26p%3D4%26rightWidth%3D0%2525%26showFooter%3Dfalse%26showHeader%3Dfalse%26_adf.ctrl-state%3D17140poo8e_4>, last accessed on 14 September 2023.

18 "Deforestation-free products", *European Commission*. Available at: <https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en>, last accessed on 31 October 2023.

Potential gains and concern

Banks and other financial institutions along with the relevant Ministries need to keep educating corporates on the benefits of working capital as it helps their entire ecosystem right from suppliers to distributors to buyers to end customers, this will benefit the economy as a whole. More importantly, this will reduce the financing cost for corporates as well as mitigate risk in a more efficient way if more working capital financing options like supply chain finance or distributor finance compared to plain vanilla lending options are being used.

Regarding the ESG aspect, if there are no specific plans and incentives from the government, this can be a deterrent for many corporates to delay their ESG plans to a later date which is not great for the economy as a whole as Vietnam has a specific target to transition to net zero by 2050.

Recommendations

FAABS would like to recommend the following:

- Seminars to be conducted by the Ministries and financial institutions to educate corporates about the benefits of working capital;
- A subsidized ESG incentive scheme from the Government (similar to the subsidized scheme for the encouraged sector) is needed, this will boost/encourage companies to activate their ESG plans on transitioning towards net zero; and
- More effort in the development of policies that have interlinked impact is needed. For instance, a clear articulation of the PDP VIII implementation plan with specific timelines is in need as it'll benefit corporates in the agriculture and aquaculture sector as well.

ACKNOWLEDGEMENTS

EuroCham Food, Agri and Aqua Business Sector Committee

CHAPTER 19 WINES AND SPIRITS

OVERVIEW

The wine and spirits (W&S) industry in Vietnam was greatly affected by the COVID-19 pandemic, which saw the suspension of product distribution, the closures of F&B and entertainment outlets, and a halt to tourism and hospitality amidst prolonged border closures and other restrictions. Prior to the COVID-19 pandemic, sales volumes of W&S in Vietnam were split fairly evenly between on-premises and off-premises channels. The onset of the pandemic severely impacted on-premise sales volumes which fell by almost half between 2019 and 2021, which was only partly offset by an 8% increase in off-premises sales volumes. W&S enterprises have suffered long-term and continuous impacts on sales during and after the pandemic when consumer demand for W&S products decreased as compared to the pre-COVID-19 period. The international W&S contribution to Vietnam's GDP fell from US\$398 million to US\$282 million.¹ Even though the situation has slowly improved since, W&S companies are still recovering from the impact of the pandemic and should be supported by a stable legal, regulatory, and business environment.

W&S form only a small fraction of Vietnam's alcohol market, with spirits and wines making up 0.8% and 0.3% of total alcohol sales volume respectively, compared to an overwhelming 98.6% occupied by beer.² Despite its small market share in the beverages industry especially relative to beer, the international W&S industry makes an important contribution to Vietnam's economy. According to a recent study by Oxford Economics (2023), the sales and distribution of international W&S contributed US\$282 million to Vietnam's GDP in 2022, equivalent to 0.6% of total hospitality, retail, and wholesale GDP. It also supported a total of 65,600 jobs across the country and generated US\$253 million in tax revenues.³

The economic contribution of international W&S is further supported by a global premiumisation trend⁴ that has also emerged in Vietnam. Vietnam's increasingly prosperous population and the government's promotion of high-quality tourism have led to growing demands for premium W&S products from both resident consumers and foreign tourists. By catering for these demands, international W&S can unlock spending across a wider range of activities, which leads to local economic benefits including new local business opportunities, high-value jobs, higher profit margins, and tax receipts in the hospitality and retail industry.

A major and longstanding issue for Vietnam's W&S industry is the illicit alcohol trade, which poses material risks to Vietnamese society, especially consumer health. According to estimates by the WHO⁵, in 2019, 57% of all alcohol consumed in Vietnam was unrecorded⁶, meaning that tax contributions were made only on 43% of total sales⁷. To address this, the Government should modernise regulations to provide flexibility and innovation within the regulatory framework to recognise changes in industry practices and consumer expectations. In the alcohol sector, benefits from bringing Vietnam's system in line with most OECD countries will include more choices and better-quality products for consumers through a competitive market, online and offline, as well as present equitable opportunities for small businesses and entrepreneurs to compete. These policy changes will ensure a uniform approach across product categories, importers, and manufacturers, ultimately expediting market access for small enterprises and new market entrants contributing to maximizing the economic gains from the W&S industry, developing a growing ecosystem, boosting Vietnam's tourism and hospitality sectors, and fight more effectively against the illicit trade in alcohol.

1 International Wine and Spirits in ASEAN: The Economic Contribution of the International Wine and Spirits Value Chain in Thailand and Vietnam, July 2023, Oxford Economics ("W&S Oxford Study 2023"), page 17 and page 48.

2 W&S Oxford Study 2023, page 17.

3 W&S Oxford Study 2023, page 47.

4 'Premiumisation' describes the broad trend of consumers 'trading up' in their consumption choices and purchasing more premium products.

5 World Health Organization Global Health Observatory (WHO-GHO), 2022. Available at [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/total-\(recorded-unrecorded\)-alcohol-per-capita-\(15-\)-consumption](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/total-(recorded-unrecorded)-alcohol-per-capita-(15-)-consumption), last accessed on 6 November 2023.

6 'Unrecorded' alcohol refers to alcohol that is not accounted for in official statistics on alcohol taxation or sales in the country where it is consumed. This is because it is usually produced, distributed, and sold outside the formal channels under government control.

7 "Towards an ASEAN Community: Tackling Illicit Alcohol in Southeast Asia, 2023", EUABC, TRACIT, APISWA, AACs ("ASEAN Illicit Trade Report 2023"), page 13.

I. SPECIAL CONSUMPTION TAX

Relevant authorities: Ministry of Finance (MOF)

Issue description

Economic efficiency, equity, enforceability, and compliance are the general principles that guide taxation policy. Inconsistencies exist in the current alcohol taxation regime when viewed against these principles. For example, in 2016, the Special Consumption Tax (SCT) reform introduced three annual increases in the Ad Valorem (AV) tax rate. It also changed the tax base on imported products from the cost, insurance, and freight (CIF) price to the importers' selling price. This reform has had a significant impact on imported W&S and nullifies the benefits of EVFTA's commitments on tariff and tax reductions, which entail a tariff dismantling schedule for W&S over the course of seven years, and as such is supposed to develop trade.

The Government approved the 2023-2025 legislative agenda of National Assembly XV on 16 December 2021, which confirmed yet another revision of the Law on Special Consumption Tax⁸. Following a period of public consultations and appraisal by the Ministry of Justice (MOJ), subsequently, the Government on 28 July 2023 approved Resolution 115⁹, which, inter alia, requested that MOF submit a revised Law on Special Consumption Tax proposal after studying and developing a hybrid tax model for alcohol, in accordance with the Prime Minister's Tax Reform Strategy until 2030¹⁰ and in line with international tax reform trends. The MOF is due to submit a revised proposal for the SCT for inclusion in the 2024 Legislative Agenda. According to this roadmap, the National Assembly's 1st discussion will be held in May 2024 and approved in October 2024 at the earliest.

Potential gains/concerns for Vietnam

Vietnam has made a significant commitment to improve the business environment, enhance national competitiveness, and actively adhere to multilateral trade agreements, especially after COVID-19. We are concerned that any change in domestic regulations at this stage – including tax – will hinder these efforts and cause unexpected impacts on the country's economic development while also preventing enterprises from recovering from the pandemic.

Also, the EVFTA brings significant benefits to businesses, especially in terms of tariff reductions. Any increase of SCT on items imported from the EU causes concern about the realisation of the benefits of this agreement. In the spirit of the General Agreement on Tariffs and Trade (GATT), specifically the Most-Favoured-Nation (MFN) 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 domestic goods.

Stable and predictable tax policies are crucial for business competitiveness, as they underpin investment planning. However, Vietnam's Law on Special Consumption Tax has seen frequent revisions of five versions since 2003, impacting the political and economic landscape and eroding business confidence. Discussions often center around raising the AV tax on alcohol for health reasons, but the comprehensive evaluation of the social and economic impacts of these reforms is yet to be conducted. Notably, a substantial portion of liquor consumed remains unrecorded¹¹, and combined with higher SCT, this will further widen the price gap between legal and illicit products, encouraging illicit activities and jeopardizing consumer health, resulting in an estimated fiscal loss of US\$441 million in 2019¹².

Moreover, the current SCT AV model obstructs the premiumisation of the market, which is pivotal for economic growth, whereby consumers drink less but drink better. The government should explore policies that combat the illicit market and bridge tax disparities between legal and illicit products. This approach aligns with the trend toward higher-quality consumption, coinciding with rising incomes and the potential for sustainable tourism. It promises economic benefits and an enhancement of public health and safety.

8 Resolution No.16/NQ-CP dated 9 February on Thematic session on legislation drafting in January 2023.

9 Resolution 115/NQ-CP dated 28 July 2023 of the Government on thematic session on legislation drafting in July 2023 (Resolution 115).

10 Decision 508/QĐ-TTg dated 23 April 2022 of the Prime Minister's approval of tax reform strategy until 2030.

11 Page 13 "ASEAN Illicit Trade Report 2023."

12 Page 12 "ASEAN Illicit Trade Report 2023."

On 28 July 2023, we welcomed Resolution 115 as an opportunity for MOF to explore a shift to a more suitable tax system that brings it closer in line with international best practices. This is in line with recommendations in reports of the Central Institute for Economic Management (CIEM) on “An Overview of the Tax System for the Alcoholic Beverage Industry and Policy Recommendations” published in 2020 and the “Quantitative Assessment of the Impacts of Excise Tax on the Alcoholic Beverage Industry”¹³ report published in 2022.

The MOF should consider a new tax system based on pure alcohol content in beverages. This would ensure fairness among products and provide more stable and predictable budget revenues while also being simpler and less costly to administer. This approach increases consumer choice, decreases the amount of carry-in from overseas and direct personal shipment from abroad, and links price to alcohol content instead of value, incentivizing moderate consumption and recognizing that all alcohol affects the body the same way, regardless of the type or price of the product. The hybrid tax system is more complex, which may lead to high administrative costs. However, it can help achieve additional goals of preventing non-drinkers from starting to consume alcohol. A combined tax method could be considered in the transition towards a single volumetric tax rate for all alcoholic beverages, the ideal system for liquor taxation.

Recommendations

- No further changes to the SCT should be implemented until 2026, to allow the Government to consider and develop evidence-based taxation policies to meet its objectives on public health and stable income for the State budget properly and comprehensively.
- Taking the consideration how to reform SCT, the hybrid methodology (a combined AV and specific tax model) should be studied for the W&S industry to meet these objectives. This is also in line with the Government’s Tax Reform Strategy until 2030 and Resolution 115.
- EuroCham Wine & Spirits Sector Committee stands ready to support these efforts, including a study of the feasibility of the SCT hybrid model in Vietnam, and sharing experiences and best practices from other markets to develop this model for the W&S industry in Vietnam. This would help to set a reasonable and suitable tax methodology with the country’s living standards and to achieve the objectives of tax revenues, business development, and public health protection.
- The MOF, in conjunction with the relevant agencies, should study measures that would address the considerable problem of unrecorded alcohol in Vietnam such as through stronger coordination and law enforcement, protecting consumer safety, and building consumer awareness, with support from the W&S industry. The reduction in unrecorded alcohol will reduce the loss in tax collection from the abovementioned 57% of all alcohol consumed in Vietnam.

II. ADVERTISING AND PROMOTION

Relevant authorities: Ministry of Industry and Trade (MOIT), Ministry of Culture, Sports, and Tourism (MOCST), Ministry of Health (MOH)

Issue description

Inconsistency between the regulations

Vietnam’s approach to restricting the advertising and promotion of W&S products has evolved over nearly 20 years. Advertising has been viewed as a cultural influence and, as such, consequently falling within the purview of the MOCST. Meanwhile, promotion, as a commercial activity, sits under MOIT. While MOH is an extremely important influencer due to its mandate on health protection, it does not have the official jurisdiction to enforce or drive the revision of existing regulations on the advertising and promotion of W&S products.

¹³ “Research Report: Quantitative Assessment of Impacts of Excise Tax on the Alcoholic Beverage Industry”, *Central Institute for Economic Management (CIEM)*, 10 October 2023, Available at: <<http://ciem.org.vn/Content/files/Bao%20cao%20danh%20gia%20dinh%20luong%20tac%20dong%20cua%20thue%20tieu%20thu%20dac%20biet%20doi%20voi%20do%20uong%20co%20con.pdf>>, last accessed on 10 October 2023.

Restrictions on advertising and promoting W&S were originally dispersed across various legal documents, notably the implementing regulations of the Ordinance on Advertising¹⁴, the Law on Commerce¹⁵, and the Law on Advertising¹⁶.

- A ban was introduced on advertising products over 30 percent ABV in the Law on Commerce, which was tightened in 2012 with a ban for products over 15 percent ABV by the Law on Advertising.
- Promotional rules have been comparatively consistent, having been banned by the Law on Commerce.

This was not a conflict until the Law on Prevention of Beer and Spirits' Harmful Effects was enacted in 2019¹⁷. This synthesised all regulatory measures to address the harmful abuse of alcohol, including advertising and promotion rules. In particular, the Law on Prevention of Beer and Spirits' Harmful Effects only bans the promotion of alcoholic beverages above 15% ABV (Alcohol by volume). Nevertheless, in practice, MOIT still upholds the ban on the promotion of all W&S products, referencing the restrictions in the Law on Commerce on banning the promotion of all W&S. At the same time, the Law on Prevention of Beer and Spirits' Harmful Effects introduces additional restrictions on time, location, and content of advertisements for the W&S products below 5.5% ABV while the Law on Advertising does not stipulate such restrictions on advertisement contents for W&S products under 15% ABV.

Notably, these inconsistencies between the regulations in the Law on Commerce, Law on Advertising, and Law on Prevention of Beer and Spirits' Harmful Effects have given rise to regulatory confusion and curtailed legitimate business activities by the W&S industry in practice. Also, the W&S industry is a highly regulated sector in Vietnam which has historically been subjected to constant regulatory changes in the areas of licensing and operational requirements, customs, and tax policies. Taken together, all these measures adversely impact the industry's ability to contribute to Vietnam's tax base and socio-economic development.

Issues surrounding the restrictions on the promotion of W&S products:

The problem with W&S promotion restriction stems from a conflicting provision in the Law on Commerce. According to Article 100, the following promotional activities are banned:

- Promotion of commercially banned goods and services; commercially restricted goods and services; goods not yet allowed for circulation; services not yet allowed to be provided (Article 100.1).
- Promotion or use of tobacco or W&S with an alcohol content of 30% ABV or more for promotion in any form (Article 100.4).

Then, in 2006, Decree 59¹⁸ guiding the Law on Commerce was issued with the list of commercially restricted goods, which included all W&S products. Therefore, given Article 100.1, now all W&S products are banned from promotion, making Article 100.4 redundant.

The Law on Prevention of Beer and Spirits' Harmful Effects amended the 30% ABV threshold in Clause 100.4 of the Law on Commerce to 15% ABV. However, the Law on Commerce's ban on the promotion of commercially restricted goods remains.

As the MOCST is currently working on a draft dossier to propose amendments and supplements to the Law on Advertising, there will be key policy changes on advertisement content and duration, as well as the responsibilities of entities that deliver advertisements. The amendment of this law, however, should ensure not only consistency across different regulatory frameworks on advertisement activities but also allow businesses to contribute to economic development while protecting consumer health.

14 Ordinance 39/2021/PL-U8TVQH10 dated 16 November 2001 of the Standing Committee of the National Assembly on Advertising (Ordinance on Advertising).

15 Law 36/2005/QH11 dated 14 June 2005 of the National Assembly on Commerce (Law on Commerce).

16 Law 16/2012/QH13 dated 21 June 2012 of the National Assembly on Advertising (Law on Advertising).

17 Law 44/2019/QH14 dated 14 June 2019 of the National Assembly on prevention and control of harmful effects of alcoholic beverages (Law on Prevention of Beer and Spirits' Harmful Effects).

18 Decree 59/2006/ND-CP dated 12 June 2006 of Ministry of Trade detailing the Commercial Law on goods and services, banned from business, subject to restrictions and condition (Decree 59).

Such an approach to law amendments has proven to be feasible and successful, as evidenced by the case with e-commerce regulations on alcoholic beverages. These regulations permit businesses to engage in the digital commerce of alcohol while imposing strict measures to combat alcohol abuse and restrict access to individuals under the legal drinking age (18 years old) in Vietnam. As legitimate producers and distributors in the wine and spirits industry, we actively collaborate with the Government and partners to facilitate responsible alcohol e-commercials. In November 2022, we launched an online training tool aimed at educating all alcohol e-commerce stakeholders on pertinent regulations, fostering a responsible digital commerce environment that encourages moderation, prevents underage sales, and addresses alcohol-related harm.

Potential gains/concerns for Vietnam

The beer, wine, and spirits markets are strictly regulated not only in Vietnam but globally. The increasingly strict advertising regulations on W&S in Vietnam, through the reduction of the ABV limit and the enactment of the Law on Prevention of Beer and Spirits' Harmful Effects, have historically been based on health concerns and social issues stemming from alcohol abuse. Acknowledging these concerns and utilizing the effectiveness of a 'whole-of-society' approach¹⁹, our industry recognises that we have a critical role to play in helping to reduce the harmful use of alcohol and changing harmful consumption in Vietnam. We are proud to have partnered with Vietnamese authorities in harm-reduction and awareness-raising programs aimed at preventing alcohol abuse and promoting responsible drinking, as well as strengthening enforcement against drink-driving. In 2022, the Vietnam Association for Responsible Drinking (VARD) and the Asia-Pacific Spirits and Wines Alliance (APISWA) successfully launched the "Power of No" campaign. This is a public awareness campaign targeting young adults across Southeast Asia that aims to save lives, change the culture around drink-driving, and normalise responsible drinking for young people of legal drinking age. Done in partnership with the Automobile Association of Vietnam (AAV) and the Vietnamese Motorsports Association LLC, the campaign has reached close to nine million young adults in Vietnam since it was launched in 2022. We will continue this campaign in 2023 onwards.

Both MOCST and MOIT are conducting reviews on the revision of the Law on Commerce and Law on Advertising respectively, which are timely and welcome. In May 2023, the MOCST invited stakeholders to submit comments on the Law on Advertising, which they are in the process of amending. At first sight, the definition of "advertisement" and "public" in the Law on Advertising should be reconsidered so as not to mix up the product advertisement with the activities of product introduction and brand development in the course of trade promotion which are the backbone of any business and are allowed by the Law on Commerce. Also, the amendment to the Law on Advertisement should take into account the consideration of cross-border advertisement to ensure consistency across all advertisement-related rules.

Recommendations

- Ensure consistency in the revisions of provisions on advertising and promotion of W&S products in the Law on Advertising and Law on Commerce, respectively, with the Law on Prevention of Beer and Spirits' Harmful Effects so as not to introduce further regulatory burdens on the W&S industry.
- Remove the ban on the promotion of all W&S products in the Law on Commerce. These products should instead be subject to the relevant advertising restrictions under the Law on Prevention of Beer and Spirits' Harmful Effects instead of Law on Commerce i.e., promotion of alcoholic beverages below 15 percent ABV should be permitted.
- Review the definition of "advertisement" in the Law on Advertisement to encompass activities conducted by W&S companies, including business and product introduction. This expansion will help establish a clear legal framework for these activities while also promoting the responsible consumption of wine and spirits.
- To promote awareness of responsible drinking and enhance social responsibility, it is recommended to adopt a balanced and inclusive approach to regulating alcoholic products, rather than rely only on ABV. Advertising restrictions should be made on the basis of where and how the advertisement is placed to give more information to consumers on which products are suitable and how alcohol should be consumed. This approach aims to provide consumers with more comprehensive information about suitable products and

¹⁹ 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.

responsible alcohol consumption. It underscores the importance of public health and awareness, promoting responsible drinking practices, irrespective of the ABV of the beverage.

- Finally, such a complete ban on advertisement of W&S products above 15% ABV further leads to an increase in unrecorded alcohol products while threatening the operations of legitimate W&S businesses because consumers are not aware of authentic W&S products and licensed sales outlets. The absolute ban should be revised to the specific ban on which advertisement channel and should be distinguished from mentoring activities for reducing alcohol abuse and increasing the awareness of responsible drinking.

ACKNOWLEDGEMENTS

EuroCham Wines and Spirits Sector Committee

CHAPTER 20 **MOBILITY: AUTOMOTIVE**

I. HOMOLOGATION REQUIREMENTS FOR AUTOMOTIVE BUSINESSES

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 (MIC), General Department of Customs (GDC)

On 17 October 2017, the Government introduced Decree 116¹, setting guidelines for the manufacturing, assembly, import, trade-in warranty and maintenance for motor vehicles. Following this, the Ministry of Transportation (MOT) later launched Circular 03 on 10 January 2018, which came into effect on 1 March 2018. By 2020, Decree 17² was issued, which simplified procedures by eliminating the need for the vehicle type approval (VTA) certificate. It further introduced a model-based homologation system, valid for up to 36 months for CBU vehicles, aligning with the process for CKD products.

1. Product composition declaration for customs clearance

Issue description

The General Department of Customs (GDC) in Hanoi issued Official Letter 7203, necessitating a detailed customs declaration for automotive imports.³ Automotive importers are now required to offer comprehensive information about the products, covering aspects like their nature, quantities, types, structure, composition, and properties, including spare parts made from mixed materials, as well as power measurements in watts per kilowatt.

Furthermore, for CBU imports, any discrepancy between the parts reference number on the vehicle declaration and previous document prompts the Vietnam Register (VR) to mandate a new physical homologation for the vehicles. This can only be bypassed if the importer provides certificates for the disputed parts, a process that often leads to delays and additional costs.

Starting from 15 July 2023, automotive parts, including radio transmitters and transceivers operating in the 9 kHz to 400 kHz frequency band, information technology equipment, radio transmitters and transceivers operating in the 9 kHz to 400 GHz frequency range with an effective radiated power of 60 mW or higher, as well as short-range radio transmitters and transceivers, are now required to undergo testing and homologation.⁴

Potential gains/concerns for Vietnam

Importing automotive spare parts is intricate due to the diverse materials involved. Often, the granular composition data mandated by Official Letter 7203 is not readily accessible. Implementing this requirement immediately poses significant challenge for automotive parts manufacturers and importers, especially when given no time for preparation or coordination. Some parts, due to their complex technology, might never have requested information available. This mandate has been causing unnecessary customs clearance delays, leading to heightened expenses for both automotive companies and their customers. Moreover, such in-depth data does not seem to add value and complicate business processes, which contradicts the Vietnamese Government's aim to simplify business operations.

Documents from the United Nations Economic Commission for Europe (UNECE) for EU products are acknowledged under the EVFTA. Thus, we recommend that the MOT accept UNECE documentation. Doing so would effectively

1 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 (Decree 116).

2 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 (Decree 17).

3 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 (Official Letter 7203).

4 Circular 04/2023/TT-BTTTT dated 31 May 2023 providing for the list of potentially unsafe commodities under the management of the Ministry of Information and Communications (Circular 04).

alleviate a major bottleneck faced by automotive spare parts importers, ensuring smooth operations for maintenance, warranty, and technical recalls. If immediate acceptance is not feasible, we propose that the General Department of Customs and other customs authorities be granted a flexible implementation period of a minimum of three years. This would give manufacturers adequate time to gather and document the requisite product data.

For imported CBU vehicles, it is essential to note that parts often undergo change throughout the vehicle's lifespan. Certificates are primarily sought and provided for parts that require "compulsory-component approval".

Recommendations

We would like to make the following recommendations:

- For vehicles that have previously undergone homologation and are produced in factories holding a valid Certificate of Production issued by the Vietnam Register, we recommend granting them immediate homologation without the need for additional testing.
- For CBU imports, we suggest that certificates should only be presented for parts deemed as "compulsory-component approval" parts, especially when the parts reference number on the vehicle declaration differs from the previous document.
- Recognise and authorise UNECE documents pertaining to products from the EU. This should be applicable to the generic model range Vehicle Type Approval for CBUs, similar to the practice across EU nations, rather than being specific to model or engine for Vietnam.
- The European Type approval operates on three distinct "layers":
 1. Component type approval (relevant for components like glasses, mirrors, horns, etc.)
 2. System type approval (referring to overarching "Systems" such as emissions, brakes, crash systems)
 3. Whole vehicle type approval (an aggregation of both Components and System type approvals)

Under the EVFTA, the comprehensive vehicle type approval from Europe is recognised, encompassing both component and system aspects (as referenced in Annex 2-B Para 3B of the FTA). Hence, individual Component and System type approvals should be deemed unnecessary.

- Amend Decree 60 to implement Annex 2-B "Motor vehicles and motor vehicles parts and equipment" by October 2023 as per the guidelines of the EVFTA.
- Provide clear testing and homologation procedures by Vietnam Register. Additionally, explicit guidelines for self-homologation, inclusive of provision from Circular 12,⁵ should be provided.

2. Recognition for safety glass in implementation of EVFTA

Issue description

As per Decree 60⁶, mutual recognition of certification for parts and vehicles imported from the EU will come into effect on 1 October 2023 and 1 August 2025, respectively. Presently, imported vehicle parts such as safety glass and mirror, requiring homologation in Vietnam, are classified under HS Chapter 70 and Chapter 87 as per Circular 31⁷. Specifically, rear mirrors and safety glasses that lack frames, heating devices or any other attached electrical or electronic devices fall under Chapter 70. This implies that the distinguishing factor between Chapter 70 and Chapter 87 for automobile rear mirror and the safety glass is merely "with" or "without" frames or attached devices.

The EVFTA's mutual recognition provisions for entire vehicles and parts are outlined in Annex 2B of the FTA, covering products from either party classified under Chapters 40, 84, 85, 87 and 94 of HS 2012. These provisions apply as described in the UNECE Regulations without restrictive criteria for attached device to these safety parts.

Potential gains/concerns for Vietnam

Annex 2-B details the commitments of both parties regarding market access, including mutual recognition of

5 Circular 12/2022/TT-BGTVT dated 30 June 2022 of the Ministry of Transport prescribing list of potentially unsafe commodities under the management of Ministry of Transport (Circular 12)

6 Decree 60/2023/ND-CP dated 16 August 2023 of the Government on technical safety quality and environmental protection inspection and certificate of conformity from inspection for imported motor vehicles and imported parts and equipment of motor vehicles under the international agreements to which Vietnam is a signatory (Decree 60)

7 Circular 31/2022/TT-BTC dated 8 June 2022 of the Ministry of Finance on promulgation of Vietnam's nomenclature of exports and imports (Circular 31)

motor vehicles and parts certifications. Based on shared principles and objectives, both parties aim to eliminate and prevent non-tariff trade barriers and foster certification recognition. Specifically, Vietnam will recognise valid EU all-vehicle certification.

Rear mirrors and safety glass (those without frames, attached devices) classified under Chapter 70 are vehicle safety components certified following ECE standards. These standards also apply to other safety components, including safety glass/rear mirror, tires, lamps, rims, and fuel tanks under Chapter 87.

Parts under Chapter 70 are explicitly designed for specific automobile types. As such, Chapter 70's mirror components and safety glass should be categorised alongside whole vehicles and other Chapter 87 components. Notably, Vietnam's automotive safety parts and components certification standards reference the European ECE Standard.

Recommendations

In line with the EVFTA's implementation, we would like to recommend the relevant ministries consider recognising ECE certificates for imported frameless Safety Glass and Mirror components (those without heating equipment or other electrical or electronic appliances) classified under Chapter 70, similar to the recognition provided for safety glass and other components under Chapter 87.

II. GREEN GROWTH ACTION PLAN

Relevant authorities: Ministry of Transport (MOT), Ministry of Finance (MOF), Ministry of Science and Technology (MOST), Ministry of Natural Resources and Environment (MONRE).

The Prime Minister's Decision 876⁸ mandates the Ministry of Transport (MOT) to spearhead e-mobility and enhance energy efficiency in transportation. Meanwhile, the Ministry of Finance (MOF) and the Ministry of Planning and Investment (MPI) are tasked with offering incentives for investment, production, and consumption of green energy electric vehicles and vehicles and infrastructure. The Ministry of Industry and Trade (MOIT) aims to halt the production and import of fossil fuel-dependent vehicles by 2040, and the Ministry of Construction (MOC) is collaborating with MOIT on developing charging station networks.

Issue description

In August 2023, MOT presented a proposal to Deputy Prime Minister Tran Hong Ha emphasizing the transition to electric vehicles (EVs). They recommended incentives for Battery Electric Vehicles (BEV), Fuel Cell Electric Vehicles (FCEVs) which are powered by hydrogen, and Solar EVs (SEV). MOT highlighted that the current incentive policies predominantly cater to battery EVs (BEVs).⁹

Transitioning from internal combustion engine (ICE)-equipped vehicles to pure EVs promotes eco-friendly urban mobility, including electric city buses, passenger cars, and trucks. Yet, the cost of EVs remains twice as high as compared to ICE vehicles of a similar model due to expensive raw materials and production processes. Today, electric car batteries cost US\$176 per kilowatt hour. However, that will drop to US\$87 by 2025.¹⁰ However, by 2025, EVs will account for 25 per cent of global automobile production, and by 2026, EVs prices are anticipated to be on par with traditional vehicles.

Vietnam's current standards of technical regulations (QCVN) presently encompass only five dedicated to electric vehicles: QCVN 68/2013/BGTVT and Amendment 1:2015 National technical regulation on electric bicycles; QCVN 75: 2019/BGTVT – National technical regulation on motors used for electric bicycles; QCVN 76: 2019/BGTVT – National technical regulation on batteries used for electric bicycles; QCVN 90: 2019/BGTVT – National Technical Regulation on Engines used for electric motorcycles and mopeds; QCVN 91: 2019/BGTVT – National technical regulation on batteries used for electric motorcycles and mopeds.¹¹

⁸ Decision 876/2022/QĐ-TTg dated 22 July 2022 of the Prime Minister approving action plan for transition to green energy and migration of carbon dioxide and methane emission from transportation.

⁹ "Transport Ministry proposes incentives for EVs producers, users", Vietnamplus, 02 August 2023. Available at: <https://en.vietnamplus.vn/transport-ministry-proposes-incentives-for-evs-producers-users/265490.vnp>, last accessed 26 September 2023.

¹⁰ Electric Vehicle Outlook 2019, Bloomberg New Energy Finance, 25 July 2022.

¹¹ "There are 52 national standards for electric vehicles and charging stations", Tap Chi Tai Chinh, 15 March 2023.

Potential gains/concerns for Vietnam

EVs, including Plug-in Hybrid Vehicles (PHEVs), contribute to CO₂ emission reduction. PHEVs serve as transitional technology, particularly where charging infrastructure is still underdeveloped. The advantage of this model is its very low fuel consumption (a 70% reduction compared to ICE vehicles). In fact, the latest generation of PHEVs can operate mostly as pure battery electric vehicles (BEVs) since their electric range can exceed 100km. The use of ICE is only necessary during long journeys. Additionally, PHEVs can facilitate early “economy of scale” for the investment in public charging stations and this follows the strategy used by most countries who have successfully built public charging so far.

The introduction of EVs necessitates a comprehensive investment in a complete chain of suppliers and associated services from power supply and distribution, charging stations and interfaces, and batteries, including charging, recycling, and disposal.

While the MOF has added to Decree 125 vehicles running on electric vehicles, hybrids, fully biofuel-powered vehicles, and vehicles powered by compressed natural gas (CNG) to the preferential import program for automotive components, current import taxes present challenges for EV imports and production in Vietnam. In Vietnam, EV imports and manufacturing are not feasible due to a 70 per cent import tax on EVs and hybrids, or an 18 to 20 per cent import tax on CKD kits, plus a 3 (EV) and 70% of respective ICE (35- 150%) per cent (hybrid) SCT. Furthermore, we should consider the objective of Thailand to become Asia’s EV manufacturing hub – only achievable if Thailand’s automakers export, including to Vietnam.¹²

Aiming at CO₂ emission reduction target as Vietnam committed in COP 21 and COP 26, Decision 876¹³ assigns MOT to build fuel consumption (FC) limit regulation for newly imported and assembled PC. The FC limit regulation is an estimated measure (No. E17) of the Technical Report of Vietnam’s Nationally Determined Contribution updated as of 2020 and also supporting to the measure of transition to EV. However, it is the fact that most ICE vehicle sold in Vietnam from 2016 - 2020 fail to meet the Minimum Energy Performance Standards (MEPS) method.

Vietnam needs to formulate new standards and technical regulations (QCVN) that cater to BEVs and their associated charging networks, aligning with international standards.

Recommendations

We would like to make the following recommendations:

- For the transition from ICE vehicles to EV, we propose to add PHEV to the EVs list for support policies similar those for BEV (import duty, special consumption tax, ownership fee), to refrain from applying import taxes on EV and hybrid CBU cars imported as for facilitation of consumption and market growth for the beginning of transition to EV, and CKD kits, raw materials, and production equipment to be imported for EV manufacturing and assembly. It is highly recommended to support plug-in hybrid electric vehicles (PHEV) in the short term, particularly while establishing a national public charging network.
- MOT confirmed to make available the national technical regulation for EV and EV charging stations including plugs, connectors (chargers); wireless charger; electric wires and cables; personal protective equipment (residual current devices); electricity metering equipment to support charging; electromagnetic compatibility; road vehicles - EV electric motors; road vehicles – EV power transmission systems. Technical standard of charging station is very important for operation of EVs. As EU is pioneering market in EV development, we will give our feedback during the open consultation to cooperate with Vietnam authorities by sharing respective information for building up-to-date technical regulations in Vietnam related to charging infrastructure, EVs and its components.
- Provide EV technology transfer incentives that go beyond the current support in prevailing regulations to customers, CBU-importers, and CKD manufacturers at national and provincial levels.
- Clarify how companies will invoice power charging to EV users at public and private charging stations at, for

¹² “Thailand’s 30@30 EV Production Policy Hinges on Export-Led Growth 03/03/2021 Fitch Solutions,” Fitch Solutions, dated 03 March 2021. Available at: <https://www.fitchsolutions.com/autos/thailands-3030-ev-production-policy-hinges-export-led-growth-03-03-2021>, last accessed 04 October 2023.

¹³ Decision 876 /2022/QĐ-Ttg dated 22 July 2022 of the Prime Minister approving the action program for transition to green energy and mitigation of carbon dioxide and methane emission from transportation (Decision 876)

example, car dealerships with Vietnam Electricity (EVN) charging stations.

- Provide fiscal incentives to early private investors in charging station networks that offer public high-power fast DC charging in order to ensure access, coverage, interoperability, and a sizeable market
- Offer EV owners specific benefits decided at city-level such as free tolls, dedicated and VIP parking, open access to the city centre, etc.
- For FC limit measures, we support the government's direction in fulfilling Vietnam's commitments at COP21 and COP26. We recommended the FC limit measure should be applied with CAFE (weight base -kg) method like in EU and other parts of the world. The suggested method could enhance more flexibility for the automakers to have smooth business plan while assuring the fuel efficiency required. We would highly appreciate participating in related discussions about FC limit regulations in Vietnam.

III. WASTE DISPOSAL AND RECYCLING

This session of Mobility is indicated in the Chapter "EXTENDED PRODUCER RESPONSIBILITY" of this book.

IV. IMPORTATION OF RE-MANUFACTURED PARTS

Relevant authorities: Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry of Science and Technology (MOST), Ministry of Transport (MOT).

Issue description

The EVFTA was enacted on 1 August 2020. As per the FTA's Article 2.6 concerning remanufactured goods stipulates, it mandates that "The Parties shall accord to remanufactured goods the same treatment as that accorded to new like goods. A Party may require specific labelling of remanufactured goods in order to prevent deception of consumers. Each Party shall implement this Article within a transitional period of no longer than three years from the date of entry into force of this Agreement". Implementation of importation of remanufactured goods into Vietnam under CPTPP starts effectiveness from 1st January 2024 according to Decree 77.¹⁴

Potential gains/concerns for Vietnam

Re-manufacturing is eco-friendly as it conserves energy, reduces CO2 emissions, and saves resources. It also offers advantages to Vietnamese customers and consumers. Based on the EVFTA, the provision regarding the import of remanufactured parts should have been operational from 1 August 2023.

Recommendations

- In line with the signed FTA, the Government should issue under EVFTA the same decision as Decree 77 for CPTPP regulation allowing the import of re-manufactured parts with the same treatment as that provided to 'like new' goods with specific labelling. Allow application for refurbishment license and code issued by the MOIT valid for the same duration as Decree 77 five years from the date of issue, and the refurbishment import license using similar form as Appendix 10 from Decree 77. We express our keen interest in joining dialogues and collaborating with the Government in formulating this regulation.

ACKNOWLEDGMENTS

EuroCham Mobility Sector Committee

¹⁴ Decree 77/2023/ND-CP dated 02 November 2023 of the Government on Management of importation of remanufactured goods under comprehensive and progressive agreement for trans-Pacific partnership (Decree 77).

CHAPTER 21 MOBILITY: MOTORCYCLES

OVERVIEW

Vietnam ranks the second-largest motorbike market in ASEAN, following Indonesia, and stands fourth worldwide behind India, China, Indonesia, and Pakistan.¹ Over the past few decades, the motorcycle industry in Vietnam has experienced rapid growth, even with the setbacks brought by the COVID-19 global pandemic^{2 3}. In 2022, the two-wheeler market in Vietnam saw a resurgence, growing by 20.5% from previous year, with sales surpassing 3 million units⁴.

Given this context, the motorcycle industry presents significant potential, with anticipated growth in exports, revenue, and consumption. This potential can be realised with a well-defined and transparent development strategy from the Government. Industry stakeholders have also been active in societal contributions, especially in enhancing road safety in Vietnam⁵ and promoting environmental friendliness. However, the sector is not without its challenges. In the sections that follow, we delve into these critical concerns and provide our recommendations to tackle each one.

I. MOTORCYCLE LIMITATION IN BIG CITIES BY 2030 AND ICE PHASE OUT TO SHIFT TO ELECTRIC VEHICLES BY 2050

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 (provincial DOTs)

Issue description

The Government has proposed a limitation on private vehicles, including motorcycles in five big cities in Vietnam and a gradual transition from internal combustion engines using fossil fuels (ICE) to Electric Vehicles (EV) between 2030 to 2050. This initiative aligns with the commitments made at United Nations Climate Change Conference (COP) 26 for CO₂ neutrality. However, motorcycle remain a vital mode of transportation for the majority of Vietnamese people, not only because of their economic considerations but also due to longstanding habits and the country's road conditions.

Potential gains/concerns for Vietnam

1. Limiting private vehicles, particularly motorcycles, to access into central areas of big cities

We commend the Government's proactive steps to address traffic congestion and pollution in Vietnam's five major cities: Ha Noi, Ho Chi Minh City, Da Nang, Hai Phong, and Can Tho. However, the Transportation Development

1 "Vietnam motorbike consumption among the top in ASEAN", Vietnamnet, 18 December 2021. Available at: <https://vinamr.com.vn/vietnam-motorbike-consumption-among-the-top-in-asean/>, last accessed on 26 July 2022.

2 "Vietnam emerges as a major motorcycle market and manufacturing hub", Vietnamnet Global, 04 June 2023. Available at <https://vietnamnet.vn/en/vietnam-emerges-as-a-major-motorcycle-market-and-manufacturing-hub-2150832.html>, last accessed on 07 November 2023.

33 According to a report released by the General Statistics Office, in the past month of June, the country's motorcycle production reached an estimated 283,900 units, a slight decrease of 2.6% compared to May (with 291,600 units), but still a significant increase of 21.8% compared to the same period in 2022. This marks the third consecutive month in which domestic motorcycle production has exceeded 280,000 units per month. Considering the second quarter of the year, motorcycle output in Vietnam amounted to 856,800 units, an increase of 11.2% compared to the first quarter of 2023 (with 770,700 units) and a 7.6% increase compared to the same period in 2022. Cumulatively, the total number of newly manufactured motorcycles in the first half of 2023 is estimated to reach 1,675,500 units, equivalent to 96.5% of the previous year's first half (approximately 1.74 million units)

4 "VAMM announces its sales of 4th quarter of 2022 and whole year 2022 in Vietnam", VAMM, 15 January 2023. Available at: <https://vamm.vn/wp-content/uploads/2023/01/VAMM-Doanh-so-ban-hang-Q4-va-ca-nam-2022.pdf> (to be updated), last accessed on 07 November 2023.

5 "Motorcycle manufacturers' association and traffic safety committee boost co-operation", Viet Nam News, 22 April 2019. Available at: <https://vietnam-news.vn/society/519007/motorcycle-manufacturers-association-and-traffic-safety-committee-boost-co-operation.html>, last accessed on 26 July 2022.

Strategy Institute (TDSI) suggests that public transportation should cater to 50% - 60% of transportation needs to reduce motorcycle reliance. Presently, Hanoi's public transportation meets only 18.5% of the demand, with a brief metro rail (~13km) and 153 bus routes. Similarly, Ho Chi Minh City's system covers 18.5% demand, offering 132 routes serviced by 2,332 vehicles⁶. The urban layout, characterised by narrow roads and alleys, makes public transportation stops and parking areas less accessible. Given the current state of public transport and infrastructure challenges, personal mobility, especially motorcycles, will remain essential and affordable for Vietnamese citizens. A potential limitation could also adversely impact the motorcycle manufacturing industry, which has heavily invested in Vietnam over the past decade, benefiting both domestic and global markets. This industry has significantly contributed to Vietnam economic and social development through taxes and job generation. Instead of an outright limitation on motorcycles, we suggest the Government explore alternative motorcycle management strategies, coupled with the enhancement of public transportation. Long-term solutions should encompass urban planning, technology integration, smart traffic systems, and education to instil traffic awareness and appropriate behaviour among the populace.

2. Phasing out ICE to shift to EV

The Government is contemplating a complete transition from ICE to EV. We believe that this transition should not be abrupt but instead be well-thought-out, extending beyond just electric energy (under EV) to other sustainable, green and clean energy alternatives. Several crucial factors need consideration in this EV shift: the preparedness charging infrastructure, customer's acceptance of new transport modes, manufacturing costs and quality standards for EVs, greenhouse gas emissions from EV production and energy creation, and battery disposal.

Given these factors, a complete move from ICE to EV demands careful consideration. Alternative green energies, like biofuel and/or electro fuels (e-fuels)⁷, may present a solution to CO₂ neutrality. Beyond biofuel and e-fuel, tightening emission standard for new motorcycles using EURO4 and regulating emissions from motorcycles in use are possible transitional solutions.

Recommendations

Before advancing any plans to limit motorcycles accessing to central areas of big cities and/or phase out ICE, we urge the Government to:

- Acknowledge the importance of motorcycles in daily life, considering concerns about public transportation readiness, the efficiency and eco-friendliness of motorcycle, and the potential lifestyle impact of motorcycle restriction;
- Address pollution by emphasizing vehicles quality over sheer quantity;
- Emulate best practices from nations that have successfully integrated advanced public transport and traffic infrastructure with motorcycle use to mitigate congestion and pollution;⁸
- Encourage MOIT to expand biofuel usage, starting from E10, and to thoroughly explore e-fuel for future implementation. Alongside renewable electric energy, biofuel and/or e-fuel should be recognized as green and clean energy sources;
- Promote an educational campaign on ethanol to highlight the benefits of using fuel with lower ethanol content; and
- Consider the adoption and promotion of stricter emission standards for new motorcycles, such as Euro 4, Euro 5. An approach to cease circulating older motorcycles which do not meet gas emission standards and the MOT's proposed roadmap for EURO 4 implemented by 2025 could effectively diminish air pollution and CO₂ emissions. Additionally, establish regular testing procedures for gas emissions from used motorcycles.

6 "Ha Noi dung hoat dong cua xe may tai noi do vao nam 2030 co kha thi?" ("It is feasible for Hanoi to stop motorbike operations in the inner city by 2030?"), Bao Giao thong. Available at: <https://www.baogiaothong.vn/ha-noi-dung-hoat-dong-cua-xe-may-tai-noi-do-vao-nam-2030-co-kha-thi-d594437.html>, last accessed 03 October 2023.

7 According to <https://en.wikipedia.org/wiki/Electrofuel>, e-fuel is a class of synthetic fuels, are a type of drop-in replacement fuel. They are manufactured using captured carbon dioxide or carbon monoxide, together with hydrogen obtained from sustainable electricity sources such as wind, solar and nuclear power.

8 "ASIA'S FUTURE CITIES: Will motorcycles ever be seen on Yangon's streets again?", CNA. Available at: <https://www.channelnewsasia.com/asia/asias-future-cities-will-motorcycles-ever-be-seen-yangons-streets-again-1023151>, last accessed on 1 August 2022.

II. TAX AND CUSTOMS ISSUES

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

SPECIAL CONSUMPTION TAX

Issue description

Under the current Law on Special Consumption Tax (SCT Law)⁹, motorcycles with a capacity of over 125cc are subjected to a 20% SCT. Nonetheless, as Vietnam's economic and social landscapes have evolved, motorcycles, even those over 125cc, are no longer viewed as luxury items. Instead, they are seen as common private transportation means. Imposing an additional 20% SCT on consumers seems inappropriate given this context.

Potential gains/concerns for Vietnam

The Law on Special Consumption Tax's enforcement adversely affects the production of local motorcycles exceeding 125cc. It discourages manufacturers from investing in and advancing this specific business segment with modern and advanced technologies. Consequently, this hinders the potential growth and development of this industry. Moreover, many Vietnamese consumers are deterred from accessing advanced over 125cc scooters. While these are not luxury items, they do offer enhanced technology for the benefit of the user.

Recommendations

- We urge entities like the National Assembly, Ministry of Finance, Ministry of Planning and Investment to re-evaluate this matter during the revision or introduction of a new law on special consumption tax. It would be beneficial to exclude motorcycles over 125cc from the law on special consumption tax.

IMPORT TAX EXEMPTION LICENSE (ITEL)

Issue description

At present, entities importing machines and equipment (M&E) intended as fixed assets for manufacturing both excise taxable and non-excise taxable motorcycles face rejections for their ITEL requests with custom authorities. This occurs even when the majority of the imported M&E are designated for non-excise taxable products.

Potential gains/concerns for Vietnam

Such a stance does not paint Vietnam's investment environment in a positive light for significant projects. It appears as if the motorcycle industry is being unfairly targeted. In contrast, other excise taxable industries like cars, aircrafts, and yachts receive full duty exemptions on their M&E imports.

Recommendation

We suggest that the Ministry of Finance and the General Department of Customs:

- Extend the regulations applied to cars, aircrafts, and yachts, granting duty exemptions for all M&Es imported for manufacturing within the motorcycle sector;
- Pending the implementation of the above recommendation, consider adopting a proportional approach for M&Es imported for the manufacturing of both non-excise taxable and excise taxable products (i.e., imposing duties in proportion to the expected production of excise taxable goods).

⁹ Law 27/2008/QH12 dated 14 November 2008 of the National Assembly on Special Consumption Tax (Law on Special Consumption Tax)

OTHER CUSTOM ISSUES

Issue description

Manufacturing enterprises that import duty-exempt materials and components encounter several customs challenges, such as:

- The absence of a system allowing manufacturers to voluntarily declare and remit taxes for discrepancies in inventory counts of duty-exempt materials/components they spot themselves.
- Ambiguities in the HS classification rules for certain items, leading to confusion for both businesses and customs officials.
- The absence of clear guidelines for re-importing exported goods (A31), particularly in cases of substandard parts/components of export products/vehicles (E62).

Potential gains/concerns for Vietnam

Without a mechanism for voluntary disclosure of inventory discrepancies for duty-exempt goods, businesses are left waiting for an official audit or inspection to settle any tax issues. This process can span several years once the discrepancies are pinpointed.

According to the Law on Tax administration¹⁰, interest for late payment start accruing from the tax payment due date to the actual payment date. Without a voluntary disclosure mechanism, even enterprises willing to fulfil their tax responsibilities proactively are hamstrung. This results in enterprises incurring higher administrative fines and late payment interest. It contradicts the provision that allows reduced penalties for proactive disclosures of shortfalls. This situation hampers businesses from self-compliance. Instituting a voluntary disclosure system would aid businesses to timely tax payments and in mitigating penalties and late payment interest charges.

Additionally, businesses occasionally recognise past errors in declaring HS codes for certain products, either due to intricate classifications or internal review mistakes. Varying interpretations of HS codes mean businesses can be penalized, incurring taxes, and late-payment interest if they declare incorrectly. Companies mandated to pay extra duties or those who overpay face challenges in securing refunds through administrative means.

Lastly, without established regulations, businesses re-import such exported components by liaising with customs, declaring the initial E62 export declaration with precise exported vehicle code on a case-by-case basis.

Recommendation

We recommend the Ministry of Finance and the General Department of Customs to:

- Introduce a voluntary disclosure mechanism, enabling businesses to proactively inform customs about inventory discrepancies in duty-exempt imported goods and make timely tax payments;
- Streamline the re-declaration process by (i) permitting a one-time declaration for multiple entries with identical errors; and (2) allowing an offset of tax payments among declarations requiring modifications;
- Create a list of goods already classified either preemptively, during customs clearance, or post-clearance audit to guide businesses in identifying potential HS code disputes within industries, aiding appropriate actions; and
- Implement regulations on broad scale, moving away from a case-by-case approach, to provide a consistent framework for businesses.

¹⁰ Law 38/2019/QH14 of the National Assembly on 13 June 2019 on Tax administration (Law on Tax administration)

MOTORCYCLE FOR ROAD TESTING

Issue description

The newly enacted Circular 24¹¹ mandates that motorcycle manufacturers obtain a document, the Certificate, from the Vietnam Register. This Certificate confirms that the vehicle meets technical and environmental safety standards and is fit for road trials¹². However, the Vietnam Register has declined to issue such Certificates, citing the absence of specific legal regulation. This refusal prevents motorcycle manufacturers from procuring temporary registration from the police, thus barring them from conducting on-road tests¹³. This situation creates a standstill for testing locally developed motorcycle models.

Potential concerns

Local motorcycle manufacturers engage in research and development to launch new models and enhancing existing ones. Before transitioning to mass production or new or imported models, a real-world road trial is imperative to ensure the motorcycles are tested under authentic traffic and road conditions, beyond just the manufacturers' internal testing facilities. The current regulatory gap regarding Certificate issuance hinders the provision of temporary license plates for trial motorcycles. This poses significant challenges for the motorcycle manufacturing process, as many new or improved designs remain untested and potentially delaying production.

Recommendation

Relevant authorities should contemplate facilitating smoother road-testing processes by:

- Removing the need for a Certificate for temporary motorcycle registration;
- Promptly introducing guidelines for the issuance of Certificates to test motorcycles, similarly to the provisions for car; and
- Creating specific scheme for granting number plates to test motorcycles, drawing inspiration from the EU's model. This would involve allowing motorcycle manufacturers to acquire and manage specific number plates by themselves dedicated solely to their test motorcycles.

ACKNOWLEDGEMENTS

EuroCham Mobility Sector Committee.

11 Circular 24/2023/TT-BCA dated 1 July 2023 of the Ministry of Public Security on procedures for issuance and revocation of vehicle registration and license plates (Circular 24).

12 A department under the Ministry of Transport responsible for managing the quality of vehicles, including motorcycles.

13 Circular 16/2021/TT-BGTVT dated 12 August 2021 of the Ministry of Transport providing procedures for granting a document certifying that the vehicle meets standards of the quality of technical and environmental safety, but this Circular apply to car only (Circular 16).

CHAPTER 22 NUTRITION AND MILK FORMULA PRODUCTS

OVERVIEW

According to the Survey measuring Vietnam's sustainable development goal indicators on children and women 2020-2021 taken by UNICEF, 97.6 per cent of children in Vietnam are breastfed at least once, 55.2 per cent of children aged 6-23 months received food from 5 or more food groups during the previous days of the Survey, and 78.2 per cent of children aged 24-59 months are developmentally on track in at least three of the following four domains: literacy-numeracy, physical, social-emotional, and learning.¹ Although the number of malnourished children has been decreasing in recent years, the number of children with micronutrient deficiencies remains relatively significant.² Therefore, access to products that contribute to improved nutrition as well as fitness and health development should be ensured. To achieve this goal, the government's policies and regulations need to facilitate the widespread consumption of nutritional products. Within the framework of this chapter, we will present several issues that in our opinion are limiting this.

I. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND QUALITY VIOLATIONS

Relevant authorities: Ministry of Science and Technology (MOST), Vietnam Directorate of Market Surveillance (VDMS), Ministry of Health (MOH)

Issue description

The increase in intellectual property infringement and quality issues in the dairy and food industry is becoming more prevalent. In pursuit of profit, a significant number of businesses have resorted to producing counterfeit or fake products of well-known brands, as well as engaging in false advertising, to compete unfairly, misleading consumers about the origin and quality of their products. Many of these businesses also use low-quality ingredients, unsanitary production processes, and substandard products, even going so far as to falsify the quality of their products in comparison to their self-declared declarations. In some cases, these businesses have been prosecuted for criminal liability. These acts of intellectual property infringement, quality violation, and false advertising not only have a severe impact on the legitimate rights and interests of conscientious businesses but also seriously jeopardize the rights and health of consumers.

The inadequate implementation of the Law on Intellectual Property³ and Law on Product and Goods Quality in Vietnam: Some underlying factors include:

- Lack of comprehensive and strict inspection and control, especially for online advertising and sales. Some e-commerce platforms have shown signs of tolerating trademark infringement products, even though they have received warning letters from trademark owners, but they refuse to remove the infringing products.
- Lack of self-monitoring mechanisms between businesses in the same associations and industries, therefore the regulatory authorities have difficulty in identifying cases of violation in terms of trademarks, quality, and advertising.
- There is no requirement that food for sensitive consumers such as the elderly, patients, pregnant women,

1 "Survey measuring Vietnam's sustainable development goal indicators on children and women 2020-2021", UNICEF. Available at: <<https://www.unicef.org/vietnam/media/8641/file/Summary%20report%20-%20MICS%206.pdf>>, last accessed on 30 October 2023

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 2 August 2022.

3 The document consolidation number 11/VBMN-VPQH issued on 8 July 2022.

young children be produced in facilities that meet Good Manufacturing Practices (GMP) or equivalent, resulting in difficulties in quality control.

- Law enforcement agencies (such as economic police, market surveillance) have not been adequately disseminated with intellectual property regulations, leading to confusion when enforcing, even with recognizable trademark infringements.
- In many cases, the Vietnam Intellectual Property Research Institute already concluded the violation of a product, which the enforcement agency has proceeded to handle, but then the Intellectual Property Office of Vietnam had an opposite opinion. This causes a lot of difficulties for the enforcement agency when making a decision to resolve and makes violators more “immune” to the Law on Intellectual Property.

Recommendations

1. Ministry of Science and Technology:

- Organize training programs to enhance expertise and knowledge on intellectual property for enforcement agencies (such as economic police, and market surveillance), and encourage enforcement agencies to proactively handle recognizable trademark infringements without consulting experts;
- Issue a specialized program for the inspection and handling of counterfeit and fake trademarks and quality violations in the food industry. This is because the food industry has a significant impact on public safety and health. The program should aim to identify and strictly handle products with packaging and labels that violate trademarks that have been registered and protected by other businesses, and/or violate quality standards; and
- Take measures to resolve the disagreement in professional opinions between the Intellectual Property Office of Vietnam and the Vietnam Intellectual Property Research Institute.

2. Ministry of Industry and Trade:

- Instruct market surveillance forces to inspect and strictly handle acts of counterfeiting/falsifying trademarks and quality violations for the food industry;
- Take measures to require e-commerce platforms to quickly handle counterfeiting/falsifying trademarks, quality violations, and advertising violations when receiving warnings from trademark owners or competent authorities; and
- Take measures to encourage food associations and industries to develop a Code of Conduct, which agrees on detailed guidelines on what should and should not be done; enterprises committed to producing quality products, not infringing on trademarks, conducting business and advertising in accordance with the law; there should be a mechanism for feedback to identify, report, and self-correct violations, as well as a process for reporting violations to regulatory authorities should they persist.

3. Ministry of Health:

- Amend legislation to require food for the elderly, patients, pregnant women, and young children to be produced in facilities that meet Good Manufacturing Practices (GMP) or equivalent.

ACKNOWLEDGEMENT

EuroCham Nutritional Foods Group

CHAPTER 23 CROPLIFE VIETNAM

OVERVIEW

Early in 2022, Prime Minister Pham Minh Chinh signed Decision No. 150/QĐ-TTg¹ approving “The 2021 - 2030 Strategy for Sustainable Agricultural and Rural Development - vision to 2050”.² The strategy helps to realize the orientation of the Resolution of the 13th Party Congress and is integrated with Vietnam’s commitment to the UN Food Systems Summit and the 26th UN Climate Change Conference of the Parties (COP26).³

For the first time ever, the strategy of developing the agriculture sector with the promotion of innovation and clear development orientation has been touted. It strongly states the need to transform agriculture from focusing on productivity alone to prioritizing quality, efficiency, and adapting to climate change. This transformation will also focus on solving the current limitations, and at the same time providing orientation solutions to promote more sustainable development for Vietnam’s agricultural and rural areas. The goal is that by 2050 Vietnam will become one of the leading agricultural countries in the world. Vietnam will rise with a modern, efficient, and environmental-friendly agricultural product processing industry.⁴

In the international context, the “2022 State of Food Security & Nutrition in the World” (SOFI) by the United Nations details the challenge of feeding a hungry world is now further exacerbated by climate change, COVID-19, and conflict – with the ongoing war in Ukraine resulting in implications to the global food supply, impacting the state of food security and nutrition for many countries directly and indirectly.⁵

The UN Food and Agriculture Organisation (FAO) also flagged risks to food security from high food and agricultural input prices. The global food import bill is on course to hit a new record of USD1.8 trillion this year, but higher prices and transport costs rather than volumes account for the bulk of the expected increase, according to a new report released by FAO in June. Worryingly, FAO is warning that many vulnerable countries are paying more but receiving less food.⁶ To drive the implementation of FAO’s Strategic Framework 2022-2031, which steers FAO’s efforts to transform agrifood systems and promote a food-secure world for all, the organization recently endorsed new 10-year strategies on Climate Change and Science and Innovation.⁷ FAO sees science and innovation as a powerful engine to transform agrifood systems and end hunger and malnutrition.

Considering both local and international contexts, while Vietnam’s smallholder farmers are under increasing pressure to produce more sufficient food for a growing population, there are also promising opportunities for Vietnam to strengthen our position amongst global agricultural players.

CroPLife Vietnam and our member companies applaud and are fully supportive of Vietnam’s Government Strategy for Sustainable Agricultural and Rural Development. We do believe that innovation in agriculture is key to allowing farmers to produce diverse, affordable, and nutritious food while at the same time reducing emissions, halting biodiversity loss and improving rural community livelihoods. To achieve this, farmers need to be given timely and equitable access to the tools they need to grow efficiently on the farm. We also believe a systematic and holistic approach is needed to reinforce policies that encourage agriculture innovation that is supported by a transparent,

1 Decision 150/QĐ-TTg of the Prime Minister dated 28 January 2022 on approving the sustainable agriculture and rural development strategies for the period 2021 – 2030 with a vision toward 2050

2 “Strategy for Sustainable Agriculture and Rural Development in the 2021-2030 period has been approved”, *MARD Website*, 14 February 2022. Available at: <<https://www.mard.gov.vn/en/Pages/strategy-for-sustainable-agriculture-and-rural-development-in-the-2021-2030-period-has-been-approved.aspx>>, last accessed on 01 July 2022.

3 “Vietnam pledges to realise commitments at COP 26”, *Vietnam News*, 8 December 2021. Available at: <<https://vietnamnews.vn/society/1095099/vietnam-pledges-to-realise-commitments-at-cop26.html>>, last accessed on 02 July 2022.

4 “Activate innovative thinking to develop agriculture - countryside - farmer”, *Nong Nghiep Vietnam*, 17 February 2022. Available at: <<https://vietnam-agriculture.nongnghiep.vn/activate-innovative-thinking-to-develop-agriculture--countryside--farmer-d315865.html>>, last accessed on 01 July 2022.

5 “In Brief to The State of Food Security and Nutrition in the World 2022. Repurposing food and agricultural policies to make healthy diets more affordable”, *FAO, IFAD, UNICEF, WFP and WHO, Rome, FAO*, 2022.

6 “New UN Food Outlook report: World’s most vulnerable are paying more for less food”, *FAO website*, 9 June 2022. Available at: <<https://www.fao.org/newsroom/detail/new-un-food-outlook-report-world-s-most-vulnerable-are-paying-more-for-less-food/en>>, last accessed on 10 July 2022.

7 “FAO Council endorses new 10-year strategies on Climate Change and on Science and Innovation”, *FAO website*, 14 June 2022. Available at: <<https://www.fao.org/newsroom/detail/fao-council-10-year-thematic-strategies-climate-change-science-innovation/en>>, last accessed on 10 July 2022.

science-based regulatory system consistent with international best practices.

In this chapter, we will discuss some key recommendations to support and promote Vietnam's smallholder farmers' access to new plant science solutions and advanced technologies in effective and responsible manners.

I. STRENGTHEN SCIENCE AND EVIDENCE-BASED DECISION-MAKING ON PLANT SCIENCE PRODUCTS AND NEW AGRICULTURE TECHNOLOGIES

Relevant authorities: Office of the Government, Ministry of Agriculture and Rural Development (MARD), Ministry of Industry and Trade (MOIT), Ministry of Natural Resources and Environment (MONRE).

Issue description

Build and conduct multi-stakeholders collaboration program to promote Sustainable Pesticide Management Framework to accelerate the transition to sustainable food systems

During the past 10 years, along with a long-term commitment to invest in R&D, we have proudly partnered with a host of Vietnamese Government agencies, research and development institutions, and academia in building and strengthening the capacity of national stakeholders in our shared pursuit of sustainable agricultural growth in Vietnam. CropLife Vietnam and its member companies have made significant investments in stewardship in Vietnam through collaborations with local stakeholders. The objectives of these programs are to maximize benefits and minimize any possible risks when using pesticides to the environment, human health, livestock, and the community. In this same spirit, we are planning to introduce the Sustainable Pesticide Management Framework in Vietnam in the next 5 years with long-term collaboration with the Ministry of Agriculture and Rural Development and related stakeholders.

The Sustainable Pesticide Management Framework (SPMF) is a multi-year holistic program in support of sustainable and responsible use of pesticides. It is a key global flagship program and foundational commitment by CropLife International, with deployment in the Africa, Asia, and Latin America regions. In Asia, Vietnam has been one of the three countries selected to benefit from this program. The program aims to build the capacity of the local countries to establish a framework that manages pesticides sustainably to protect human health, the environment and crop production in addressing the global triple challenge of climate change, biodiversity loss and food security to advance innovation in agriculture for enabling sustainable food systems.

CropLife International is a strong supporter of the FAO-WHO International Code of Conduct on Pesticide Management. SPMF reflects our ambition and commitment to accelerate the transition to sustainable food systems. This program will provide the expertise and additional resources on structural changes to create sustained outcomes, focusing on 3 key pillars:

1. Implementation of science-based regulatory framework on pesticides management along with risk mitigation measures;
2. Adoption of Crop Protection (CP) Innovation; and
3. Responsible & Effective Use of Pesticides.

The three pillars provide holistic coverage to reduce the risk of pesticides, by focusing on both an accelerated and sustainable transition. As such, farmers are equipped with a toolbox for farming that protects human health, and the environment, and optimizes crop protection both now and in the future. SPMF in Vietnam will be built on a strong foundation of shared vision, and established partnership to leverage industry efforts to support the Government's goals for long-term sustainable development of the agricultural sector, ensuring both productivity and environmental stewardship.

Our specific proposal for each of 3 key pillars is as follows:

Implementation of science-based regulatory framework on pesticides management along with risk mitigation measures

- Facilitate and support organizing capacity and capability-building programs on risk assessment and advanced CP solutions;
- Hold seminars on scientific and technical matters while supporting organizing policy consultation workshops on sustainable framework of CP management; and
- Share best practices and proven models of Agriculture Innovation Adoption.

Adoption of CP Innovation

- Facilitate agriculture innovation to showcase best models and share policy recommendation;
- Promotion of bio-pesticide and advanced CP solutions;
- Improve and support an effective transition to an e-system of CP registration and management; and
- Establish Tracking-database on Maximum Residue Limit for exportation.

Responsible & Effective Use of Pesticides

- Establishment and operation of formal e-learning platforms on CP responsible use & pest management for key crops of exportation;
- Continue 5 years Memorandum of Understanding of stewardship models collaboration in Dong Thap;
- Present the right stewardship models to change farmer's practices on CP residue management based on behaviour field studies; and
- Provide additional technical support for the synchronized operation of the National Poisoning Control Centre to handle poisoning cases related to pesticides with uniformed protocol.

Completion of regulatory guidelines for adoption of new breeding innovation and agriculture technologies

Gene Editing Crops

To realize multiple ambitious goals as mentioned above, Vietnam Agriculture Sector industry needs plant breeding innovations such as gene editing. Plants face a variety of challenges from drought, floods, heat, diseases, and pests. At the same time, demand for food is increasing and consumers' preferences are changing. Innovations in agriculture, like gene editing, will make a critical contribution to meeting these demands and making the food system more sustainable and resilient.⁸

Gene editing technology in agriculture is based on the traditional breeding process. Through gene editing, scientists can make precise, targeted changes to plants' specific DNA sequences that mirror what could occur either in nature or through traditional plant breeding, but in a more efficient way. Where GMO plants often include DNA from another organism, gene editing allows scientists to work within a plant's own genetic code. Gene editing mostly focuses on making improvements that could occur in nature but makes them in a more precise way.⁹

With regard to the next generation of plant breeding innovations, including gene editing, Vietnam has the opportunity to create new and promising solutions to the biggest problems facing production agriculture.

⁸ "What is gene/genome editing?", *CropLife Canada Website*, 20 November 2020. Available at <<https://croplife.ca/field-notes-gene-editing/>>, last accessed on 04 October 2023.

⁹ *ibid.*

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 harmonized regulatory policies will be needed.

Recommendations

- Reinforce policies together with stakeholders that encourage agriculture innovation supported by a transparent, science-based regulatory system consistent with international best practices while taking into consideration agronomic realities in Vietnam; and
- Cooperate with multiple stakeholders to deliver the latest Plant Based Innovations innovations that can help farmers overcome increasingly complex economic and environmental challenges through case studies or demonstration of agricultural technologies that accelerate innovation, promote their responsible use, and mitigate the risks of pesticides.

II. STREAMLINE AND MOVE TOWARDS THE FUNCTIONAL IMPLEMENTATION OF A COMPREHENSIVE REGULATORY FRAMEWORK ON AGRICULTURAL INPUT PRODUCTS

Relevant authorities: Ministry of Agriculture and Rural Development (MARD); Ministry of Health (MOH); Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry of Natural Resources and Environment (MONRE), National Steering Committee 389

Issue Description & Potential Concerns

Delay & Lack of Functionality in Genetically Modified (GM) Crops Registration

Vietnam has developed a science-based, sufficient, and simplified legal framework for GMOs for both trading and local cultivation – that is considered an advanced policy model for other countries in Asia. Thus, the functional implementation of Vietnam's legal framework on GMOs is crucial to ensure the positive movement of biotech adoption in the region, promote the benefits of agricultural biotechnology and support Vietnam's government's direction toward sustainability and food security.

Vietnam has several opportunities regarding regulations on GM crops. The first is a strategic opportunity to benefit from over two decades of global commercialization of GM crops. This will help Vietnamese farmers to deal with real-world production challenges such as pest and weed control. One example is the use of GM corn as an effective Integrated Pest Management (IPM) tool that resists Fall Armyworm. According to a recent study, the GM varieties outperformed conventional varieties in terms of yield by +30.4 percent and reduced the cost of production by between US\$26.47 per ha and US\$31.30 per ha. The GM corn technology also reduced pesticide use. The average amount of insecticide applied to the GM corn crop was significantly lower by 78 percent (0.08 kg/ai per ha) than the average value for the conventional corn area (0.36 kg/ai per ha).¹⁰ While GM corn is approved for cultivation in Vietnam unfortunately in recent years there has been a lack of variety registration approvals issued and growers only have access to old germplasm for GM corn.

The second opportunity is to allow the production of GM corn for animal feed to reduce reliance on foreign suppliers. According to the Department of Livestock Production¹¹, the most imported raw material is corn with more than 9.6 million tons. Due to the impact of the COVID-19 pandemic and especially the recent Russia-Ukraine conflict, the prices of many raw materials have increased. The prices of many feed materials, compared to March

10 G.Brookes & T.X. Dinh, "The impact of using genetically modified (GM) corn/maize in Vietnam: Results of the first farm-level survey", GM Crops & Food, 2020. Available at: <<https://www.tandfonline.com/doi/full/10.1080/21645698.2020.1816800>>.

11 "Vietnam spent more than 9 billion USD on importing animal feed ingredients", MARD website, 28 March 2022. Available at: <<https://www.mard.gov.vn/en/Pages/vietnam-spent-more-than-9-billion-usd-on-importing-animal-feed-ingredients.aspx>>, last accessed on 10 July 2022.

2021, have increased significantly. Specifically, the price of corn kernels is VND10,200/kg (up 29.3 percent); soybean meal VND16,500 /kg (up 33.4 percent); corn residue VND10,300/kg (up 23.1 percent); wheat VND9,850/kg (up 49.5 percent).

Therefore, apart from MARD's macro-direction to convert some inefficient arable land to crop production for feed material, one necessary solution is to encourage and speed up the registration and introduction of new plant varieties, including GM crops to provide farmers with enough tools that allow them to better adapt to climate changes. This in turn will help improve productivity and household income, etc.

Recommendations:

We would like to make the following recommendation:

- Accelerate the GM approval process to comply with current regulations to ensure no restrictions on animal feed imports, encourage the cultivation of GM corn by issuing Variety Registrations for Traited Hybrids, and gradually reduce import dependence.

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¹² CropLife Vietnam Sector Committee members: Adama, BASF, Bayer, Corteva, FMC, Summit Agro, Sumitomo Chemical, Syngenta and UPL.



DISPUTE RESOLUTION

CHAPTER 24 JUDICIAL AND ARBITRAL RECOURSE

OVERVIEW

In May 2023, the Vietnamese government gave the long-awaited green light to Power Development Plan 8 (PDP 8). This landmark legislation sets out a roadmap for Vietnam's future power development over the course of the next decade. The Ministry of Industry and Trade (MOIT) estimates that the implementation of PDP 8 will require between US\$113 and 135 billion of investment.¹

To attract investors, Vietnam will need to ensure a neutral and predictable legal framework. Indeed, one of investors' primary concerns will be the existence of an efficient and transparent justice system 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.

We have noted some positive developments in recent years (as highlighted in this chapter). However, our members continue to report serious obstacles in trying to ensure their rights in Vietnam. We would like to respectfully highlight some of these outstanding 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 (Judicial/Economic Committees), Ministry of Industry and Trade (MOIT)

Issue description

In the 2022 edition of the Bertelsmann Stiftung's Transformation Index (BTI)², Vietnam ranked 106th out of 137 participating developing countries in the "political transformation" category (which includes, among other things: judicial independence, prosecution of office abuse, stability of democratic institutions).

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 judgments.³ Our members are following this process with great interest. We hope that, as a result, there will be a well-established and reliable body of precedents and case-law that could provide guidance and predictability on the likeliness of an outcome for individual disputes.

Our members also face this issue in implementing the Law on Competition⁴ because the decisions of the relevant authorities are not public. The Law on Competition stipulates that the National Competition Commission (VCC) is an advisory agency to assist the Minister of Industry and Trade in performing the function of state management of competition on the basis of merging the competition authority and the Competition Council in accordance with the provisions of the Competition Law 2004. On February 10, 2023, the Government promulgates Decree 03⁵ regulating the functions, powers and organizational structure of VCC, which stipulates that VCC is an agency

¹ "Vietnam needs \$135B to develop power projects by 2030", VnExpress, 2023. Available at: <<https://e.vnexpress.net/news/business/economy/vietnam-needs-135b-to-develop-power-projects-by-2030-4631326.html>>, last accessed on 31 October 2023.

² BTI, 'BTI 2022 Country Report: Vietnam', Bertelsmann Stiftung, 2022. Available at: <<https://bti-project.org/en/reports/country-report/VNM>>, last accessed on 18 July 2023.

³ 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://congboanan.toaan.gov.vn/>>, and <<https://anle.toaan.gov.vn/webcenter/portal/anle/home.>>, last accessed on 10 Jul 2023.

⁴ Law 23/2018/QH14 dated 12 June 2018 of the National Assembly on Competition (Law on Competition).

⁵ Decree 03/2023/ND-CP dated 10 February 2023 of the Government defining the functions, tasks, powers, and organizational structure of Vietnam Competition Commission (Decree 03).

under the Ministry of Industry and Trade, with the function of conducting competition proceedings, merger control, deciding on exemptions from prohibited competition restriction agreements, settle complaints against decisions to handle competition cases in accordance with the provisions of law; advise the Minister of Industry and Trade in performing the state management of competition, protecting the interests of consumers and managing business activities in a multi-level manner.

Competition policies are implemented in order to create and maintain a healthy, fair, equal and transparent competitive environment, ensuring the right to freedom of competition in business of enterprises in accordance with the provisions of law. The Law on Competition also provides for the VCC to publicly announce decisions on exemption from prohibited competition restriction agreements, decisions on merger control, decisions on handling competition cases, decisions on suspension of settlement of competition cases, decisions to settle complaints, decisions to handle competition cases in accordance with the provisions of competition law and other relevant laws.

Once the VCC and its supporting entities are operational, we expect to see more enforcement activity by competition regulators, not only in the area of merger control, but also in the enforcement of regulations on anti-competitive agreements and abuse of market dominance.

Furthermore, the permitted scope of legal services for foreign law firms remains uncertain, particularly since the adoption of Decree 123⁶ and 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

Potential gains/concerns for Vietnam

EuroCham Legal Sector Committee is 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.⁹ Every year, the two websites managed by the Supreme People's Court report an increased number of published judgments.¹⁰

When planning to invest abroad, the availability of an efficient and transparent judicial system is one of the key factors that foreign investors consider. 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

- Maintain the predictability and stability of the current system to ensure an enabling regulatory framework;
- Continue to publish the judgments of courts at all levels;
- Publish all decisions of the competition authorities; and
- 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 (Decree 123).

7 Decree 137/2018/ND-CP dated 8 October 2018 of the Government amending and supplementing Decree 123/2013/ND-CP (Decree 137).

8 Law 65/2006/QH11 dated 29 June 2006 of the National Assembly on Lawyers (Law on Lawyers).

9 Article 6, the Civil Code 91/2015/QH13 dated 24 November 2015 of the National Assembly (Civil Code).

10 Total Number of Judgements and Decisions Published: 1.201.442. Available at: <<https://congbobanan.toaan.gov.vn/>>, last accessed on 23 August 2023.

II. ARBITRATION IN VIETNAM

Relevant authorities: Ministry of Justice (MOJ), Supreme People's Court, Supreme People's Procuracy, National Assembly (Economic Committee)

Issue description

Given the real or perceived disadvantages of other dispute settlement mechanisms in Vietnam, such as the Vietnamese courts (see Section I above) and international arbitration (see Section III below), investors may seek recourse through arbitration in Vietnam.

While the Vietnam International Arbitration Centre (VIAC) confirmed a resumption of growth in the total value of disputes of VIAC arbitration cases since the end of the pandemic¹¹, our members continue to report a number of serious issues in VIAC-managed arbitration.

The main concern remains the intervention of the Vietnamese courts not only before a final award is issued, which may result 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 respondents in VIAC proceedings raised unfounded objections to the jurisdiction of the VIAC tribunal. When the tribunal subsequently 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, the court decision resulted in the termination of the VIAC proceedings.

Our members have also reported cases where Vietnamese courts reconsider the merits of the case in order to set aside a final award issued by the VIAC tribunal and rely on a breach of the 'fundamental principles of Vietnamese law' to justify this decision to set aside the award.

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.

Our members report that the objective of avoiding interventions from Vietnamese courts is regularly invoked by VIAC representatives to justify the restrictive management of arbitration proceedings. For example, our members have reported that the rules applied to witnesses at hearings are extremely rigid compared to usual standards in international arbitration centers. This is justified by the fear of a court's intervention at a later stage. At the same time, VIAC tribunals routinely allow a large number of "authorised representatives" of a party (this would include any employees of such party) to attend the hearing and testify or give new evidence during the hearing without prior disclosure to the other party.

Other examples include: a refusal to direct that the submissions/correspondence be exchanged by email as well as hard copy by courier, even when the pandemic caused courier services to be suspended – resulting in months of delay; a refusal to direct that some hearings could be held with some participants joining by video-link; and a refusal to direct that voluminous documents could be submitted via excel files instead of by hard copy documents. All these examples stand in sharp contrast with the usual practice of international arbitration centers.

Another problem is that, unlike other legislations which provide immunity for arbitrators except in cases of gross negligence or fraud, Vietnamese law does not provide immunity for arbitrators. As a result, parties may sue arbitrators in the course of arbitration, particularly when the arbitrator grants interim relief, under the general principles of contract law and civil liability. The arbitration procedure then takes longer, and arbitrators sometimes withdraw.

These elements may explain the difference in the percentage of international cases between VIAC¹² (60% in 2022)

11 "Annual report 2022", Vietnam International Arbitration Centre, 2022. Available at: <www.viac.vn/en/annual-report.html> last accessed on 23 August 2023.

12 "Annual report 2022", Vietnam International Arbitration Centre, 2022. Available at: <www.viac.vn/en/annual-report.html> last accessed on 23 August 2023.

and other Southeast Asian arbitration centers (88% for SIAC¹³ and 83% for HKIAC¹⁴ in 2022).

Our members have noted with interest the establishment of representative offices of two internationally well-known arbitration institutions in Vietnam in recent years. We hope that this will help to increase awareness of international arbitration standards in Vietnam.¹⁵

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

- 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;
- A right of appeal should be introduced against first-instance court decisions on jurisdiction or on the validity of an arbitral award.

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 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 Awards¹⁶ (NYC), to 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. Unfortunately, we have not seen real improvement since the previous editions of this chapter.

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 Code¹⁷ contains a specific provision on the burden of proof which makes clear that the award debtor shall bear this burden. Unfortunately, it appears that this practice has not substantially evolved with the entry into force of the Civil Procedure Code in 2016, as suggested by the MOJ's figures mentioned below.

13 "Annual report 2022", Singapore International Arbitration Centre, 2022. Available at: <<https://siac.org.sg/annual-reports>> last accessed on 23 August 2023.

14 "Annual report 2022", Hong Kong International Arbitration Centre, 2022. Available at: <<https://www.hkiac.org/about-us/annual-report>> last accessed on 24 July 2023.

15 <https://icc-vietnam.org/> and <https://docs.pca-cpa.org/2021/10/2021/10/63fff1ec-pca-viet-nam-signing-ceremony-press-release.pdf>, last accessed on 18 July 2023.

16 Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 1958 of The United Nations Commission on International Trade Law.

17 Civil Procedure Code 92/2015/QH13 dated 25 November 2015 of the National Assembly (Civil Procedure Code).

Another difficulty is the rejection of applications by the Vietnamese courts for reasons that are not consistent with the NYC. For example, 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 Vietnamese law instead of the relevant law governing the foreign party. Similarly, they 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.

Recently, another difficulty arose in a case¹⁸. Under the Civil Procedure Code¹⁹, Vietnamese courts have exclusive jurisdiction over disputes involving foreign elements and concerning rights to real estate in Vietnam. Vietnamese courts take an expansive view of this jurisdictional privilege, refusing to enforce a foreign arbitral award because its enforcement would involve the realization of real estate in Vietnam.

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.²⁰ A preliminary observation of these figures suggests 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 application for recognition and enforcement were suspended, and in 29 cases, the awards were not recognised.²¹ Unfortunately, these figures have not been officially updated by MOJ as of the date of this chapter.

The practice showed that one of the key reasons for which recognition and enforcement of arbitration awards are refused is due to recognition and enforcement contrary to basic principles of Vietnamese laws. This expression “basic principles of Vietnamese laws” was subject to a broad interpretation and as a result many arbitration awards were refused for the recognition and enforcement in Vietnam due to this reason. In the meantime, the NYC is silent on the term “basic principles of laws”. Article V.2(b) of the NYC only provides for refusal of recognition and enforcement of an arbitral award in a country if the recognition or enforcement of the award would be contrary to the public policy of that country. It appears that the term “basic principles of Vietnamese laws” is inconsistent with the term “public policy” as referred in the NYC.

In order to improve the situation, the introduction of 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 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. This would help to ensure that judges are properly trained to deal with applications for the recognition and enforcement of foreign arbitral awards in accordance with Vietnamese law and the NYC.

A more favourable trend towards the recognition of foreign arbitral awards seems to be emerging, since of the 11 decisions published by the Supreme People's Court since October 2019²², only 3 have been suspended or refused. We hope that this trend will be confirmed in the coming years with a wider sample.

We further understand that a resolution is being drafted to guide the procedure for recognition and enforcement of foreign arbitral awards in Vietnam in compliance with the CPC. EuroCham Legal Sector Committee would be happy to provide comments and suggestions on this draft resolution.

Potential gains/concerns for Vietnam

The vast majority of state parties to the NYC properly apply its provisions 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.

18 Decision No. 09/2023/QĐ-PT dated 17 January 2023 of the High People's Court in Hanoi.

19 Article 470.1(a), the Civil Procedure Code.

20 Ibid.

21 Ministry of Justice's data base on the filed applications for recognition and enforcement of international arbitration awards. Available at: <https://moj.gov.vn/ttpp/Pages/dlcn-va-th-tai-Viet-Nam.aspx?fbclid=IwAR3ML02FXdzugE5pZSO98eaEgWVTopdcUD4NnQ_wUgbb_B_b-l_JHnn66jY>, last accessed on 10 July 2023.

22 Available at: <<https://congbobanan.toaan.gov.vn/>>, last accessed on 21 Jul 2023.

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, leads 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

- Continue to publish updated figures on applications for recognition and enforcement of foreign arbitral awards to follow the publication of figures for 1 January 2012 to 30 September 2019;
- Implement the Civil Procedure Code so that it provides for the strict application of the provisions of the NYC;
- Clarify the term “basic principles of Vietnamese laws” in specific and clear criteria to secure that recognition and enforcement of an arbitration award in Vietnam would be transparent and consistent with those stipulated in 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; and
- 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.

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