

# Doing Business in Vietnam

2008



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# 1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 70 countries throughout the world. Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Vietnam has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at October 2008.

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We look forward to helping you do business in Vietnam.



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## 2. Business environment

### Background

The Socialist Republic of Vietnam is the easternmost nation on the Indochinese Peninsula. With a population of over 85 million, Vietnam is the 13th most populous country in the world. Legend has it that Vietnam's origin lay in the harmonious union of Lac Long Quan, King of the Sea, and Au Co, Princess of the Mountains. In real life, Vietnam's history is characterised by a nearly continuous struggle for autonomy. Reunified in 1975 but for over two decades since then the country experienced little economic growth because of conservative leadership policies. Since 2001, Vietnamese authorities have committed to economic liberalisation and enacted structural reforms needed to modernise the economy and to produce more competitive, export-driven industries. Political stability and encouraging foreign investment policies help Vietnam's FDI grow steadily.

Foreign Investment Agency figures show that Vietnam's newly pledged and expanded FDI capital was US\$ 12 billion in 2006 and US\$ 21.3 billion in 2007. The new fund reached US\$46.3 billion in the first eight months of 2008. The country is listed among the "Next Eleven" economies; according to government figures GDP, growth was 8.44% in 2007, the second fastest growth rate among countries in East Asia and the fastest in Southeast Asia.

### Geography

Location: South-eastern Asia, bordering the Gulf of Thailand, Gulf of Tonkin, and South China Sea, alongside China, Laos, and Cambodia

Area: total:	329,560 sq km
Land:	325,360 sq km
Water:	4,200 sq km

Coastline:	3,444 km (excludes islands)
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Climate:	Tropical in south; monsoonal in north with hot, rainy season (mid-May to mid-September) and warm, dry season (mid-October to mid-March)
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Population:	85,154,900
Age structure:	0-14 years: 27.9 % 15-64 years: 66.4% 65 years and over: 5.8%

Population growth rate:	1.21%
Life Expectancy:	72
Literacy Percent:	94

Languages: Vietnamese (official), English (increasingly favoured as a second language), some French, Chinese, and Khmer; mountain area languages (Mon-Khmer and Malayo-Polynesian)

### **Economy**

Vietnam is a densely-populated, developing country that in the last 30 years has had to recover from the ravages of war. Growth averaged around 9% per year from 1993 to 1997. The 1997 Asian financial crisis highlighted the problems in the Vietnamese economy and temporarily allowed opponents of reform to slow progress towards a market oriented economy. GDP growth of 8.5% in 1997 fell to 6% in 1998 and 5% in 1999. Growth then rose to around 7.5% in 2000-06 even against the background of global recession, making it the world's second-fastest growing economy. Simultaneously, investment grew three-fold and domestic savings quintupled.

According to the CIA World Fact Book, the unemployment rate in Vietnam is one of the lowest in the world at 2%. The GDP growth was 8.44% in 2007, the third largest growth in Asia. According to Vietnam's Minister of Planning and Investment, the government targets a GDP growth of around 8.5-9% for 2008. Since 2001, Vietnamese authorities have reaffirmed their commitment to economic liberalisation and international integration. They have moved to implement the structural reforms needed to modernise the economy and to produce more competitive, export-driven industries. Vietnam's exports to the US doubled in 2002 and again in 2003. Vietnam has successfully completed accession to the WTO in 2006.

### **Statistics:**

GDP (purchasing power parity):	\$178.1 billion (2005)
GDP - real growth rate:	8.44% (2007)
GDP - per capital: purchasing power parity:	\$2,142 (2005)
Industrial sector:	41.7% (2007)
Service sector:	38.30% (2007)
Agriculture sector:	20.0% (2007)
Labour force:	44.17 million (2007)
Unemployment rate:	4.64% (2007)

Distribution of family income -	Gini index: 36.1 (1998)
Inflation rate (consumer prices):	12.63% (2007)

Investment (gross fixed):	40.4% of GDP (2007 est.)
Budget:	revenues: \$10.66 billion
expenditures:	\$13.09 billion; including capital expenditures of \$1.8 billion (2004 est.)
Public debt:	65.9% of GDP (2004 est.)
Industrial production growth rate:	16% (2004 est.)
Current account balance:	-\$2.061 billion (2004 est.)
Exports:	USD\$48.4 billion FOB (2007 est.)
Exports - partners:	US USD\$10 billion, EU USD 8.7 billion, (ASEAN USD\$ 8 billion, Japan USD\$ 5.5 billion, China USD\$3.2 billion (2007 est))
Imports:	USD\$60.8 billion f.o.b. (2007 est.)
Reserves of foreign exchange and gold:	\$6.51 billion (2004 est.)
Debt - external:	\$16.55 billion (2004 est.)
Economic aid - recipient:	\$2.8 billion in credits and grants pledged by international donors for 2000 (2004)
Currency (code):	dong (VND)
Currency code:	VND
Exchange rates: dong per US dollar –	16,241 (2007) 15,994 (2006), 15,859 (2005), 15,746(2004), 15,510 (2003), 15,280 (2002), 14,725 (2001), 14,168 (2000)

### Legal System

Vietnam uses the Civil Law system which based on written laws. The hierarchy of the legal System in Vietnam can be simply classified into three basic layers in term of its governing scope and level: (1) The National Assembly issues the Constitution, laws, codes and resolutions; the National Standing Committee issues ordinances and resolutions; (2) Legal instruments issued the central executive and justice bodies including: decisions and mandates of the State President; decrees and resolutions of the Government, decisions and directives of the Prime Minister; decisions, directives and circulars of Ministers and equivalent levels; resolutions of the Supreme Court's Judge Council and other legal instruments of the Supreme Procuracy; and (3) resolutions of the People Councils and decisions and directives of the People's Committees.

All laws and regulations root from the Constitution and then the Civil Code. Other important laws concerning foreign investment and trade include the Law on Investment in Vietnam; the Law on Enterprise; the Law on Commerce; the Labour Code; the Law on Land; Law on Corporate Income Tax; the Law on Value Added Tax the Law on Competition, etc.

### **Forex Control**

Vietnam imposes a strict control over foreign currency. Foreign investors who wish to transfer capital in foreign currency into Vietnam must open a specialised foreign currency bank account at a legal bank in Vietnam. During the operation, foreign currency remitted into Vietnam by foreign investors must be converted into Vietnamese dong or deposited in a foreign currency bank account. Payment made by enterprises in foreign currency can be implemented in certain cases as described by the State Bank of Vietnam (SBV), such as payment for imported goods and services; abroad remittance by foreign investors of invested and reinvested capital, earning profits from undertaking in Vietnam, principals and interests of off-shore loans and credits, and other legal benefits; payment for travel allowances to employees travelling abroad, payments of salaries and other legal incomes of foreigners; personally carried foreign currency are also allowed (but for a limited amount defined by law for different circumstances and in case of excess, the whole amount will be taxed like forex trading). In all cases above the amount of foreign currency are monitored.

Foreign investors who are in need of foreign currency for paying allowed business transactions can buy foreign currency from permitted banks in Vietnam. Offshore loans reaped by enterprises are subject to certain conditions as regulated by SBV. Medium and long term loans are required to be registered with SBV.

### **Land Use Right and Land Ownership**

Acquisition of rights to use real property

Domestic organisations, households and individuals (including overseas Vietnamese) may select allocation of land or lease of land for the purposes of either non-commercial or commercial. In Vietnam, land is owned by the people and subject to exclusive administration by the state. Ownership of land by an individual or organisation is not permitted. Individuals and organisations are however titled to use land ("land use right"). The land use right may legally be obtained by way of allocation by the state or lease from the state or assignment from existing land users. Ownership of buildings and other assets attached to land is permitted. They may convert from lease to allocation. However, 100 percent foreign invested



companies may only lease land to implement their investment projects in Vietnam (i.e. for commercial purposes).

### **Duration**

Land may be allocated to domestic organisations, households and individuals (including overseas Vietnamese) for (i) an indefinite term for non-commercial purposes (including residential purposes), or (ii) a definite term (up to 50 years) for non-agricultural production and business purposes. Meanwhile, leases are only for a definite term, and depend on the duration of the proposed investment project.

The term may be fixed up to 70 years in case (i) investment projects with large capital but slow capital recovery rate and investment projects in areas with difficult socioeconomic conditions or especially difficult socioeconomic conditions which require a longer period of land allocation or land lease, or (ii) one-off payment of land rent is made for the whole 50-year term of the lease.

Noticeably, upon expiry of the duration of allocation of land or lease of land, the state may grant an extension if the investor so requests. In all circumstances the extended lease term for a foreign invested company may not exceed the term of previous duration.

Conditions for granting an extension include: (i) the extended duration must be consistent with the supplemented project as approved by the licensing authority, (ii) the foreign-invested company has strictly observed the laws on land during its use of such land, and (iii) the continued use of such land must be in conformity with the approved land use zoning.

### **Scope of rights to use real property**

Currently, there are two options for payment of rent for lease of land, namely (i) annual payment of land rent and (ii) one-off payment of land rent for the whole term of the lease.

Scope of the land use right depends on the form of payment of rent. In the case of one-off payment, the land users are entitled to deal with such land in much the same way as a freehold owner of land would in other countries. This includes assigning, subleasing, mortgaging and contributing as capital the land use right. Land users adopting annual payment do not have these rights. In other words, such land is untouchable in terms of the rights to use real property.

On May 22 2008, The 12th National Assembly adopted a resolution that gives foreign individuals and organisations in Vietnam the right to buy

and own apartments in the country. The national legislators agreed the resolution will be implemented on a trial basis for five years, as of January 1, 2009. Under the resolution, foreign individuals and organisations who invest directly in the country and those hired as executives by Vietnamese or foreign-invested enterprises will be entitled to purchase and own apartments in Vietnam.

The resolution also benefits foreigners that have made a special contribution to Vietnam recognised by the State President and the Prime Minister, college graduates with special expertise working in socio-economic fields, and foreigners who have married Vietnamese citizens. Foreigners who want to buy houses are required to have a residency permit for more than one year without diplomatic privileges. They will be allowed to buy and own apartments in housing development projects in areas they are not banned from living or moving around.

They are permitted to own apartments for a maximum of 50 years from the certified date of ownership but are obliged to sell or donate their apartments within one year of their ownership certificates expiry date.

The resolution also gives foreign-invested businesses the right to buy and own apartments. However, they must not get involved in real estate development and must have a real need for employee accommodation. Foreign-invested businesses are required to have investment licenses granted by an authorised Vietnamese agency and are allowed to own apartments while they are investing in the country, which is stated in their investment licenses.

### **Stock Market**

There is a very new and exciting way to invest in Vietnam. Vietnam has two stock exchange centres, one in Ho Chi Minh City and the other in Hanoi. Although establishment of those stock exchange centres was decided in 1998, the Ho Chi Minh Stock Exchange officially operated in July 2000, earlier than the Hanoi centre, which was commenced in March 2005.

As of the time of this writing, there are 148 companies listing in Hanoi Security Trading Centre and 156 in Ho Chi Minh Stock Exchange.

### *IPO*

Joint stock companies (or shareholding companies) wishing to have initial public offering of stock must satisfy the following conditions: (1) being a joint stock company having a minimum paid-in capital of 10 billion VND; (2) having no accumulate loss till the year of application and profit in the

year prior to the one applying to IPO; and (3) having the feasibility study to utilise the proceeds from the issuance of shares approved by General Meeting of Shareholders.

The stock going to IPO must be registered with the State Securities Commission (SSC).

The IPO of additional issuance of shares, issuance of warrants and rights, bonds, and securities investment fund units shall be subject to different regulations and conditions.

*Overseas listing*

Vietnamese joint stock companies may offer stocks or bonds in overseas markets. Current laws and regulation are being completed to provide better regimes for overseas listings.

*Foreign participation*

Foreign organisations and individuals purchasing shares on the securities market of Vietnam may hold maximum of 49% of the total listed share of any issuing organisation. This cap is expected to be removed after 5 years as of the date of Vietnam's accession to WTO. However, buying and selling securities by foreign currencies are still strictly controlled as described in Forex Control section above.

### 3. Foreign investment

The Fifth Congress of the Vietnamese Communist Party made a turning-point decision in the country's development strategy to build a market-oriented economy under the state control. The Vietnamese Communist Party and State, while attempting to mobilise all domestic resources, pursue the policy of deepening international economic relations to seek new opportunities for the country's economic co-operation and development.

As part of foreign economic relations activities, foreign direct investment (FDI) was put high on the agenda. As domestic capital raising possibilities are limited, FDI constitutes an important part to the Vietnamese economy.

The major goal of Vietnam's FDI policy is to attract capital, advanced technology, and management skills in order to effectively develop the country's potential, increase savings, improve people's living standard and realise the cause of modernisation and industrialisation.

Foreign investments in Vietnam are realised under the following forms: Business Co-operation Contract; Joint-venture; 100 % foreign-owned enterprises; Other forms such as Export Processing Zone, Build-Operate-Transfer (BOT), Build- Transfer-Operate (BTO), and Build-Transfer (BT).

FIA figures show that Vietnam's newly pledged and expanded FDI capital was US\$12 billion in 2006 and US\$21.3 billion in 2007. The new fund reached US\$45.3 billion in the first seven months of this year (the total registered investment capital for the new 654 projects was 44.49 billion USD. The remaining 788.6 million USD went to 188 current projects).

Together with these, the disbursement fund increased drastically from US\$4.6 billion in 2006 to US\$8 billion in 2007. The first seven months of 2008 saw US\$6 billion in implementation capital. The largest investment came from Brunei's New City group which invested 4.3 billion USD in a new urban area in central Phu Yen province, as well as a joint-venture among PetroVietnam, Vina SCG Chemical and Thai Plastic to build a US\$3.77-billion Long Son oil refinery in southern Ba Ria-Vung Tau province. A US\$3.5-billion in a university urban area in Ho Chi Minh City with investment by Malaysian Berjaya Leisure Company also ranked high on the list.

Taiwan remains Vietnam's largest investor with 82 projects totally worth US\$ 8.4 billion, representing 18.9 percent of registered capital. It is

followed by Japan with 65 projects valued at 7.2 billion USD, Malaysia with 28 projects worth US\$5.07 billion, Brunei with 14 projects capitalised at US\$4.3 billion, Canada with 4 projects worth US\$4.2 billion and Singapore with 48 projects valued at US\$4.02 billion.

FDI attraction in the first seven months doubled the figure of 2007 (US\$21.3 billion), demonstrating foreign investors' trust in Vietnam's investment environment, despite the impacts of high inflation and price fluctuations on foreign investment activities, according to the Department of Foreign Investment of the MPI.

Given the decentralisation of FDI activities in accordance with the Investment Law passed in 2005, local governments have done a good job of attracting and accelerating FDI project implementation, resulting in sharp rises of the inflows since then. The achievement was also attributed by combined efforts made by relevant ministries, agencies and localities in investment promotion.

## 4. Setting up a Business

Required documents for registrations of a business in Vietnam are specified by Law on Enterprises 2005. These regulations can be characterised with openness, ease, and flexibility. The registration process could take approximately 50 days and VND 4,400,000 (about US\$280) with no minimum capital requirement for any type of business.

According to the law, the founder of an enterprise has to submit all of the business registration documents as prescribed by the Law to an authorised business registration body. The business registration body will consider the business registration documents and issue a business registration certificate within ten (10) business days. If the business registration certificate is refused, the founder of the enterprise will be notified in writing. The notice must specify the reasons and the amendments or additions required.

The time-limit for issuance of a business registration certificate attached to a specific investment project is subject to the law on investment.

### **Sole proprietorships**

There are several restrictions upon the creation of sole proprietorship (also known as private enterprise). The founder has to be older than 18 years of age. In order to legally manage or establish a sole proprietorship, the founder has to be mentally capable, without criminal record (or has been erased) and not being a state officials or a member of the army. One person can only establish a single sole proprietorship.

The approval of the prime minister of state is required if the sole proprietorship proposes to conduct business in the following areas: (1) manufacturing and distribution of explosives, poison, and toxic chemicals, (2) mining of certain precious minerals, (3) production and supply of electricity and water on a large scale, (4) manufacture of information transmitting facilities, postal and telecommunication services, broadcasting, television, and publication, (5) ocean shipping and air transportation. (6) specialist export and import business, (7) international tourism.

Required registration documents are: (1) request for business registration in the standard form published by the authorised business registration body, (2) copy of people's identity card, passport or other lawful personal identification, (3) document of an authorised body or organisation certifying the legal capital in respect of enterprises conducting lines of

business for which legal capital is required by law, (4) practicing certificates of the director and other individuals in respect of enterprises conducting lines of business for which a practicing certificate is required by law.

The owners of sole proprietorships have unlimited liability and cannot issue any type of security.

### **Partnership**

Required registration documents for partnership are similar to private enterprise except for the addition of the draft charter of the company. A partnership must have at least two unlimited liability partners. Additional limited liability partners could also be in a partnership but are only liable in principle to the extent of their capital contribution.

Partnership cannot issue any type of security. Unlimited liability partners cannot be owner of a private enterprise or an unlimited liability of another partnership. Activities carried out by an unlimited liability partner beyond the scope of registered lines of business of the company shall not fall within the company's liability, unless such activities are approved by the other partners.

### **Limited liability companies**

Required registration documents for limited liability companies are similar to partnership except for the addition of the legal documentations for member which is an organisation. A limited liability company cannot have more than fifty members. All members are liable to the extent of capital that it contributed to the company. Members' share are transferable but has lower liquidity as stock.

Limited liability companies cannot issue shares. One member limited liability companies share similar treatments except the event of withdrawing or assigning chartered capital. One member limited liability companies also could not withdraw profits of the company in cases where the company has not paid in full all debts and other property obligations which become due. In order to carry out such activities, the law requires the company register to be converted into multiple members limited liability companies within 15 days of such assignment or withdrawal.

### **Joint-stock companies**

Required registration documents for joint-stock companies are similar to limited liabilities except for legal documentations for members which is an

organisation are only required for founding shareholders. Shareholders may be organisations or individuals; there must be at least three shareholders and there is no restriction on the maximum number. Such law entails that two or fewer members must choose another type of business entity for establishment therefore restricts the ability to issue security of such companies.

Join-stock companies can issue any type of security. The company must have common shares and may have preferred shares. Voting shares, one type of preferred share, can only be held by founding shareholders or organisation authorised by the government and valid for three years from the date of issuance of business registration certificate. After three years, those of founding shareholders will be converted into common shares and all restriction on common shares will be lifted. Dividends, if paid in cash must be paid in Vietnamese dong.

Other than those mentioned above, there are some popular ways to do business in Vietnam have been used by foreign investors.

### **Foreign Company Branches**

Foreign corporations and foreign traders are entitled to set up a trading branch in Vietnam if having business registration or certificate of incorporation granted in their country for at least 5 years. The business scope of a trading branch is limited to the followings:

- Goods locally bought for export: handicrafts; processed/unprocessed agricultural products (except rice and coffee); processed/unprocessed fruits, consumer's industrial commodities, animal and poultry meats and processed foodstuff.
- Goods import for local sale: machinery and equipment for mining, processing of agricultural products; input materials for production of human treatment drugs and animal drugs; input materials for production of fertilizers and insecticides.

### **Representative Offices**

Foreign corporations are also entitled to set up one or several representative offices in Vietnam. A representative office is allowed to do the following activities:

- Act as liaison office to study business environment
- Look for trade, investment opportunities and partners
- Act on behalf of their head office to negotiate and sign contracts for the supply and purchase of goods and services
- Supervise and accelerate the implementation of contracts assigned by their head office
- Advertise and promote their company's goods and services.





## 5. Labour

The labour law of Vietnam is governed by the Labour Code of the Socialist Republic of Vietnam. The Labour Code protects the right to work, the interests and other rights of the labourer. At the same time it protects the rights and lawful interests of the labour user. Therefore creating conditions for the establishment of harmonious and stable labour relations, helping to develop the creativeness and talent of the intellectual and manual workers, of the labour managers in order to achieve productivity, quality and social progress in labour, production, service, efficiency in the use and management of labour, thus contributing to the industrialisation and modernisation of the country in the cause of bringing prosperity to the people and strength to the nation and building a just and civilised society.

Some of the more important points are mentioned and explained below.

### **Labour Contract**

A labour contract must be in writing and signed between the employee and the Employer's representative, unless the employment will last less than three months. The contract should provide for either a definite term, an indefinite term or for work on seasonal or limited basis. It is forbidden to sign labour contract for a season job or a specific job with duration of less than one year to do jobs of a permanent character lasting more than one year.

A labour contract must be in conformity with the Vietnamese laws and collective agreements (if any). It must have clauses relating to: the work involved, working hours, rest breaks, recreation time, wages, place of works, term of contract, occupational safety and hygiene, social and medical insurance.

Probationary agreements are often included in the contracts. The probationary length varies, and subject to the nature and complexity of assigned jobs.

### **Working Time**

As per the code the working time shall not exceed 8 hours in a day and 48 hours in a week. The labour user and the labourer may agree on extra hours work but the time of such work shall not exceed four hours in a day and 200 hours in a year.

### **Rest**

Vietnam has some specific regulations about resting time, such that each week the labourer is entitled at least one day of rest (24 straight hours); the employer must ensure that the labourer can have an average of four days of rest at least in a month, etc.

There are 8 mandatory paid holidays. Employees who serve for at least one year shall be entitled to 12 days paid annual leaves, whose date and time are arranged by both employer and employee. As the law requires, the number could be 14 to 16 if difficult working conditions present. Annual leave increases as seniority of one grows.

### **Statutory Minimums**

Salary rates must conform to the collective labour agreement (if applicable) and must not be less than the legally-regulated minimum rates. The monthly minimum wage for domestic enterprise is VND540,000 (about US\$33). There are currently three levels applicable to employees working for foreign capital enterprises, which come down from VND1,000,000 VND (about US\$60) in the inner of Hanoi and HCMC, VND900,000 (about US\$54) in the suburb of Hanoi, HCMC, and the inner of Ha Long, Hai Phong, Bien Hoa, Vung Tau, Thu Dau Mot, to VND800,000 (about US\$48) in the rest of the country. In a near future, there will be no differences in required minimum wage between foreign-owned and domestic companies.

### **Mandatory Insurance**

An enterprise that employs an employee for more than 3 months must pay social insurance. The employee is responsible for 6% of salary and employer 15% of the enterprise's total salary fund to be paid to the social insurance agency.

Health insurance will be paid at the same time of social insurance payment. The employer will pay 2% of the total salary fund and the employee will be responsible for 1% of his/her salary for health insurance. The employer shall withhold the social insurance amounts from the employees when making salary payment and remit those amounts to the insurance agency.

### **Establishment of Labour Union**

Foreign invested enterprises are not permitted to bar the establishment of a labour union in the enterprise. The labour union in an enterprise is a representative unit of all employees in that enterprise and will be established to protect the employees' legitimate rights and to represent all the employees in settlement of disputes as arisen. The employer is also

required to enter into a collective labour agreement with all employees represented by the labour union.

### **Collective Labour Agreement**

Representatives of both employers and employees in an enterprise are required to negotiate and sign a collective agreement. Normally, the employees' representative is the chairman of the enterprise's trade union. A collective labour agreement must cover all matters such as wages, and working conditions for each category of jobs. A collective labour agreement shall have the validity depending on the agreement between the employer and enterprise's trade union executive committee. A copy of the collective labour agreement must be submitted to the provincial labour department for registration.

The term of the collective labour agreement may be extended from one to three years. This is the main legal framework stating rights and obligations of the employer and employees to be carried out in the course of business.

### **Labour Safety & Labour Sanitation**

Labour inspectors play an important role in maintaining an adequate working environment in Vietnam. They inspect regularly and fine companies which do not follow the labour code on safety and sanitation.

The labourer must be given a health check during the recruitment and periodical health checks according to the prescribed regime. The cost of health checks for the labourer is borne by the labour user.

### **Labour Dispute**

It should be first noted that Vietnamese laws allow employees to strike works against employers. Attempts must be made to settle labour disputes through amicable negotiation between the employer and employees. If the dispute can not be settled through negotiation, the parties may refer the dispute to a conciliation council comprising an equal number of representatives from each side, or an arbitrator from local labour agency.

If all fails, the dispute can be referred to the local court for final settlement.

## 6. Taxation

### Legislation

The backbone of the taxation system is all the tax laws which for instance, include the Law on Corporate Income Tax (passed on June 03, 2003), the amended Law on Value-Added Tax (passed on 03 June 2008), the amended Law on Special Sales Tax (passed on May 20, 1998). There are also hundreds of decrees, circulars and other regulations being issued by the Government, various ministries and agencies, from time to time, with a view to guiding for the implementation of those laws.

### Types of Taxes

According to the prevailing tax law system and in practice, the following taxes in Vietnam are: Corporate income tax; Value-added tax; Special sales taxes; Withholding tax; Import/export tax; Technology transfer tax; Foreign contractor tax; and Personal income tax.

Land use tax and fees are trivial.

### Corporate Income Tax (CIT)

CIT, which will be adjusted to 25% from current 28% from 2009, may reduce the State budget about VND5 trillion a year, but it will offset the coffer with the increasing investment in long term. The new amended law allows businesses not to pay for advertisement, marketing, promotion and some other spending more than 10% of total expenditures reasonable for taxation. Lawmakers said that the reduction of corporate income tax will create favourable business and investment environment, help companies improve financial accumulation and capability and competitiveness. Vietnam has last cut the CIT from 32% to 28% in 2003. The incentive tax rates vary according to the level of socio-economic difficulties of the location where the projects took place. The highest and lowest of the incentive tax rates are below:

- (a) The tax rate of 20% shall be granted to projects, for a period of 10 years from their production starting, which belong to the sectors where investment are encouraged (including service projects in Industrial Zones – IZ ), or invest in the locations with socio-economic difficulties.
- (b) The tax rate of 10% shall be granted to projects, for a period of 15 years from their production starting, which belong to the sectors where investment are encouraged (including projects for development of IZs and EPZs) and invest in the locations with special socio-economic difficulties.

In addition to the mentioned incentive tax rates, the projects may enjoy the tax holidays and reductions vary from (a) 2 years tax free from the first profit-making year and 50% reduction for the following 2 years to (b) 4 years tax free from the first profit-making year and 50% reduction for the following 9 years, with respect to BOT, BTO and BT projects.

### **Value-Added Tax**

Value-Added Tax (VAT) is levied on the added value of most goods and services generated during the process from the production, circulation to consumption (With respect to some categories, they are subject to Special Sales Tax, as described in Section 16.5 hereunder).

There are four VAT rates as follows: (i) The tax rate of 0% is applicable to goods for export, abroad re-insurance, abroad credit services, abroad financial investment, abroad stock investment; (ii) The tax rate of 5% is applicable to essential goods and services such as water, fertilizer, insecticides, medicine, educational and training equipment and tools, baby toys, scientific and art books, natural agro-forestry products, animal feeds, services for scientific and agricultural applications, etc; (iii) The standard tax rate of 10% is applicable to most goods and services such as petroleum, coals, ores and other exploited products; commercial electricity; electronic, electrical and mechanical products; chemicals and cosmetics; textiles, fabrics, yarns; sugar, confectioneries, and soft drinks; glass, plastic, rubber, construction materials; construction and installation works, transportation and loading/unloading; postal and telecommunication services; leasing of premise, equipment and transport means; legal consulting services; and luxury goods and services such as gold, silver and precious stone trading, hotel, tourism, catering, all kinds of lottery, shipping agents, which in the past were subject to the tax rate of 20%.

### **Special Sales Tax**

Other than those subject to VAT, the following are being subject to the Special Sales tax with the rates ranging from 10% to 75% (lower than in the past rates of 15 % to 100%), which are cigarettes, beer (not including draft beer), alcohol, cars (less than 24 seats), gasoline, air conditioners (less than 90000 BTU), playing cards, joss papers, joss articles; trading in dancing clubs, massage, karaoke, casinos, jackpot game machine-based services, lottery trading, and golf course trading. Betting in horse race and motor race shall be excluded from the list of taxable services.

The goods and services subject to VAT are not subject to special sales tax, and vice versa.

**Withholding Tax**

Since the corporate income tax rate increased to 28% from 25% as above mentioned, foreign capital projects and investors shall be free from paying the withholding tax from 1 January 2004 when the recently amended Law on Corporate Income Tax comes into full effect.

**Import/Export Duties**

The import tariff and export tariff are being amended frequently from time to time to satisfy the State requirement import and export management. Import tariff includes (1) preferential tariff applicable to the country applying the Most Favoured Nation (MFN) treatment with Vietnam, (2) special preferential tariff applicable to countries applying special treatment of import tariff with Vietnam, and (3) normal tariff which is equal up to 70% of preferential tariff. Although there are three levels of import tariff, the preferential tariffs are applying to almost countries having trade relation with Vietnam. Dutiable prices are determined in accordance with the rules of the General Agreement on Trade and Tariff (GATT) adopted by the government.

Importation of commodities for fixed assets of newly established foreign invested enterprises, after being approved by competent authority in Vietnam, is exempted from import duties.

Importation of materials and components for production by foreign invested enterprises which are located in areas having special difficult socio-economic conditions and lying in special preferential investment sector shall be exempted from import duty for 5 years from commencement of production.

**Technology Transfer Tax**

All technology transferors are subject to the technology transfer tax which imposed upon the taxable revenues as agreed in the contract. Instead of three rates previously, there exists only a rate of 10% applicable recently to all cases.

**Foreign Contractor Tax**

Foreign contractors who conduct production and business activities in Vietnam, not under the FIL, on the basis of signing contracts with Vietnamese legal entities, and sub-contractors who provide services to contractors in Vietnam, shall be liable for paying the same taxes and tax rates as applicable to the local enterprises. These taxes include VAT, corporate income tax, import-export duty, personal income tax, and others if so required by the laws of Vietnam.

Foreign contractors and sub-contractors may choose one between the two following ways to pay VAT and corporate income tax:

(i) Ordinary Method

This is applicable to whom following the Vietnamese accounting system. The tax payment will be done in the same way of local entities, at the VAT and corporate income tax rates as described above.

(ii) Combined Method

This method is applicable when foreign contractors or sub-contractors do not use the Vietnamese accounting system. In order to facilitate the assessment and payment of VAT and corporate income tax, these two types of taxes are consolidated into one base which is the taxable revenues.

Added values vary from 10%, 25%, 30% to 50% of the taxable revenues, subject to whether it is trading, production, construction with or without supplies. VAT will be calculated by multiplying the said added values with the respective rates as described in Section 16.4 above. Payable corporate income tax varies from 1%, 2%, 5% to 10% of the taxable revenues, subject to whether it is trading; production, transport, construction; services; lending; and technology transfer.

**Personal Income Tax**

All foreigners having incomes in/ from Vietnam, regardless the length of time they live in Vietnam are the payers of personal income tax.

Those living in Vietnam less than 183 days, they will be liable for paying tax at a fixed rate of 25% (formerly 10%) of the aggregate income. Those living in Vietnam over 183 days (so called locally-resident foreigners), will be subject to the progressive tax tariff, with the maximum rate of up to 40% of their monthly income.

The threshold of taxable income applicable to a locally resident foreigner is VND 8 million.



## 7. Accounting & reporting

### **Overview of Accounting Practice and Environment**

Determined to be an export-driven economy, Vietnam has rapidly changed its regulations and laws, as well as accounting standards to adapt with an international business environment. In 2000, the Ministry of Finance of Vietnam initiated a program to create a suitable and adequate system of accounting for Vietnam (Vietnamese Accounting Standard, aka VAS) based on International Accounting Standard (IAS).

To date, 26 accounting standards and their compliant guides have been issued. These standards and the future ones are expected to undergo some changes as the International Federation Accountants (IFAC) is also perfecting International Financial Reporting Standards (IFRS), which were created by adopting all of IAS and adding improvements. The changes and additions to VAS aim to create reliable and accurate financial reports, therefore helping domestic and international investors have a well-informed decision, creating a harmonisation in managing and reporting for multi-national corporations.

There are a large number of governmental decrees and decisions in place to regulate financial reporting in Vietnam. Of those the Accounting Law issued by the 11th National Assembly of Vietnam and Decrees No. 128 and 129 are the highest authorities for accounting practices.

Vietnamese accountants are becoming more dynamic and better organised as the economy quickly evolves. Vietnamese Association of Certified Public Accountants (VACPA) was formed in 2006 to oversee auditors' practices. Another accountancy body, Vietnam Association of Accountants and Auditors (VAA) is also in place to unify accounting professionals, promote the field and improve technical skills to meet the demand of a rapidly changing market.

### **Presentation of Financial Statements**

All business entities in Vietnam have to follow Vietnam Accounting Standards and Vietnamese Accounting System for business entities and other relevant legal documents in preparing financial statements. Reports are required to be truthful, reasonable, consistent and comparable; further details will be discussed below. The following are mandatory:

- Balance Sheet
- Income Statement
- Statement of Cash flow
- Disclosure notes

There are two main standards for preparing and presenting financial reports: VAS 21 and VAS 24. Details about treatment for specific accounts are covered in other standards.

- Fiscal year: It is usually the calendar year or 12-month period but can be shorter depends on the nature of business.
- All transactions must be recorded in Vietnam Dong or another currency approved by the Ministry of Finance based on the specific practical need of the business. However, financial statements used in Vietnam must convert into Vietnam Dong according to compliance guide for VAS 10.
- VAS 18 states that financial statements must use the accrual basis, historical costs and reflect going concern. Information must be truthful, relevant, objective, recorded using conservatism on every significant aspect. The standard also required preparers be prudent while presenting payables and contingencies. Allowances and provisions must be appropriately recorded according to compliance guide of VAS 18.
- All transactions, economic events must be recorded using appropriate accounting policies which should be applied consistently. Changes in accounting estimates or policies must be disclosed according to VAS 29.
- Banks and credit unions must prepare and present financial statement according to VAS 22
- Vietnam Accounting Standards also provide a guidance for businesses how to record and present transactions involve consumer goods, real estate, self-built asset, capital lease, real estate investment, interest expense, construction contract, insurance contract and corporate income tax.
- The Standards also provide guidance for presenting consolidated financial reports, mergers, joint-venture, and partnership in VAS 25, 11, 08, and 07 respectively.

Audit firms and independent auditors have to follow accounting standards and auditing standards to provide an opinion about truthfulness and reliability of the financial statements. Businesses subject to such statutory audits include state-owned enterprises, state funded organisations, foreign invested businesses, banks and financial institutions and publicly traded companies. Other businesses may opt to audit their financial statements to increase transparency, productivity, investing attractiveness and competitiveness.

Separate from independent audit firms, a National Assembly controlled body of auditing known as State Audit is also in the field. Its existence is

expected to result better management of State-funding projects, higher overall financial transparency, corruption reduction, therefore allow the country to develop healthier.

## 8. UHY firms in Vietnam

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## 9. UHY offices worldwide

For contact details of UHY offices worldwide, or for details on how to contact the UHY executive office, please visit [www.uhy.com](http://www.uhy.com)