

In-depth

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Guide

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This Guide answers some of the most common questions raised by investors when they consider investing in Vietnam. What follows is a general guide for investors, outlining some of the main issues that should be considered. It is necessarily selective and should not be used as a substitute for formal advice.

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1. INTRODUCTION

In the past several years, culminating in its accession to WTO on 11 January 2007, Vietnam has taken active steps to revamp its entire legal framework for business and investment in Vietnam. The changes are largely favourable to both foreign and local investors.

Some of the significant laws include the Investment Law, which regulates how an investment in Vietnam may be approved, and the Law on Enterprises, which sets out the types of corporate vehicles investors may establish to carry out their investment projects. These laws both became valid only on 1 July 2006.

In addition to these laws, Vietnam has also issued new laws on contracts (Commercial and Civil Codes), on dispute resolution (Code of Civil Procedure), on intellectual property (Intellectual Property Law), on anti-corruption (Anti-corruption Law), on the stock market (Securities Law) and on foreign exchange (Foreign Exchange Law).

In regard to real estate investments, there is the new Land Law, Housing Law and Law on Real Estate Business (which became valid on 1 January 2007).

These new laws in general create a much more favourable and clearer legal framework for doing business, for local and foreign businesses alike, and form an excellent backbone for the future development of Vietnam.

These laws contain many “firsts”. For example, the Law on Enterprises abolishes the distinction between a local and a foreign company and between both of these and a State-owned company. All types of companies must now operate by the same corporate governance rules. This should create a level-playing field for doing business, since the failure to comply with these corporate rules will lead to personal liability for directors or officers of a company, regardless of whether the company is foreign-owned, Vietnamese-owned or State-owned. The Investment Law also now applies to both local and foreign investors.

This Guide answers some of the most common questions raised by investors when they consider investing in Vietnam. What follows is no more than a general guide for investors, outlining some of the main issues that should be considered. It is necessarily selective and should not be used as a substitute for formal advice.

2. FORMS OF DOING BUSINESS

2.1 What key law governs investments in Vietnam?

Whether a foreign investor invests “directly” or “indirectly” in Vietnam, the applicable law is the Investment Law, which applies to both local and foreign investors in Vietnam. The Investment Law is crucial for businesses to understand because it contains a significant number of investment guarantees and provides a roadmap for the conditions and procedures for investment in Vietnam.

“Direct” investment is defined to include the following:

- establishing companies owned 100% by foreign investors (“WFOE”)
- establishing joint ventures between local and foreign investor(s) (“JV”)

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- investing pursuant to a contract: Business Cooperation Contract (“BCC”), Build-Operate, Build-Transfer-Operate or Build-Operate-Transfer or Build-Transfer Contract
 - investing in developing a business (to expand the size or improve capacity of a project or to change to new technologies, increase quality of products or reduce pollution to the environment)
 - purchasing shares of or contributing capital to companies or branches in Vietnam to participate in management
 - investing in a merger or acquisition of a company or branch and
 - other forms of direct investment.

“Indirect” investment is defined to include the following:

- purchasing of shares, bonds and other valuable papers
- investing through securities investment funds and
- investing through other intermediary financial institutions.

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

If a foreign entity does not wish to or is not ready to invest in Vietnam but desires to have a physical presence in Vietnam, it may set up a representative or a branch office. Branches are also permitted in some specialised sectors but are otherwise unusual.

2.2 What are the most common forms of direct investment in Vietnam?

The most common forms of direct investment by a foreign investor or investors to carry out a project are: to incorporate a WFOE, JV or to enter into a BCC.

A WFOE and JV are both Vietnamese corporate legal entities and therefore in each case a Vietnamese corporate vehicle, to carry out investment in these forms must be established under the Law on Enterprises as discussed below.

In a BCC, no legal entity is formed. The parties to such arrangements may agree to share profits and losses or share in the products of the cooperation, in much the same way as a partnership; it is, in effect, a contractual JV.

2.3 In order to carry out a direct investment project in Vietnam in WFOE or JV form, must an investor set up a Vietnamese legal entity?

Yes, to carry out a business or an investment project in the WFOE or JV form, investors would have to set up a Vietnamese legal entity. This is governed by the Law on Enterprises, which is the new company law that sets out the types of corporate vehicles available to investors. It became valid on 1 July 2006.

In respect to foreign investors carrying out a first project in Vietnam, the incorporation of the Vietnamese company takes place simultaneously with the licensing of their first project. This means that a foreign investor cannot incorporate a company without a project. However, subsequent to the first project,

they have the option to carry out additional projects using the established corporate vehicle or to set up new corporate vehicles.

2.4 What types of Vietnamese legal entities are available?

A foreign investor (just like a local investor) can select the following Vietnamese corporate vehicles to carry out a project:

- (a) A limited liability company (“LLC”) which is essentially a private company with a minimum of two (2) shareholders and a maximum of fifty (50);
- (b) A shareholding or joint stock company (“JSC”) which is a public company with at least three (3) shareholders but no maximum and which can issue shares, and list on the Vietnam Securities Trading Centre;
- (c) A one-member LLC which is an LLC with only one (1) shareholder;
- (d) A partnership which is made up of individual partners;
- (e) A private enterprise (akin to a sole proprietor).

2.5 What is the key difference between an LLC and a JSC?

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

2.6 What factors lead a foreign investor to choose a JV or a WFOE?

The main factors that lead a foreign investor to choose a JV are because many business sectors in Vietnam require a JV to establish a commercial presence in Vietnam and / or because the Vietnamese party has a key asset, local know-how and knowledge, and other factors that make the JV essential. For example, in real estate development projects, the Vietnamese party usually has the land use rights that it may opt to contribute to the JV in exchange for equity.

2.7 What is a representative office permitted to do?

A representative office represents the foreign company in Vietnam, as the name suggests. It is often the first step to establishing a presence in the country. Foreign companies that wish to establish a representative office in Vietnam must first be duly established in accordance with the laws of its home jurisdiction.

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

3. GOVERNMENT APPROVALS

3.1 What is the approval process for establishing JVs and WFOEs?

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

To receive an IC a project will either go through: a registration or an evaluation procedure based on the size of the project and the type of the project.

Registration applies to projects:

- (a) under VND300 billion (approximately USD18,750,000) and
- (b) not on list of “conditional” sectors.

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

Evaluation applies to projects:

- (a) over VND300 billion or
- (b) on the list of “conditional” sectors.

Time limit: forty-three (43) business days (or forty-five (45) business days in special cases).

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

- national defence and security, social order and safety
- banking and finance
- public health
- culture, information, press and publishing
- entertainment services
- real estate
- survey, prospecting, exploration and mining of natural resources, environment or ecological
- development of education and training or
- other sectors as set out by law.

3.2 What level of the Vietnamese government must approve a particular project?

Decree 108/2006/ND-CP dated 22 September 2006, which guides the Investment Law, delegates the authority to issue ICs to the local People’s Committees (“PCs”) for most types of projects (including real estate) regardless of size except for a limited type of “sensitive” projects which require the Prime Minister to approve the investment policies (such as casino projects, production of cigarettes).

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

This “de-centralisation” of licensing authority is generally seen as a favourable

step, as the local PCs are much more familiar with the projects in their localities than the central licensing authority (the Ministry of Planning and Investment (“MPI”). Previously, a project over USD10 million in Ho Chi Minh City or Hanoi and over USD5 million in other cities and provinces had to be approved by the MPI. Significant delays resulted as the MPI in Hanoi was not familiar with the project and the local requirements and lacked sufficient manpower to deal with the applications. This new change, therefore, should significantly reduce any delay in approving projects.

4. BUSINESS SCOPE AND AUTHORITY

4.1 What is the significance of a company’s business registration certificate or an IC?

All validly existing private business enterprises in Vietnam must have either a business registration certificate or an IC. Either one or the other is required depending upon set criteria. The IC doubles as a business registration document. Foreign invested enterprises, which include WFOEs and JVs, (“FIEs”) always need to obtain an IC. Certificates are usually issued by the local PC with jurisdiction over the matter. The certificates state the legal name of the company, the nature of the company (LLC or JSC), its permitted scope, its legal representative, legal address and the amount of registered capital. Without a valid certificate, business enterprises cannot legally do business in Vietnam.

4.2 What is a “legal representative” of a Vietnamese company?

The legal representative is the officer who has the primary responsibility and power to act on behalf of the company in its dealing with the outside world, including the State. Pursuant to the Law on Enterprises, either the chairman of the members’ council (in case of an LLC), chairman of the board of management (in case of the JSC) or the general director must be designated the legal representative. Legal representatives have the authority to bind the company in contracts, initiate lawsuits, and are personally liable for the commission or omission of certain acts. For example, in the context of an LLC, the legal representative of the company must notify the business registration body in writing of the progress of capital contribution within fifteen (15) days from the date undertaken for capital contribution, and must bear personal liability for any damage to the company and to other persons due to late notification or inaccurate, untruthful or incomplete notification.

4.3 What is the significance of a Vietnamese company’s “business scope”?

Unlike in most common law countries, the business scope permitted to Vietnamese companies are narrowly defined and mostly codified into a State recognised and published list of business activities called “business lines.” Generally, the permitted business scope must be closely tied to what is considered necessary for that particular project. Generally to obtain an IC, the investor needs tangible plans, including a feasibility study, on what precisely the investor will do. Broad grants of business scopes such as “do any lawful business permitted by law” are not permitted.

4.4 When do contracts in Vietnam need to be notarised?

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

5. CAPITAL STRUCTURE

5.1 What is the capital structure of an FIE?

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

5.2 Can the capital contribution of an FIE be reduced, whether by distribution or otherwise?

Yes, but there is a qualified waiting or a “lock-in” period. In an LLC, investors may reduce their capital contribution if business operations have been carried out for more than two (2) years from the date of business registration; and, at the same time, ensure that debts and other property obligations of the company are able to be paid in full after returning part of the contributed capital to the investors. In the JSC, within three (3) years from the date of issuance of the business registration certificate, the shares of founding shareholders cannot be sold except to other founding shareholders unless the sale to non-founding shareholders is approved by the shareholders.

5.3 What are the time limits for contributing capital?

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

6. RETAIL AND DISTRIBUTION

6.1 Are there any business form limitations for foreign companies in retail and distribution business in Vietnam?

Yes, there are limitations on the types of business forms that may engage in retail in distribution in Vietnam. Generally, to establish a commercial presence in Vietnam to do retail and distribution business, foreign companies must establish a

JV enterprise in Vietnam with up to 49% foreign ownership. The 49% ownership cap for foreign entities is set by Vietnam's World Trade Organisation ("WTO") commitments and will be abolished by 1 January 2008, and by 1 January 2009, there will be no JV requirement. In other words, from 1 January 2008 to 1 January 2009, a JV is still required but there will be no ownership percentage cap for foreign entities; and, from 1 January 2009, WFOEs may apply to conduct distribution in Vietnam.

The option of opening up a branch office is not advisable right now because there is uncertainty in the law as to whether, as a branch, you may engage in distribution.

6.2 What are the requirements to establish a retail outlet?

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

According to Decree No. 23/2007/ND-CP, any FIE which is licensed to distribute goods in Vietnam is allowed to establish one retail store without any license required. For the second store, it must apply to the provincial PC where its intended second store will be located. Before issuing the license, the PC must get the approval of the Ministry of Industry and Trade ("MIT") of Vietnam.

7. TAXATION

7.1 What are the corporate income tax rates in Vietnam in brief?

For corporate income tax ("CIT") in Vietnam, the uniform rate is 28%. There are special investor incentive rates at 10%, 15%, and 20% available for a period between ten (10) to fifteen (15) years from the date the company begins to operate (and in exceptional cases the 10% rate may be available for the entire term of the project if approved by the Prime Minister). There are also tax holidays from two (2) to nine (9) years depending on where the project is located, the types of activities and the number of employees. Tax holidays can take the form of complete tax exemption for a certain period from the date from which the company makes profit followed by a period in which tax is charged at half rate. There are special rates for investments in certain geographical areas such as Phu Quoc.

7.2 What are the Value Added Tax rates?

There are three rates: 0%, 5%, and 10%.

7.3 What are the personal income tax rates?

For foreigners:

- If a foreigner is a resident for less than 183 days within a twelve (12) consecutive months period, the tax rate is 25% on Vietnam-related income earned based on the days he / she is in Vietnam.
- If a foreigner is resident for more than 183 days, standard rates apply based upon progressive scales. Tax is on worldwide income.
- Foreigners working in Phu Quoc pay only 50% of ordinary rates.

Income × USD	Tax Rate
Up to 500	0%
Over 500 - 1,270	10%
Over 1,270 - 3,200	20%
Over 3,200 - 5,000	30%
Over 5,000	40%

For Vietnamese:

Income × USD	Tax Rate
Up to 300	0%
Over 300 - 950	10%
Over 950 - 1,600	20%
Over 1,600 - 2,600	30%
Over 2,600	40%

8. THE RIGHT TO PURCHASE FOREIGN CURRENCY AND REMITTANCE OF PROFITS

8.1 Can I purchase foreign currency in Vietnam?

Yes. The Investment Law specifically allows foreign investors to purchase foreign currency at credit institutions licensed to trade in foreign currency in Vietnam to meet their “vang lai” or “non-capital” transactions and other permitted transactions as set out in the foreign exchange laws (such as repayment of an offshore loan, and remittance of dividends abroad). The law sets out a broad range of permitted transactions. Thus, the banks are in charge of foreign exchange compliance and will guide their customers accordingly. As long as the proper documentations are provided to the bank, remittance offshore is not a problem.

It should be noted that, although all enterprises have the right to convert, there is no guarantee of availability of foreign currency in Vietnam except for important projects in certain fields.

8.2 Is it possible to repatriate your investment from Vietnam?

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

- (a) profits derived from business activities (profits can be remitted on a quarterly, semi-annual or annual basis);
- (b) payments received from the provision of technology and services and from intellectual property;
- (c) principal of and any interest on offshore loans;
- (d) invested capital and proceeds from the liquidation of investments; and
- (e) other sums of money and assets legally owned by the investor.

9. WTO AND FOREIGN INVESTMENT IN VIETNAM

9.1 How does Vietnam's WTO entry benefit foreign investment in Vietnam?

While the WTO Agreements are not specifically focused on investment terms and conditions, as a condition to entry into the WTO, Vietnam has agreed to open up a number of previously restricted or closed sectors to greater foreign investment, including distribution and retail, architectural and engineering services, construction, banking and education services. The rules are complicated and vary from sector to sector but in general, permit, over a span of one (1) to three (3) year period, first minority foreign investment in JVs, followed by majority foreign investment in JVs, and eventually wholly foreign-owned investments.

9.2 Will Vietnam live up to its WTO commitments?

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

10. IMPORT / EXPORT

10.1 Can my company freely import its goods into Vietnam?

Generally, most goods may be imported into Vietnam. Of course there are some goods that are prohibited, subject to permission from the MIT, and subject to other regulation. Even without physical presence in Vietnam, a foreign company may import goods into Vietnam. Under a new law, such foreign companies may need to obtain a certificate of registration of right of export and import.

10.2 What items are prohibited from import?

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

11. LITIGATION IN VIETNAM

11.1 What is the structure of the Vietnamese court system?

The court hierarchy of Vietnam has three tiers namely the Supreme Court, Provincial Courts, and District Courts.

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

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

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

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

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

Protest is the procedure (or the right of Procuracy Office or Superior Courts) in which the procuracy office (prosecution office) or the superior court makes an appeal or objection to the judgment of a court. There are two types of protest. First, the Procuracy Office of the same level or higher can protest a judgment by requesting an appellate court hear the case following the appellate procedure. The Procuracy Office may appeal a judgment of a court of first instance to the court of appeal regardless of irregardless to the parties' wishes. Second, the Procuracy Office or Superior Court can protest the judgment by requiring a competent court hear the case via *supervisory* or *review* procedure.

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

A Provincial Court is empowered to hold:

- (a) First-instance trials of cases according to the provisions of the Code of Civil Procedure which include: (i) transportation agreements via airway or sea way, sales of securities, disputes in investment, banking, insurance, intellectual property, and company; (ii) cases where a concerned party to the dispute is living abroad or the disputed property is located abroad; and (iii) cases that a Provincial Court takes from a District Court where it deems necessary;

- (b) To conduct appellate trials of cases where the first-instance judgments and / or rulings of lower courts have not yet taken legal effect but have been appealed and / or protested against according to the provisions of the procedural law; and
- (c) To supervise, review cases where judgments and / or rulings of lower courts have already taken legal effect but been protested against, according to the provisions of the procedural law.

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

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

11.2 What are the qualifications of judges in Vietnam?

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

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

The required time set out in point (e) above is four (4) years for a District Court.

To become a Provincial Court judge, a person must have been a District Court judge for at least five (5) years or if not appointed as a District Court judge, a person must have worked in the legal profession for at least ten (10) years.

To become a Supreme Court judge, he must have been a Provincial Court judge for at least five (5) years or if not appointed as a Provincial Court judge, he must have worked in the legal profession for at least fifteen (15) years.

The term of office for every judge is five (5) years. Upon the termination of the term, a Judge Selection Council will review the performance of a judge and decide if he is qualified to reappointment. The components of the Judge Selection Council are different according to the level of a judge, i.e., District or Provincial or Supreme Court judge.

11.3 Is the role of judges similar to other civil law jurisdictions in that they take the lead in investigating the case?

The new Code of Civil Procedure has introduced some features of a more adversarial litigation system, including: burdens of proof and requiring parties to take the

initiative in adducing evidence to support their case. Therefore, it has lessened the judge's role as the lead investigator in the case. However, it is at base a civil law system and the rule for the parties' right to discovery is not comprehensive.

11.4 What is the system for enforcing court judgments?

An order to execute a civil judgment would be governed by the Ordinance on Execution of Civil Judgments ("OECJ"). Once the judgment is obtained, it is given to the civil judgment-executing bodies who must issue decisions to force the judgment execution. However, the executors must set a time limit of no more than thirty (30) days counting from the date of receiving the judgment execution decision for the judgment debtors to voluntarily execute the judgment, except for cases where it is necessary to prevent the judgment debtors from dispersing or destroying assets or shirking the judgment execution, in which case, the executors will have the right to apply, in time, coercive measures.

The executors are entitled to apply the following coercive measures for judgment execution:

- (a) seizure of account deposits, seizure of money, recovery of valuable papers of the judgment debtors;
- (b) seizure of incomes of the judgment debtors;
- (c) blockade of accounts, property of the judgment debtors at banks, credit organisations, State treasuries;
- (d) detaining, or handling of the assets of the judgment debtors, including their assets being held by the third persons;
- (e) forced handover of houses, transfer of land use rights or handover of objects or other assets; and
- (f) ban from doing certain jobs or being forced to do certain jobs.

The time frame from filing a lawsuit to obtaining a judgment is approximately ninety (90) days. After the judgment the losing party would have fifteen (15) days to appeal. Add to this the thirty (30) days to await voluntary execution, most judgment creditors will likely wait at least 135 days from the date of filing the civil complaint for a decision to force judgment execution. The actual execution of the decision by "executors" may take much more additional time. In practice, there are some legitimate concerns regarding the possible corruption of judicial officers, including executors.

11.5 How independent of politics is the Vietnamese court system?

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

11.6 Political issues apart, how well do Vietnamese courts work?

Litigants are often dissatisfied with the quality of the judicial system in Vietnam. The common cause is the lingering perception the judicial system is not transparent or accountable. Moreover, since the hearing process may encompass stages of first instance, second instance, appeal, supervision, and review, reaching a final

judgment is often quite long and frustrating. Nonetheless, with recent and pending legislation, the situation is improving and will most likely continue to improve.

11.7 Is arbitration in Vietnam preferable to litigation?

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

The Ordinance on Commercial Arbitration only applies to disputes arising from commercial activities in accordance with an agreement between the parties. The Ordinance broadly defines “commercial activities” to mean “the performance of one or more commercial acts by a business organisation or an individual, comprising of purchase or sale of goods; provision of services; distribution, commercial representation or agency; bailment; leasing out or leasing; hire-purchase; construction; consulting; engineering; licensing; investment; finance and banking; insurance; exploration and exploitation; transportation of goods and passengers by air, sea, rail or road; and other commercial acts in accordance with law.”

11.8 Is offshore arbitration possible?

Yes, under the Law on Investment the parties may choose offshore arbitration. The Code of Civil Procedure sets for guidelines on the recognition and enforcement of foreign arbitral awards in Vietnam. Vietnam has been a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 28 July 1995.

11.9 Are foreign judgments enforceable in Vietnam?

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

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

For a foreign verdict to be recognised in Vietnam, a letter requesting the recognition of the same, must be sent to the Ministry of Justice (“MOJ”) in Vietnam. The MOJ will forward the letter, together with any attached documents, to an authorised Court within seven (7) days from the date of receipt of the letter of request for its consideration and action. Four (4) months after the Court has received all the documents, it is required to issue a decision as to whether it will reject the request for recognition and return all the documents to the Ministry of Justice, or will consider the case. Once the judgment has been recognised, enforcement would proceed pursuant to OECJ.

12. REAL ESTATE LAW

12.1 Is it possible for FIEs to own land in Vietnam?

Yes, however, the concept of “ownership” in Vietnam is unique and needs to be explained. Vietnam’s Land Law is similar to that of China. Land belongs to the people and the right to use the land is administered by the State for the people. Ownership is referred to as a “right to use land” (“LUR”) and evidence of such right is a land use right certificate (akin to a title deed) (the “LUR Certificate”) which sets out the term and the purpose of the land use. LURs can be granted on a “long-term” basis or for a limited term. In general, “long-term use” LURs are only granted for a number of very limited purposes such as for residential, personal use, for households and individuals that have already been granted long-term LURs to use for the family’s production, business purposes, for national security purpose, etc.

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

- When the term has expired and no extension is given:
 - Regarding land and assets on land, no compensation will be paid.
- Land for an investment project has not been used for twelve (12) consecutive months or the implementation schedule has been delayed for twenty-four (24) months compared to that set out in the project documents from the date the land is handed over and no approval is granted for such delay:
 - No compensation is payable “in respect of land”
 - Government will issue (but has not yet done so) legislation on compensation for assets on land.

Furthermore, the term or duration of the LUR for foreign investors is usually fifty (50) but maybe seventy (70) years (in the case of residential land and in special circumstances) and not in perpetuity. It is worthy to note, however, that pursuant to a new law, Decree 84/2007/ND-CP, foreign developers of residential land may obtain a land lease for seventy (70) years which may be extended without limit, each time for a period of seventy (70) years without being required to pay rent for any extended duration.

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

12.2 Can a foreign company or individual own improvements and other assets on land in Vietnam?

Yes, when foreign developers make assets on land upon which it has LUR, it has ownership interest on the assets; they simply need to register the assets. However with regard to purchasing existing assets on land, the answer is more complex. Generally, the law does not allow a foreign investor to directly purchase assets, such as buildings for the sole purpose of buying, selling, or leasing assets on the land. It does, however, allow a foreign investor to invest in an existing asset to improve it. The extent of the improvement needed to satisfy this requirement is unclear.

12.3 Are there any limits on the deposits a developer may ask from the purchaser for residential housing?

Yes, there are legal limits on when deposits can be received by developers for in real estate projects. Pursuant to the Law on Residential Housing and the Law on Real Estate Business, deposits and advance payments for commercial residential housing:

- (a) cannot be received unless:
 - “design of residential housing has been approved”;
 - “the construction of the foundation has been completed”;
 - “[developer has] completed construction of infrastructure servicing the real estate in accordance with the approved contents and schedule of the project”; and
- (b) cannot exceed 70% of the contract price of the residential housing “before delivery of the residential housing to purchasers.”

12.4 How is land rental price calculated and when is it payable?

Land rental is payable when land is leased from the Government pursuant to a land lease (annually or for an entire term) and is 0.5%-2% of the land price issued by and based on the price list issued by the PC of each city or province on 1 January of each year.

12.5 How is LUF calculated and when is it payable?

LUF is based on the price list issued by the PC of each city or province on 1 January of each year. In practice, the price is based on the market value. It is unclear as to whether improvements made by developers will be included. Land use fees are payable when land is allocated.

12.6 May land be mortgaged and is registration required?

In respect of an investor leasing land from the State, land may only be mortgaged if rental is paid all in advance. Furthermore, land may only be mortgaged to “credit institutions licensed to operate in Vietnam” and not to “offshore” lenders, including shareholders.

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

Enforcement of mortgages is based upon contracts. If enforcement cannot be carried out pursuant to the contract, the mortgagee may sell the LUR or request a State body to sell the land by auction and commence proceedings.

13. INTERNET

13.1 Who regulates internet related businesses?

Internet Service Providers (“ISPs”) must be licensed by the Ministry of Information and Communication (“MIC”), and licences once issued will be valid for up to ten (10) years. Internet Content Providers (“ICPs”), defined as a body, organisation or enterprise that provides information on the Internet through an ISP, must also be issued a licence by the MIC. It seems to be the case that ICPs only need to obtain a one-time permit to post information on the Internet instead of a permit on every occasion. Further, these organisations are subject to governmental control by MIC and Ministry of Public Security.

13.2 Does Vietnam have a law relating to electronic commerce?

Yes, a recent law has been implemented on e-transactions. The MIC is responsible for the Government for presiding over electronic transaction activities. The law stipulates the legal validity of data messages and electronic signatures, signing and performance of electronic contracts, and security, safety, protection and confidentiality in electronic transactions.

13.3 Does Vietnam censor certain types of content that may be placed on the internet websites?

Yes, under Vietnamese law an ICP cannot publish content on websites that may oppose the State, cause people to rebel against the State, infringe upon ethics and fine customs of Vietnam, or disclose national secrets. Misuse of the internet can result in fines that range from VND50,000 to VND70,000,000.

14. LABOUR

14.1 What approvals do expatriate workers need to legally work in Vietnam?

The majority of expatriate employees and overseas Vietnamese wishing to work in Vietnam for three (3) months or more are also obliged to obtain a work permit which will entitle them to be employed in Vietnam in accordance with the term of the labour contract but for not more than thirty-six (36) months. The work permit may also be extended on one occasion corresponding to the term of the labour contract. Thereafter, the work permit may only be extended for following occasions if upon expiry of the first extended occasion, Vietnamese employees have not completely been trained to replace foreign partners and with the approval of the Chairman of the central-run provincial or municipal PCs where employers’ headquarters are located. Vietnam’s WTO commitments stipulates, that, per FIE, a minimum of three (3) non-Vietnamese managers, executives and specialists shall be permitted entry and stay permits for an initial period of three (3) years which may be extended.

Exempt are members of the Board of Management (in shareholding companies) or Members Council (in limited liability companies), foreigners working for diplomatic organisations, foreigners being chiefs of representative offices, foreigners granted with law practising certificates by the Ministry of Justice, the foreign party to a BCC, foreign students studying in Vietnam, and those working for State offices.

14.2 What are the key conditions for an employment contract in Vietnam?

All workers must have a contract of employment that covers a number of specified general issues including the nature of the work, working hours / breaks, salary, location and duration of the contract to name a few. If an employee is called for military service or public service, the contract will be suspended for the duration of that service.

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

- (a) a contract for an indefinite term;
- (b) a contract for a defined duration of twelve (12) to thirty-six (36) months; or
- (c) a seasonal or fixed term contract for less than twelve (12) months.

A contract for a definite term or seasonal contract will be converted automatically into an indefinite term contract if at its expiry the employee continues to work for the employer but the parties fail to re-sign a new contract within thirty (30) days from the date of its expiry. In addition, a definite term contract may only be extended on one occasion following which the employee in question must either be released or else employed on an indefinite term basis.

14.3 On what grounds may you terminate an employee?

It is difficult for employer to unilaterally terminate employment contracts in Vietnam. Simple notice to terminate, however long, is not by itself permissible, unless, of course, the employee agrees. Otherwise, an employer may only terminate an employee's contract in limited and defined circumstances after notification to the Department of Labour when:

- (a) the employee is dismissed;
- (b) the employee repeatedly fails to perform the work required as per the contract;
- (c) the employee suffers illness or injury and remains unable to work after having received treatment for a period as stipulated by law;
- (d) reasons of force majeure force the employer to scale down production and reduce the number of employees; or
- (e) the enterprise terminates its operation.

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

- (a) theft;
- (b) embezzlement;

-
- (c) disclosure of technological and business secrets;
 - (d) any act that causes severe losses to the company's assets and interests;
 - (e) repeating a breach while on a disciplinary sanction for an earlier breach;
 - (f) repeating a breach after being demoted for the earlier breach; or
 - (g) absence for five (5) working days or more in a month or twenty (20) working days in a year without justifiable reasons.

Prior to termination the Employer must send a notice: forty-five (45) days in respect to an indefinite term contract; thirty (30) days for a contract of between twelve (12) months and thirty-six (36) months, and three (3) days for contracts of a duration of less than twelve (12) months.

15. ENVIRONMENTAL LAW

15.1 What environmental reports or studies must be submitted for investment projects in Vietnam?

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

The content of the EIA Report must include: specifications of the project, operational technology of the project, measures to minimise the negatives effects on the environment, and undertaking to apply environmental protection measures during construction and operation phases, and opinions of the local PC and the population community where the project is carried out.

The contents of the EPU report must include: the project site; the form and scale of production, trading and services, materials and raw materials used for the project; likely waste to be produced from the project; and the undertaking to apply measures to minimise and treat wastes and comply with the laws on the environment. The undertaking must be registered with the local district PC where the project is located before commencement of the project.

15.2 What are some of the possible environment related financial obligations an investor may face in Vietnam?

Investor may face the following environment related financial obligations:

- (a) Environment tax: Any organisations or individuals producing goods that have a negative environmental and health consequences are subject to this tax.
- (b) Environmental protection fees: These must be paid by organisations or individuals discharging waste that could be harmful to the environment.
- (c) Natural resource exploitation and restoration funds: An organisation or individual that exploits natural resources must give a deposit to a credit institution operating in Vietnam or to the environment protection fund where the exploiting is taking place.

- (d) Environment protection funds: The State and each of its provinces have financial agencies to protect the environment. These agencies are funded by the government and aim to spend money to protect the environment from further damage.

16. BANKRUPTCY LAW

16.1 Who may file bankruptcy in Vietnam?

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

16.2 Which court has jurisdiction over a bankruptcy?

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

17. INTELLECTUAL PROPERTY

17.1 What laws protect intellectual property in Vietnam?

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

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

17.2 Is registration required to protect intellectual property?

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

17.3 What is the duration of protection for patent, copyright, trade mark, industrial design and trade name?

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

18. TECHNOLOGY TRANSFER

18.1 Who has the right to transfer technology?

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

- (a) the owner of the technology;
- (b) any organisation or individual being permitted by the owner of the technology to transfer the use or ownership of the technology.

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

18.2 What kind of technology may be transferred?

The legal objects of technology transfer are: technical knowhow; technical knowledge about technology in the form of technological plans, technical solutions, formulae, technical parameters, design drawings, technical plans, computer programs, and data information about the transferred technology; solutions for rationalisation of production and renovation of technology, licences for special business rights and other objects as provided in the law on technology transfer.

In the case where the technology is an object with protected intellectual property rights, the transfer of such technology must be conducted together with the transfer of intellectual property rights in accordance with the law on intellectual property.

18.3 What technology transfers are prohibited?

The following technologies are not permitted to be transferred:

- (a) the technology does not meet the regulations of the law on occupational safety, occupational hygiene, ensuring the health of people, or on protection of the environment;
- (b) technology that adversely affect culture, security and social safety;
- (c) technology which fails to have technical, economic or social efficiency; and
- (d) technology with serves national security or defence, but the permission of the authorised State body has not been obtained.

18.4 What approvals or procedures should be followed in order to transfer technology in Vietnam?

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

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

- (a) the transfer of foreign technology into Vietnam;
- (b) the transfer of Vietnamese technology outside of Vietnam; and
- (c) domestic transfer of technology within Vietnam where the value of the technology transfer contract exceeds VND500,000,000 (approximately USD31,250).

Registration must take place within ninety (90) days of executing the technology transfer contract. The parties to a technology transfer contract may agree on the price where the transferee does not use State funds and where the transferee to use State funds, it must first be submitted to the competent State body for approval.

19. GOVERNMENT OF VIETNAM AND CHARTS OF MAJOR STATE AGENCIES

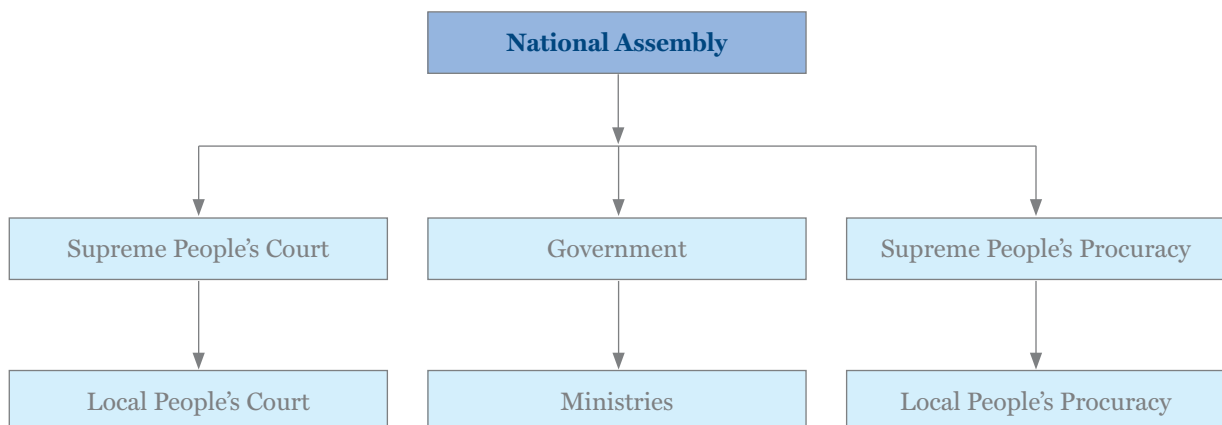
19.1 Overview of the Government of Vietnam

The Socialist Republic of Vietnam is a single-party state. Only political organisations affiliated with or endorsed by the Communist Party are permitted to contest elections. The President of Vietnam is the titular head of state and the nominal commander in chief of the military of Vietnam, chairing the Council on National Defence and Security. The Prime Minister of Vietnam is the head of government, presiding over a council of ministers, currently (as of September 2007) composed of five (5) deputy prime ministers and the heads of twenty-two (22) ministries and commissions.

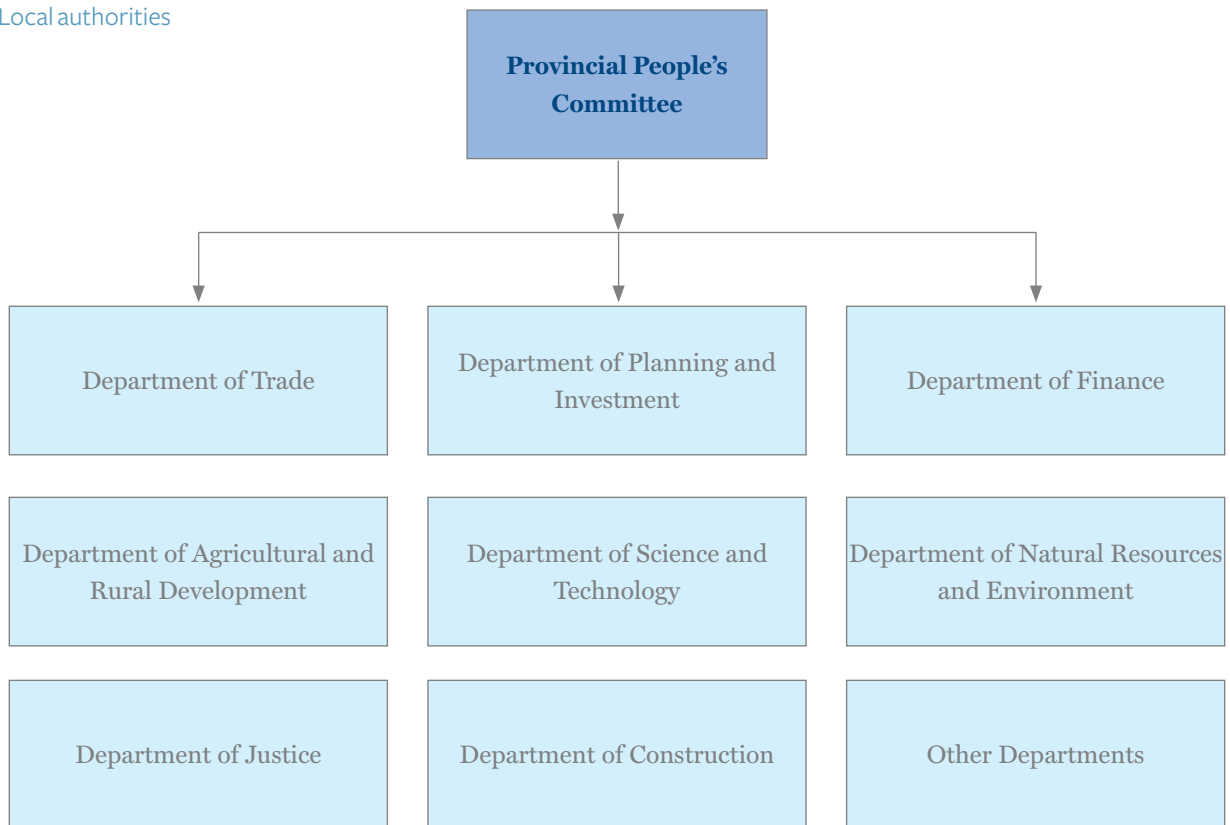
The National Assembly of Vietnam is the unicameral legislature of the government, composed of 498 members. It is superior to both the executive and judicial branches. All members of the council of ministers are derived from the National Assembly. The Supreme People's Court of Vietnam, which is the highest court of appeal in the nation, is also answerable to the National Assembly. The General Secretary of the Communist Party is perhaps one of the most important political leaders in the nation, controlling the party's national organisation and state appointments, as well as setting policy.

Sections 19.2 to 19.4 on the following pages are charts showing the general organisational structure of the Socialist Republic of Vietnam.

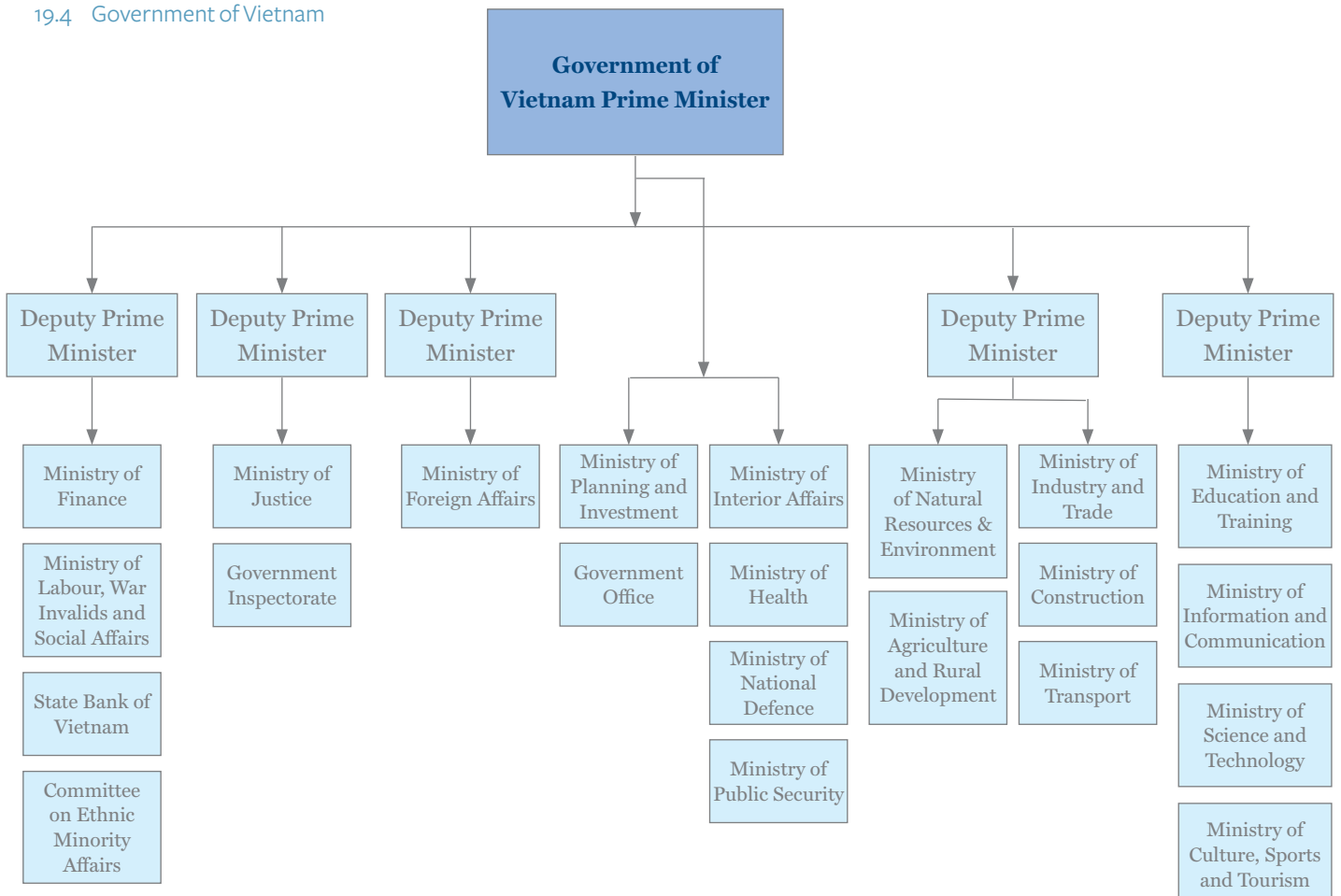
19.2 Central authorities



19.3 Local authorities



19.4 Government of Vietnam



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