Vietnam

RISK & COMPLIANCE REPORT

DATE: March 2018

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Executive Summary - Vietnam	
Sanctions:	None
FAFT list of AML Deficient Countries	No
Higher Risk Areas:	US Dept of State Money Laundering assessment Compliance with FATF 40 + 9 Recommendations Not on EU White list equivalent jurisdictions Corruption Index (Transparency International & W.G.I.)) Failed States Index (Political Issues)(Average Score)
Medium Risk Areas:	Weakness in Government Legislation to combat Money Laundering World Governance Indicators (Average Score)

Major Investment Areas:

Agriculture - products:

paddy rice, coffee, rubber, tea, pepper, soybeans, cashews, sugar cane, peanuts, bananas; poultry; fish, seafood

Industries:

food processing, garments, shoes, machine-building; mining, coal, steel; cement, chemical fertilizer, glass, tires, oil, mobile phones

Exports - commodities:

clothes, shoes, electronics, seafood, crude oil, rice, coffee, wooden products, machinery

Exports - partners:

US 17%, China 12.9%, Japan 12%, South Korea 4.6%, Germany 4.4%, Malaysia 4.2% (2012)

Imports - commodities:

machinery and equipment, petroleum products, steel products, raw materials for the clothing and shoe industries, electronics, plastics, automobiles

Imports - partners:

China 27.2%, South Korea 12.7%, Japan 8.5%, Singapore 8.3%, Thailand 5.3%, Hong Kong 5.2% (2012)

Investment Restrictions:

Vietnam officially encourages foreign investment as part of its development strategy and the government has stated its commitment to improving the country's business and investment climate. The Investment Law of 2005 provides the legal framework for foreign investment in Vietnam.

Vietnam became the 150th member of the World Trade Organization on January 11, 2007. Vietnam's commitments under the WTO increase market access for exports of Foreign goods and services and establish greater transparency in regulatory and trade practices as well as a more level playing field between Vietnamese and foreign companies. Vietnam undertook commitments on goods (tariffs, quotas, and ceilings on agricultural subsidies) and services (provisions of access to Foreign Service providers and related conditions). It has also committed to implement agreements on intellectual property (TRIPS), investment measures (TRIMS), customs valuation, technical barriers to trade, sanitary and phyto-sanitary measures, import licensing provisions, anti-dumping and countervailing measures, and rules of origin. Vietnam has made progress in implementing its bilateral and international obligations; however, concerns remain in many areas such as protection of intellectual property rights (IPR) and effectiveness of the court/arbitration system.

The Investment Law designates prohibited and restricted sectors for investment, but there are additional laws that apply conditions to investments in sectors such as mining, post and telecommunications, property trading, banking, securities, and insurance.

The Investment Law provides for five main forms of foreign direct investment: (1) 100 percent foreign-owned or domestic-owned companies; (2) joint ventures (JV) between domestic and foreign investors; (3) business contracts such as business cooperation contracts (BCC), build-and-operate agreements (BOT and BTO), and build and transfer contracts (BT); (4) capital contribution for management of a company; and (5) merger and acquisitions (M&A). Foreign investors can, with restrictions, invest indirectly by buying securities or investing through financial intermediaries.

Vietnam has gradually opened some sectors for foreign investment through M&A. While foreign investors are allowed to buy shares in some domestic companies without limitation, examples where this has occurred are rare. The ratio of total foreign ownership permitted in a project depends on a number of factors, including Vietnam's international commitments, the economic sector in question and the type of investor, among others. There are strict foreign ownership limitations for certain listed companies and service sectors. For example, foreign ownership cannot exceed 49 percent for listed companies and 30 percent for listed companies in the financial sector. A foreign bank is allowed to apply to establish a 100 percent foreign owned affiliate in Vietnam but may only own up to 20 percent of a local commercial bank. Individual foreign investors are usually limited to 15 percent ownership, though a single foreign investor may increase ownership to 20 percent through a strategic alliance with a local partner and with approval from the Prime Minister's Office.

The list of sectors in which foreign investment is prohibited includes cases where the investment would be deemed to be "detrimental to national defense, security and public interest, health, or historical and cultural values."

The list of sectors in which investment is encouraged includes high-technology, agriculture, labour-intensive industries (employing 5000 or more employees), infrastructure development, and projects located in remote and mountainous areas.

The list of sectors in which investment is conditional for both foreign and domestic investors includes those having an impact on national defense, security, social order and safety; culture, information, press and publishing; financial and banking; public health; entertainment services; real estate; survey, prospecting, exploration and exploitation of natural resources; ecology and the environment; and education and training.

The sectors where certain conditions are applicable to foreign investors include telecommunications, postal networks, ports and airports, and other sectors as per Vietnam's commitments under international and bilateral arrangements.

Foreign investors have the right to sell, market, and distribute what they manufacture locally, and to import goods needed for their investment projects and inputs directly related to their production, provided this right is included in their investment license.

Foreign participation in distribution services, including commission agents, wholesale and retail services, and franchising, opened to fully foreign-owned businesses in 2009. Vietnam has excluded certain products from its WTO distribution services commitments, including rice, sugar, tobacco, crude and processed oil, pharmaceuticals, explosives, news and magazines, precious metals, and gemstones. Distribution of alcohol, cement and concrete, fertilizers, iron and steel, paper, tires, and audiovisual equipment opened to foreign investors in 2010. Investment in retail outlets is subject to a strict "economic needs test."

Contents

Section 1 - Background

The conquest of Vietnam by France began in 1858 and was completed by 1884. It became part of French Indochina in 1887. Vietnam declared independence after World War II, but France continued to rule until its 1954 defeat by communist forces under Ho Chi MINH. Under the Geneva Accords of 1954, Vietnam was divided into the communist North and anti-communist South. US economic and military aid to South Vietnam grew through the 1960s in an attempt to bolster the government, but US armed forces were withdrawn following a cease-fire agreement in 1973. Two years later, North Vietnamese forces overran the South reuniting the country under communist rule. Despite the return of peace, for over a decade the country experienced little economic growth because of conservative leadership policies, the persecution and mass exodus of individuals - many of them successful South Vietnamese merchants - and growing international isolation. However, since the enactment of Vietnam's "doi moi" (renovation) policy in 1986, Vietnamese authorities have committed to increased economic liberalization and enacted structural reforms needed to modernize the economy and to produce more competitive, export-driven industries. The communist leaders, however, maintain control on political expression and have resisted outside calls to improve human rights. The country continues to experience small-scale protests from various groups - the vast majority connected to land-use issues, calls for increased political space, and the lack of equitable mechanisms for resolving disputes. Various ethnic minorities, such as the Montagnards of the Central Highlands and the Khmer Krom in the southern delta region, have also held protests.

0 50 100 km
0 50 100 mi
CHINA
Lao Cai
Fan Si Pan
HANOI
Hong Gai
Haiphong
LAOS
Vinh
Gulf of Tonkin
Hainan Dao (CHINA)
Mekong
Hue
Da Nang
THAILAND
Quy Nhon
CAMBODIA
Tonle Sap
Nha Trang
Cam Ranh
Ho Chi Minh City
Mekong
Long Xuyen
Dao Phu Quoc
Can Tho
Gulf of Thailand
South China Sea
Con Dao

Section 2 - Anti – Money Laundering / Terrorist Financing

FATF status

Vietnam is no longer on the FATF List of Countries that have been identified as having strategic AML deficiencies

Latest FATF Statement - 14 February 2014

The FATF welcomes Vietnam's significant progress in improving its AML/CFT regime and notes that Vietnam has established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies that the FATF had identified in October 2010. Vietnam is therefore no longer subject to FATF's monitoring process under its on-going global AML/CFT compliance process. Vietnam will work with APG as it continues to address the full range of AML/CFT issues identified in its mutual evaluation report.

Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Vietnam was undertaken by the Financial Action Task Force (FATF) in 2009. According to that Evaluation, Vietnam was deemed Compliant for 1 and Largely Compliant for 3 of the FATF 40 + 9 Recommendations. It was Partially Compliant or Non-Compliant for all 6 of the Core Recommendations.

Key Findings from latest Mutual Evaluation Report (2009):

The key Anti-Money Laundering (AML) laws in Vietnam concerning the criminalization of Money Laundering are Articles 250 and 251 of the Penal Code 1999 and Article 3 (5) in the Law on Drug Prevention of 2000. AML preventative and institutional measures are contained in AML Decree 74 of 2005 but not Combating the Financing of Terrorism (CFT) measures. Neither the Penal Code nor AML Degree 74 criminalizes terrorist financing as an autonomous offense.

Vietnam has claimed 603 convictions under Article 250 and one conviction under Article 251. Convictions have been predominately confession based. However, there is a lack of comprehensive statistical data on convictions under Article 250.

The Anti Money Laundering Information Centre (AMLIC), Vietnam's Financial Intelligence Unit (FIU), is based within the State Bank of Vietnam (SBV); and is essentially the lead agency on AML/CFT. AMLIC has a staff of 23, and has disseminated 19 Suspicious Transaction Reports (STRs) from 58 received to date.

The SBV has implemented AML Decree 74 obligations through SBV Guideline 281 for credit institutions. The SBV Guideline covers banking and non-banking credit institutions. However, only the banking sector has commenced implementation of AML Decree 74 requirements despite a number of other financial "credit institutions" being defined in Article 12 of the Law on Credit Institutions. Furthermore, no other central government ministries, covering financial and Designated Non-Financial Businesses and Professions (DNFBPs) sectors, have issued such guidance and implemented AML Decree 74 in their sectors.

There has been no AML/CFT on-site inspection undertaken to date by financial and DNFBP sectors supervisors. 6. Vietnam has ratified the 1988 UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention) but has expressed reservations on Article 6. It has not ratified or acceded to the UN Convention against Transnational Organized Crime (Palermo Convention). Vietnam has acceded to the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (CFT Convention).

US Department of State Money Laundering assessment (INCSR)

Vietnam is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.

OVERVIEW

Vietnam is not a regional financial center. Large parts of Vietnam's economy remain cash-based. Aided by a stable currency and low inflation, the government is reducing the use of both gold and U.S. dollars and is seeing success in de-dollarizing the economy. Vietnam is technically compliant with international AML standards and has made progress in many areas, including enacting laws for record keeping and international cooperation. Continuing economic growth and diversification, increased international trade, and a relatively young, tech-savvy population all suggest that Vietnam's exposure to illicit finance will increase in the coming years.

In 2017, Vietnam prosecuted its first money laundering case. To improve further, Vietnam needs to continue to build up its AML capabilities, especially within the Ministry of Public Security (MPS), the Supreme People's Procuracy (SPP), Ministry of Justice, Customs Department within the Ministry of Finance, the State Bank of Vietnam (SBV) and the AML Steering Committee. Vietnam will need political will and a stronger coordinated effort across government to increase enforcement of existing AML laws.

VULNERABILITIES AND EXPECTED TYPOLOGIES

Sources of illicit funds in Vietnam include public corruption; fraud; gaming; prostitution; counterfeiting of goods; and trafficking in persons, drugs, and wildlife and related commodities. Remittances from Vietnamese organized crime groups in Europe, Australia, and North America continue to be a significant source of illicit funds entering Vietnam, particularly proceeds from narcotics and wildlife traffickers using Vietnam as a transit country.

Vietnam remains a predominantly cash-based economy. High-value items, including real estate and luxury vehicles, are routinely purchased with cash with few questions asked. Such practices hinder the effectiveness of monitoring processes within the banking system. As a result, the banking system is still at risk for money laundering through false declarations, including fictitious investment transactions. Customs fraud and the over- and under-invoicing of exports and imports are common and could be indicators of TBML. Illicit funds are used to purchase real estate for subsequent resale.

KEY AML LAWS AND REGULATIONS

The revised Penal Code, coming into effect on January 1, 2018, revises the money laundering offense and adds criminal liability for legal persons involved in money laundering. Vietnam has in place KYC and STR legal requirements. The SBV instituted standardized STR forms to ensure consistency of reported data; however, the system is not yet online, and as a result, local banks must file hard copies of STRs.

Vietnam does not have a records-exchange mechanism in place with the United States, but the government typically provides records and responses to the United States and other governments upon request.

Vietnam is a member of the APG, a FATF-style regional body.

AML DEFICIENCIES

While Vietnam is technically compliant with current international standards, especially in terms of its legal framework, banking supervision for AML still needs improvement, and CDD and KYC policies within domestic banks need to be enhanced and fully implemented. Regulations on updating information of customers whose transactions originate in other countries are minimal and are weakly enforced.

Cross-border controls remain weak and demonstrate little effort to tackle the instances of bulk cash smuggling, and wildlife and drug trafficking. The lack of rigorous and impartial financial oversight of key state-owned enterprises (e.g., in the oil and gas sector), and the resulting opportunities for embezzlement, represent an additional AML vulnerability.

Vietnam is not a member of the Egmont Group of FIUs. Vietnam has applied for membership and is currently working with sponsors.

ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS

Vietnam has a National AML/CFT Coordinating Committee chaired by a deputy prime minister and the Governor of the SBV. The country has a national AML/CFT Action Plan for 2015-2020, with several goals. While Vietnam's laws are adequate, AML enforcement needs to improve as Vietnam develops and updates its AML regulations.

With donor assistance, SBV and MPS are carrying out an AML/CFT national risk assessment (NRA), scheduled to be completed in June 2018, to identify high-risk areas vulnerable to money laundering. However, making sure the NRA accurately reflects the country's risks and vulnerabilities will take a coordinated effort and political will. Vietnam's adoption of any recommendations for reform will depend upon interagency and high-level support and action.

When police investigate predicate crimes, it is rare to have a parallel AML investigation due to lack of resources and difficulty in coordinating the efforts of stakeholders. Domestic cooperation among agencies such as the Anti-Money Laundering Department of the SBV, Vietnam's FIU; Customs; MPS; and the General Department of Taxation is rare because it is not codified. Currently cross-agency coordination occurs with signed MOUs. Progress towards changing operating practices among key agencies (MPS, SPP, and SBV) is still slow. In 2017, Vietnam prosecuted its first money laundering case with the sentencing of Giang Van Hien, who was convicted of laundering funds embezzled by his son from a state-owned enterprise.

International cooperation on AML and asset forfeiture is also generally poor, but has improved since SBV signed MOUs with nine foreign FIUs.

Vietnam has a system for restraint and forfeiture of criminally linked assets; however, enforcement is weak.

Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):

According to the US State Department, Vietnam does not conform with regard to the following government legislation: -

System for Identifying and Forfeiting Assets - The jurisdiction has established a legally authorized system for the tracing, freezing, seizure, and forfeiture of assets identified as relating to or generated by money laundering activities.

Arrangements for Asset Sharing - By law, regulation or bilateral agreement, the jurisdiction permits sharing of seized assets with third party jurisdictions that assisted in the conduct of the underlying investigation.

Ability to Freeze Terrorist Assets w/o Delay - The government has an independent national system and mechanism for freezing terrorist assets in a timely manner (including but not limited to bank accounts, other financial assets, airplanes, autos, residences, and/or other property belonging to terrorists or terrorist organizations).

Criminalize 'Tipping Off - By law, disclosure of the reporting of suspicious or unusual activity to an individual who is the subject of such a report, or to a third party, is a criminal offense

EU White list of Equivalent Jurisdictions

Vietnam is not currently on the EU White list of Equivalent Jurisdictions

World Governance indicators

To view historic Governance Indicators Ctrl + Click here and then select country

Failed States Index

To view Failed States Index Ctrl + Click here

Offshore Financial Centre

Vietnam is not considered to be an Offshore Financial Centre

US State Dept Narcotics Report 2017:

Vietnam is an illicit drug transshipment point for local and international criminal organizations. The Government of Vietnam reports that heroin remains the most commonly trafficked and abused illegal drug in the country. However, trafficking and abuse of amphetamine-type stimulants (ATS) continues to rise, and has been reported as the second most abused drug in Vietnam since 2010. ATS is commonly available in both pill form and as crystal methamphetamine. In 2016, the cost of crystal methamphetamine in Vietnam dropped dramatically, signifying a significant increase in availability. The use and transshipment of cocaine through Vietnam is increasing, with a growing number of cocaine couriers being arrested at Vietnam's airports. Cultivation and production of illegal narcotics in Vietnam is rare.

Vietnam continues to implement its 2011 comprehensive anti-drug strategy. In 2012, the Prime Minister allocated $121 million through 2015 to support drug control and drug prevention. In December 2013, Vietnam's government approved the Decision on Drug Rehabilitation Renovation Plan for 2013 – 2020, aimed at diversifying drug dependence treatment models, scaling-up community based and voluntary treatment centers, and reducing the number of people in compulsory rehabilitation centers.

According to the most recent data available from the Government of Vietnam, in 2015, Vietnamese law enforcement agencies investigated 18,517 drug related cases and arrested 29,963 people involved in drug related crimes. During the first six months of 2016, Vietnamese law enforcement agencies investigated 10,022 drug related cases and arrested 15,829 people involved in drug related crimes. During this six-month period, Vietnamese law enforcement agencies reported seizing 219.9 kilograms (kg) of heroin; 47.95 kg of opium; 445.7 kg of cannabis; 413.8 kg of synthetic drugs; 148,483 ATS tablets; and 11.7 kg of cocaine. Vietnam did not report seizing any new psychoactive substances or synthetic opioids (fentanyl, carfentanil, etc.) in 2015 or 2016. Vietnam works with neighboring countries to carry out interdiction operations, with border liaison offices on both sides of the Sino-Vietnamese border. The United States promotes counternarcotics information sharing, coordination of operations, and capacity building with Vietnam's Ministry of Public Security.

Vietnam has no bilateral extradition treaty with the United States. Although Vietnam does not have a bilateral mutual legal assistance treaty with the United States, it has acceded to relevant multilateral conventions that enable such cooperation. The United States budgeted $1.6 million in 2016 in support of medication assisted therapy for more than 15,000 patients, both to prevent HIV transmission and to improve treatment outcomes among intravenous drug abusers.

US State Dept Trafficking in Persons Report 2016 (introduction):

Vietnam is classified a Tier 2 country - A country whose governments does not fully comply with the Trafficking Victims Protection Act's minimum standards, but are making significant efforts to bring themselves into compliance with those standards

Vietnam is a source country and, to a lesser extent, a destination, for men, women, and children subjected to sex trafficking and forced labor. Vietnamese men and women migrate abroad for work independently or through state-owned, private, or joint-stock labor recruitment companies. Some recruitment companies are unresponsive to workers' requests for assistance in situations of exploitation, and some charge workers excessive fees, leaving workers with exorbitant debts and vulnerable to debt bondage. Some victims are subjected to forced labor in the construction, fishing, agricultural, mining, logging, and manufacturing sectors, primarily in Taiwan, Malaysia, Republic of Korea, Laos, Angola, United Arab Emirates, and Japan. Workers may find themselves compelled to work in substandard conditions for little or no pay, with large debts and no legal recourse to address labor law violations. Vietnamese women and children are subjected to sex trafficking abroad; many are misled by fraudulent labor opportunities and sold to brothel operators on the borders of China, Cambodia, and Laos, and in other Asian countries, including Thailand, Malaysia, Republic of Korea, Taiwan, and Singapore. Some Vietnamese women who travel abroad for internationally brokered marriages or jobs in restaurants, massage parlors, and karaoke bars—mostly to China and increasingly to Malaysia and Singapore—are subjected to domestic servitude or forced prostitution. False advertising, debt bondage, passport confiscation, and threats of deportation are tactics commonly used to compel Vietnamese victims into servitude. Traffickers increasingly use the internet, gaming sites, and social media to lure potential victims into vulnerable situations; for example, men entice young women and girls with online dating relationships and persuade them to move abroad then subject them to forced labor or sex trafficking. Victims are recruited by relatives, acquaintances, or neighbors, often with the knowledge, consent, or persuasion of close family members. Vietnamese organized crime networks recruit, under pretenses of lucrative job opportunities, and transport Vietnamese, including children, to Europe—particularly the United Kingdom—and subject them to forced labor on cannabis farms.

Within the country, Vietnamese men, women, and children—particularly street children and children with disabilities—are subjected to forced labor, although little information is available on these cases. Children are subjected to forced street hawking and begging in major urban centers of Vietnam. Some children are subjected to forced and bonded labor in informal garment and brick factories or urban family homes and privately run rural gold mines. Many children from impoverished rural areas, and a rising number from middle class and urban dwellings, are subjected to sex trafficking. Child sex tourists, reportedly from Asia, the United Kingdom, Australia, Europe, Canada, and the United States, exploit children in Vietnam. Although a 2014 legal provision requires a judicial proceeding before detention of drug users in compulsory drug rehabilitation centers and restricts to three hours detainees' maximum work day, some drug users detained administratively under the previous legal provision were subjected to forced labor in rehabilitation centers. NGOs report some complicit Vietnamese officials, primarily at commune and village levels, facilitate trafficking or exploit victims by accepting bribes from traffickers, overlooking trafficking indicators, and extorting profit in exchange for reuniting victims with their families.

The Government of Vietnam does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Vietnam amended its penal code to bring its anti-trafficking law closer to international standards, but the changes were not in effect at the close of the reporting period. The government convicted fewer traffickers in 2015 and, although it initiated investigations, it did not pursue criminal prosecutions for forced labor. The government continued to provide anti-trafficking training for officials and develop interagency cooperation; however, many officials lacked the skills to identify victims or to investigate labor trafficking cases. The government continued to subject to forced labor some individuals administratively detained in drug rehabilitation centers. Vietnamese officials abroad assisted with the return of an unknown number of trafficking victims in 2015 and worked with NGOs to help repatriate victims from China. Vietnam entered into memoranda of understanding with 11 primary destination countries and updated its agreement with Malaysia to ban the practice of employers retaining employees' passports. NGOs report border officials in high-risk trafficking areas increased their engagement to investigate trafficking cases.

US State Dept Terrorism Report 2009

The Government of Vietnam, the Ministry of Public Security, and the Counterterrorism Department, assessed that there is no general terrorist threat against Vietnam from indigenous groups and individuals or from abroad. Vietnamese police and security officials participated in a series of U.S. training programs sponsored by the State Department, Drug Enforcement Administration, and the International Law Enforcement Academy in Bangkok.

International Sanctions

None applicable

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	35
World Governance Indicator – Control of Corruption	42

Corruption continues to be pervasive in Vietnam's business environment. Companies are likely to experience bribery, political interference and facilitation payments in all sectors. The land administration, construction sector, and public administration are especially prone to corruption. The Vietnamese Penal Code and the Law on Anti-Corruption criminalizes public sector corruption, in the form of attempted corruption, facilitation payments, extortion, abuse of office, fraud, money laundering, and active and passive bribery. Punitive measures range from fines to capital punishment, depending on the severity of the corruption case. Enforcement of the anti-corruption framework is lacking. Gifts are criminalized by law, but there are exceptions for special occasions gifts with a value below VND 500,000. Facilitation payments are illegal but common in practice. **Information provided by GAN Integrity.**

US State Department

Vietnam's 2005 Anti-Corruption Law requires government officials to declare their assets and sets strict penalties for corrupt practices. Enforcement remains problematic. Vietnam ratified the UN Convention on Anti-Corruption in 2009, but has not signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Government has tasked various agencies to deal with corruption, including the Central Steering Committee for Anti-Corruption (led by the Prime Minister), the Government Inspectorate, and line ministries and agencies. The Central Steering Committee for Anti-Corruption was formed in 2007 and initially fell under the Office of the Prime Minister. In 2012 responsibility for oversight was shifted to the Communist Party of Vietnam (CPV) Politburo and eventually transferred to the CPV Central Commission of Internal Affairs in February 2013.

The 2013 Transparency International Corruption Perceptions Index ranked Vietnam 116 out of 177 countries, with an index score of 31 out of 100 (stable from 2012). Corruption is due in large part to a lack of transparency, accountability, and media freedom, as well as low pay for government officials and inadequate systems for holding officials accountable for their actions. Competition among agencies for control over business and investments has created overlapping of jurisdictions and bureaucratic procedures and approvals that in turn create opportunities for corruption.

According to the 2013 PCI report 50 percent of FDI companies had to pay for informal charges, and 40 percent acknowledged that rent-seeking is widespread.

Corruption and Government Transparency - Report by Global Security

Political Climate

Vietnam's efforts to attract foreign investment and improve the business climate has resulted in attempts to combat rampant corruption, according to the Bertelsmann Foundation 2012. According to Freedom House 2013, despite the government's acknowledgement of growing public discontent, abuse of office and corruption remain widespread. The government has come up with a plan aimed at tackling corruption and overhauling more than 50 commercial state-owned enterprises by June 2013, according to an Irish Times February 2013 article.

The Bertelsmann Foundation 2012 reports that the Vietnamese government has demonstrated its efforts in combating corruption, with measures such as the establishment of new anti-corruption bodies and the issuance of the 'National Strategy for Preventing and Combating Corruption Towards 2020' in May 2009. Vietnam has ratified the United Nations Convention against Corruption (UNCAC); however, the government has responded to a few high-profile corruption cases, rather than undertaking comprehensive reforms. This helps explain why over half of surveyed households in Transparency International's Global Corruption Barometer 2013 perceive that the level of corruption in Vietnam has increased in the past two years. Moreover, 37% perceive the government's effort in the fight against corruption to be "ineffective´".

The Anti-Corruption Law 2005 was considered by the World Bank to be among the best anti-corruption legal frameworks in Asia, as reported by the US Department of State 2012. The law obliges all public officials to declare their assets and also lays out strict penalties to punish corrupt officials. However, according to the US Department of State 2013, the state still has difficulty enforcing and implementing the law. Transparency International in Vietnam also reports that in 2004 Vietnam agreed to implement the Transparency Standard on Government Procurement adopted by the Asia Pacific Economic Cooperation (APEC). Since 2005, Vietnam has made significant progress in adopting legislation on public procurement. Despite these efforts, according to a Transparency International 2012 Corruption Report on Vietnam, the legal framework is considered to be complicated, making comprehension and implementation of the law challenging.

Business and Corruption

The Bertelsmann Foundation 2012 reports that resources are often wasted as a result of an inefficient and corruption-prone system that includes close professional and personal relations with politicians and patronage systems. These problems perpetuate corruption and the widespread use of facilitation payments by companies when dealing with frontline civil servants.

According to Grant Thornton's Vietnam's Investment Sentiment and Outlook Quarter 2, 2013, the three largest obstacles for investors in Vietnam are corruption, government red tape and the legal system, respectively. Approximately 43% of surveyed investors see corruption as a substantial problem. However, findings by the World Economic Forum's Global Competitiveness Report 2013-2014 paint a different picture, as less than 10% of surveyed business executives rank corruption as the most problematic factor for doing business in Vietnam. According to the USAID's Vietnam Provincial Competitiveness Index 2012, more than half of surveyed companies state that operations in their line of business are subject to bribery requests from provincial officials. Furthermore, over 60% of surveyed companies feel that a relationship with government officials is vital for accessing important legal and planning documents. While this percentage is high, it represents a sharp decrease compared to 2010, where nearly 80% of respondents felt such ties were necessary.

According to the Bertelsmann Foundation 2012, state monopolies are still common in the Vietnamese economy. The US Department of State 2013 reports that tension among government agencies vying for control over businesses and investments has resulted in a disorderly overlapping of jurisdictions, and bureaucratic processes and endorsements may create opportunities for corruption. There are reports of corrupt relationships and kickbacks between government officials and state-owned companies. Some sectors are more vulnerable to corruption than others. Companies should be particularly aware of continuing corruption related to public procurement. See this country profile's special page on corruption in public procurement and contracting in Vietnam. To better reduce corruption risks in the procurement process, companies considering bidding on public tenders are advised to use a specialised due diligence tool on public procurement. Companies should be aware that it is not uncommon for state-owned enterprise officials to collude with the ruling political party members to obscure their illegal activities, as reported by Freedom House's Countries at the Crossroads 2012. Companies doing business in Vietnam are highly recommended to develop, implement and strengthen integrity systems and to conduct extensive due diligence when working with agents, contractors and other local partners.

Regulatory Environment

According to the USAID's Vietnam Provincial Competitiveness Index 2012, local corruption, unreliable protection of property rights and a lack of legal institutions remain obstacles for companies doing business in Vietnam. The World Bank & IFC's Doing Business 2014 points out some reforms making it easier to conduct business in the country, including the establishment of a one-stop shop to obtain business and tax licences, abolishing the requirement for a company licensing seal and allowing for self-print value tax invoice forms. Nevertheless, business executives surveyed in the World Economic Forum's Global Competitiveness Report 2013-2014 give complying with administrative requirements (permits, regulations and reporting) issued by the government a score of 3.1 on a 7-point scale (1 'burdensome' and 7 'not burdensome'). Companies may consult the useful Ministry of Planning and Investment website that functions as the main contact point for investors. The Ministry administers the SME Development Business Portal (in Vietnamese), which lists required licences, general information and contacts for SMEs. Also under the Ministry is the Foreign Investment Agency, which provides information on business legislation, investment opportunities and policies targeting foreign investors. Companies should also access this profile's special page on regional differences in Vietnam's regulatory environment for further information, as economic governance varies between provinces.

The Enterprise Law of 2005 has reportedly simplified the process of starting a company by easing application procedures. According to Doing Business 2014, starting a company requires an entrepreneur to go through 10 procedures, taking 34 days at a cost of 7.7% of the GNI per capita. The Enterprise Law and Law on Investment of 2005 provide for diversified ownership structures of investments and companies. All land is owned by the state; however, under the Law on Land of 2003, foreign investors are entitled to lease (renewable) land for 50 years and up to 70 years in some poorer areas.

According to the US Department of Sate 2013, investors have to deal with an underdeveloped legal system and inefficient dispute and claims settlement mechanisms. Despite international and domestic arbitration being legally enforceable in Vietnam, and Vietnam having a system of independent arbitration centres which can grant enforceable arbitral awards, negotiation is the common and preferred means for dispute resolution. The Vietnam International Arbitration Centre (VIAC) operates under the Vietnam Chamber of Commerce and Industry (VCCI) and has the authority to settle disputes arising from international economic transactions, such as foreign trade contracts, investment and international trade. Through sponsorship by the Danish government via Danida, the VIAC has reportedly increased awareness and legal knowledge in the Vietnamese business community. However, no track record of impartiality or competence exists for this institution, and companies should be aware that no international standard arbitration rules can be used in place of the VIAC's own set of arbitration rules. Vietnam is a member of the New York Convention 1958. In April 2007, the Pacific International Arbitration Centre (PIAC) opened for business in Ho Chi Minh City, aiming to offer impartial, transparent mediation and arbitration services that meet the requirements of international users. Vietnam has not yet acceded to the International Centre for the Settlement of Investment Disputes (ICSID). Visit the website of the Lexadin World Law Guide or access a collection of laws in Vietnam.

Section 3 - Economy

Vietnam is a densely populated developing country that has been transitioning from the rigidities of a centrally-planned economy since 1986. Agriculture's share of economic output has shrunk from about 25% in 2000 to 18% in 2014, while industry's share increased from 36% to 38% in the same period. State-owned enterprises now account for only about 40% of GDP.

Vietnamese authorities have reaffirmed their commitment to economic modernization and a more open economy. Vietnam joined the WTO in January 2007, which has promoted more competitive, export-driven industries. Vietnam was one of 12-nations that concluded the Trans-Pacific Partnership free trade agreement negotiations in 2015.

Hanoi has oscillated between promoting growth and emphasizing macroeconomic stability in recent years. During 2015, Vietnam's managed currency, the dong, depreciated about 5%. Poverty has declined significantly, and Vietnam is working to create jobs to meet the challenge of a labour force that is growing by more than one million people every year.

Vietnam is trying to reform its economy by restructuring public investment, state-owned enterprises, and the banking sector, although Hanoi's progress in meeting its goals is lagging behind the proposed schedule. Vietnam's economy continues to face challenges from an undercapitalized banking sector and nonperforming loans.

Agriculture - products:

rice, coffee, rubber, tea, pepper, soybeans, cashews, sugar cane, peanuts, bananas; poultry; fish, seafood

Industries:

food processing, garments, shoes, machine-building; mining, coal, steel; cement, chemical fertilizer, glass, tires, oil, mobile phones

Exports - commodities:

clothes, shoes, electronics, seafood, crude oil, rice, coffee, wooden products, machinery

Exports - partners:

US 21.2%, China 13.3%, Japan 8.4%, South Korea 5.5%, Germany 4.1% (2015)

Imports - commodities:

machinery and equipment, petroleum products, steel products, raw materials for the clothing and shoe industries, electronics, plastics, automobiles

Imports - partners:

China 34.1%, South Korea 14.3%, Singapore 6.5%, Japan 6.4%, Hong Kong 5.1%, Thailand 4.5% (2015)

Banking

The opening of Vietnam's economy has placed new demands on a financial sector that until the early 1990s operated largely in isolation from international standards and practices. Vietnam is making progress in developing the basic infrastructure to support a modern banking system and financial markets, but neither meets international standards.

The central bank, the State Bank of Vietnam (SBV), is the main financial regulatory agency. The SBV supervises two policy banks (the Social Policy Bank of Vietnam and the Vietnam Development Bank), four state-owned commercial banks (SOCBs) Vietinbank, BIDV, Agribank and the Housing Bank of Mekong Delta), 38 joint-stock (private) banks, five joint-venture banks, 53 representative offices of foreign banks, 33 branches of foreign banks, 15 financial companies and 13 financial leasing companies.

The SBV is not an independent body like the U.S. Federal Reserve and it continues to operate under government oversight. Despite the 2010 passage of the new State Bank Law, which nominally expands SBV independence, in some key areas of operation, such as the provision of liquidity support, monetary policy, the management of foreign currency reserves and foreign exchange rates and issuance of banking licenses, SBV actions are subject to prime ministerial approval.

The Vietnam Bankers Association (VNBA) was founded in 1994 as the trade association for banks and acts as a link to the authorities, including: disseminating and implementing policies, mechanisms and laws on banking operations to its members; protecting the interests of the members; conducting training and research; and expanding international banking co-operation. VNBA's authority over its members is limited. The International Monetary Fund, the World Bank, and other international donors, including the United States, are assisting Vietnam to implement financial reforms to ensure the stability and promote the effectiveness of the banking system and the financial sector. The reform programs focus on three main areas: restructuring of joint- stock banks; restructuring and equitization of the SOCBs; and improving the regulatory framework and enhancing transparency. Other ongoing projects aim to modernize the interbank market, create an international accounting system and allow outside audits of major Vietnamese banks. The SBV is in the process of strengthening its own internal processes and enhancing the level of inspection and supervision of the banks within its jurisdiction. The SBV is also preparing regulations to implement the Basel capital accord in calculating risk-adjusted assets and risk-adjusted capital ratios. Increasingly, more SOCBs are audited by independent auditing firms.

Vietnam's banking system is very weakly capitalized, with the market highly concentrated at the top and fragmented at the bottom.

In 2008, the State Bank of Vietnam for the first time granted licenses to wholly foreign- owned banks: HSBC, Standard Chartered Bank, ANZ, Hong Leong and Shinhan Vina. The current ceiling for a single foreign strategic shareholder in a local joint stock bank is set at 20 percent of the total charter capital; total foreign holdings in a local joint stock bank may not exceed 30 percent.

Stock Exchange

The securities market is governed by the Securities Law of 2006, and supplemented by Decree 14 of the State Securities Commission (SSC) on Implementation of the Securities law.

The SSC is a regulatory agency under the Ministry of Finance which has oversight of Vietnam's two stock exchanges, the Ho Chin Minh Stock Exchange and the Hanoi Securities Trading Centre, and the Vietnam Securities Depository which acts as a centralized share registry for all publicly listed companies.

Section 4 - Investment Climate

Executive Summary

Vietnam continues to work to improve its business climate in order to attract foreign direct investment (FDI), and has sustained registered FDI of roughly $18.5 billion per year over the last five years. In 2015 Vietnam successfully attracted new and additional investment in the IT sector and energy. Investors commonly cite Vietnam's geographic proximity to global supply chains, political and economic stability, expected benefits from the Trans-Pacific Partnership (TPP) and other recently signed free trade agreements (FTA's), and an increasing desire to diversify their manufacturing base in Asia away from China as reasons for investing in Vietnam. Vietnam is one of the few counties in Asia that has been able to sustain manufacturing growth. Fueled by a growing economy with a young, increasingly urbanized population and inexpensive labor, Vietnam could become the next manufacturing powerhouse of Asia. Last year was an important year for Vietnam as it made great strides in integrating into the global economy. In 2016 signed the Trans-Pacific Partnership (TPP) and in 2015 Vietnam signed the European Union FTA (EV-FTA), the Korea FTA, Eurasian Economic Union (EAEU), is a part of the newly formed ASEAN Economic Community (AEC).

Manufacturing dominated FDI inflows last year as investors continue to move large scale operations from other developing countries to Vietnam. In 2015, the investment influx to the textiles and apparel industries continued in anticipation of the conclusion of the Trans-Pacific Partnership. Information technology (IT) also attracted major investments from Samsung ($3 billion), LG ($1.5 billion), and Microsoft ($500 million). The FDI inflows to the IT sector are in line with Vietnam's strategic efforts to shift FDI from low-end manufacturing to the high tech sector. Vietnam also continued to attract investment in infrastructure projects such as power generation, roads, railways and water treatment. Vietnam needs an estimated $170 billion in additional infrastructure development in order to meet growing economic demand. In energy alone, the Vietnam's General Statistics Office (GSO) estimates that electricity demand will continue to grow at a rate of 10 percent to 12 percent per year, rising from 169.8 terawatt hours in 2015 to 615.2 terawatt hours by 2030.

In 2015, Vietnam issued the underlying decrees to implement several key laws, including the Enterprise Law, the Investment Law, the Bankruptcy Law, Housing Law and Real Estate Business Law. The State Bank of Vietnam (SBV) executed its plan to strengthen the banking sector last year, and was successful in maintaining stability of the Vietnamese Dong (VND) despite a challenging global currency environment in the latter part of the year.

However, the new Investment Law failed to create a clearer licensing process, and reforms allowing foreigners access to property have failed to attract large-scale foreign investment in real estate. The state-owned enterprises (SOE) reforms also fell short of the Government of Vietnam's (GVN) ambitious goal of equitizing over 500 SOEs by the end of 2015.

While Vietnam continues to attract increasing amounts of FDI, several challenges in the business climate remain, including: corruption and weak legal infrastructure, a shortage of skilled labor that can meet the demands of an increasingly sophisticated global market, low labor productivity, a weak judicial system, the need for better infrastructure, and a cumbersome bureaucracy that still focuses on monitoring and control rather than business facilitation.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2015	112 of 168	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	90 of 189	doingbusiness.org/rankings
Global Innovation Index	2015	52 of 141	globalinnovationindex.org/content/page/data-analysis
U.S. FDI in partner country ($M USD, stock positions)	2015	$218.0	Vietnam General Statistics Office
World Bank GNI per capita	2014	$1,890	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) of $4,125 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015 .

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Vietnam is focused on attracting foreign investment, especially in sectors that will bring advanced technology, increase the labor market skillset, and improve Vietnam's labor productivity. Vietnam's attractiveness as an FDI destination has grown as the country continues to make key legal reforms related to the business climate. Other FDI draws are Vietnam's stable political system, strategic location near global supply chains and China, and an abundant labor force that is less expensive relative to China.

Foreign invested companies continue to play an important role in the economy. According to the Vietnam General Statistics Office (GSO) the FDI sector contributed 70 percent of total exports in 2015 (up from 47 percent in 2000) and foreign invested enterprises' contribution to GDP increased to 18 percent from 13 percent over the same period. Vietnam has maintained registered FDI levels of around $18.5 billion per year over the last five years. Concluding the four FTA's in 2015-2016 has already increased FDI in Vietnam. While Vietnam has made great strides to connect to the global supply chain and is committed to improving the business environment, it remains a developing economy with many areas for improvement. Key challenges include corruption and weak legal infrastructure, a shortage of skilled labor that can meet the demands of an increasingly sophisticated global market, low labor productivity, a weak judicial system, the need for better infrastructure, and a cumbersome bureaucracy that still focuses on monitoring and control rather than business facilitation.

In 2015, according to Vietnam's Foreign Investment Agency (FIA), the United States was the 16th largest FDI source with a total investment of $224 million, down from 11th in 2014. Malaysia beat out Japan as the second largest FDI source in 2015 due to a large investment in the Duyen Hai 2 thermal power plant south of Ho Chi Minh City. The top three FDI sources in 2015 were South Korea, with newly registered capital of $2.7 billion in 702 projects, Malaysia with $2.4 billion in 27 projects, and Japan with $1.3 billion in 299 projects, according to the FIA. China FDI excluding Hong Kong increased to $744 million (10th largest source) in 2015 from $427 million in 2014. However, data may be inaccurate as some investment is registered through a third country.

Other Investment Policy Reviews

In the past three years, has the government/authority conducted an investment policy review (IPR) through:

A. *World Bank 2035 Report*: http://www.worldbank.org/en/news/infographic/2016/02/23/vietnam-2035-toward-prosperity-creativity-equity-and-democracy

B. *Provincial Competitive Index*: http://eng.pcivietnam.org/

C. WTO review of Vietnam's trade policies and practices, 2013 http://www.wto.org/english/tratop_e/tpr_e/tp387_e.htm

D. OECD's Investment Policy Review, 2010. http://www.oecd.org/countries/vietnam/vietnam-investmentpolicyreview-oecd.htm

E. UNCTAD's Investment Policy Review, 2008. http://unctad.org/en/Docs/iteipc200710_en.pdf

Laws/Regulations on Foreign Direct Investment

In December 2014, Vietnam passed a new Investment Law with breakthrough changes aimed at improving the investment environment. Previously, Vietnam used a "positive list" approach, meaning that foreign businesses were only allowed to operate in a list of specific sectors outlined by law. Starting in July 2015, Vietnam implemented a "negative list" approach, meaning that foreign businesses are allowed to operate in all areas except for six prohibited sectors. Additionally, there are 267 sectors that are now open to foreign investment provided that the investor satisfies certain conditions.

Under the new Investment Law, businesses must apply for an investment license when establishing a new company, and update their business license when they: 1) make significant changes to an ongoing enterprise, such as increasing investment capital; 2) restructure the form of investment or investment ratios between foreign and domestic partners, 3) change the foreign management structure, or 4) add new business activities. The law also requires foreign and domestic investors to be treated the same in cases of nationalization and confiscation. However, foreign investors are subject to different business licensing processes and restrictions, and Vietnamese companies that have a majority foreign investment are subject to foreign investor business license procedures. In general the new Investment Law has not provided clearer and speedier processes for investors to complete necessary investment license paperwork.

Conformity with Economic Master Plans

As restated in the new Investment Law, most FDI projects must conform to one or more sectoral master plans. Master plans are economic development policies that set five- to ten-year targets for an industry. The requirement for projects to conform to relevant master plans can be problematic for foreign investors, as the grounds for assessing compliance with a particular plan are unclear, and master plans may overlap as they are issued by both ministries at the national and provincial level.

Business Registration

Vietnam is a member of the U.N. Conference on Trade and Development's (UNCTAD) international network of transparent investment procedures: http://vietnam.eregulations.org/. Foreign and national investors may be able to find information on administrative procedures applicable to investment and income generating operations including the number of steps, name and contact details of the entities and persons in charge of procedures, required documents and conditions, costs, processing time, and legal bases justifying the procedures for the following provinces:

Danang - http://danang.eregulations.org
Ho Chi Minh City - http://hochiminhcity.eregulations.org
Binh Dinh - http://binhdinh.eregulations.org
Hai Duong - http://haiduong.eregulations.org
Phu Yen - http://phuyen.eregulations.org
Vinh Phuc - http://vinhphuc.eregulations.org
Hanoi - https://hanoi.eregulations.org

In reality, the business registration process is often longer than the standards mentioned online. Also, foreign investors are required to notarize their documents, creating an additional burden. The Ministry of Planning and Investment (MPI) has an Investment Promotion Department to facilitate all foreign investments, and several provinces and cities such as Hanoi also have investment promotion agencies.

In Vietnam micro enterprises are classified as those employing less than 10 employees. Small enterprises are those employing less than 50 employees and capital less than VND10 billion ($448,000) in trade and services, and businesses employing less than 200 employees with invested capital less than VND20 billion ($897,000) in other sectors. Medium sized enterprises employ between 50 and 100 employees with capital investment between VND10 billion to VND50 billion ($448,000 and $2.2 million) in trade and services, and businesses employing between 200 and 300 employees with invested capital between VND20 billion to VND200 billion ($897 thousand and $9.0 million) in other sectors. The government provides various mechanisms to assist SME's through loan guarantees, low corporate income taxes and simplified accounting bookkeeping, and MPI is currently drafting a new law to better assist SMEs that is expected to go to the National Assembly this year. However, these benefits are not applied to foreign invested companies.

Industrial Promotion

Vietnam promotes foreign investment in certain priority sectors and geographic regions, such as mountainous and remote areas that have difficult economic and social conditions. The government encourages investment in the production of new materials, new energy sources, metallurgy and chemical industries, manufacturing of high-tech products, biotechnology, information technology, mechanical engineering, agricultural, fishery and forestry production, salt production, generation of new plant varieties and animal species, ecology and environmental protection, research and development, knowledge-based services, processing and manufacturing, labor-intensive projects (using 5,000 or more full-time laborers), infrastructure projects, education, training, and health and sports development.

Limits on Foreign Control and Right to Private Ownership and Establishment

The ratio of total foreign ownership permitted in a project depends on a number of factors, including Vietnam's international commitments and the sector in question. There are also strict foreign ownership limits for certain listed companies and service sectors. Foreign investors must negotiate on a case by case basis with the government on market access in sectors that are not explicitly open through a trade or investment agreement.

In addition, the lack of substantive regulations on merger and acquisition (M&A) activities makes such transactions risky. For example, when a foreign investor buys into a local company through an M&A transaction, it is difficult to determine which business lines the acquired company is allowed to maintain. The reason for the lack of clarity is while the GVN allows foreign investors to invest in all but six prohibited sectors, and regulates investment in 267 sectors, there are more than 6,400 conditions relating to these sectors, of which 3,299 conditions will be unlawful from July 1, 2016. Therefore, if companies operate within the 267 conditional sectors, determining the potential status of foreign investors will be very difficult.

Privatization Program

Vietnam's stated goal of equitizing (i.e. converting SOEs to joint stock companies) more than 432 SOEs between 2014 and 2015 was not met. While the Government of Vietnam classifies an SOE as equitized if it completes its equitization plan, in practice the only time an SOE is equitized is when the shares are sold to the private sector. Also, while foreign investors are allowed to buy shares in SOEs in accordance with WTO commitments, the majority of SOEs that were privatized in 2014-2015 offered such a small percentage (often just 2-3 percent) to private investors that most SOE's failed to attract more than nominal interest from foreign investors.

Additional drawbacks to foreign investment in SOEs include an overall lack of transparency, weak corporate governance, and unclear management structure. Domestic and foreign investors are permitted to buy shares through a public auction, or invest as a strategic shareholder. However, Vietnam has had a difficult time attracting strategic shareholders due to specific requirements placed on these shareholders, such as the transfer of technology or expertise. Overall, the low equitization percentage of SOEs has led many to question whether equitization will indeed result in a level playing field for domestic and foreign companies, or bring substantive changes in SOE corporate governance.

Screening of FDI

Vietnamese authorities evaluate investment license applications using a number of criteria, including: 1) investor's legal status and financial capabilities; 2) the project's compatibility with Vietnam's "Master Plan" for economic and social development and projected revenue; 3) technology and expertise; 4) environmental protection; 5) plans for land use and land clearance compensation; 6) project incentives including tax rates, and 7) land, water, and sea surface rental fees.

Licensing authority decentralization to provincial authorities has in some cases streamlined the licensing process and reduced processing times. It has also, however, given rise to considerable regional differences in procedures and interpretations of investment laws and regulations. Insufficient guidelines and unclear regulations sometimes cause local authorities to consult national authorities, creating delays. In addition, the approval process is often much longer than the time frame mandated by law. Many U.S. firms have invested successfully, though a lack of transparency in the procedure for obtaining a business license at times makes investing riskier.

Investment projects that must be approved by the National Assembly include:

- Projects with a large environmental impact;
- Projects that change the land usage purpose in national parks;
- Projects located in protective forests larger than 50 hectares; or
- Projects that require relocating 20,000 people in remote areas such as mountainous regions.

Investment projects that require Prime Ministerial approval include:

- Projects to build airports, seaports, or casinos; to explore, produce and process oil and gas; or to produce tobacco;
- Projects having investment capital more than 5,000 billion VND ($233 million);
- Projects with foreign investors in sea transportation, telecommunication or network infrastructure, forest plantation, publishing, or press; and
- 100 percent foreign-owned scientific and technology companies or organizations.

Projects which are not approved by the National Assembly or the Prime Minister will be approved by the provincial People's Committee.

Competition Law

The Vietnam Competition Administration (VCA) of the Ministry of Industry and Trade (MOIT) reviews transactions for competition-related concerns. In 2014 (latest available), the VCA launched 10 investigations related to competition restriction. The VCA continues to receive and process M&A cases in crucial sectors of the economy, such as food processing and trading; production, trading, and transmission of electricity; and import, export, and distribution of steel.

2. Conversion and Transfer Policies

Foreign Exchange

Vietnam generally does not provide foreign currency conversion guarantees to foreign investors. The Vietnamese Dong (VND) remained stable until August 2015 as the State Bank of Vietnam (SBV) had prioritized exchange rate stability in order to reduce dollarization and the use of gold. The SBV published daily interbank reference exchange rate (only changed on an ad hoc basis), and maintained a narrow trading band of +/-1 percent for USD/VND transactions from February 2011 until August 2015. In 2015, the SBV adjusted the USD/VND interbank reference exchange rate down 3 percent and widened the trading band from +/- 1 percent to +/- 3 percent, effectively devaluing the Dong by 5 percent. While Vietnam still considers foreign reserve data a state secret, the SBV in recent years has been more forthcoming about the level of foreign reserves. In July 2015, the SBV Governor announced that foreign reserves reached $37 billion.

The SBV has adopted a new mechanism to determine the interbank reference exchange rate. In order to provide flexibility in responding to exchange rate volatility, the SBV now announces the interbank reference exchange rate daily. The rate is determined based on the previous day's average interbank exchange rates, taking into account movements in the currencies of Vietnam's major trading and investment partners.

As part of its efforts to de-dollarize the economy, the Government of Vietnam issued Decree 70 in 2014 to prohibit foreigners (residents and non-residents) from holding foreign currency denominated savings accounts. Foreigners are still allowed to have checking and investment accounts in any foreign currency and VND (previously foreigners were only allowed to have USD investment accounts).

According to the 2005 Ordinance on Foreign Exchange Control, currency transactions between residents must be conducted in VND. Exporters must remit all foreign currency earnings into a foreign currency account with an authorized credit institution in Vietnam. Retaining foreign currency earnings overseas requires SBV approval. Any resident or institution permitted to conduct offshore investment must open a foreign currency account at an authorized credit institution and register the account with the SBV.

Currency transfers are protected by Article VII of the International Monetary Fund (IMF) Articles of Agreement (http://www.imf.org/External/Pubs/FT/AA/index.htm#art7)

Remittance Policies

Vietnam allows foreign businesses to remit profits, capital contributions, and other legal investment activity revenues in hard currency. There are no time constraints on remittances and no limitations on the inflow or outflow of funds for remittances of profits or revenue. However, outward foreign currency transactions require certain supporting documents (such as import/foreign service procurement contracts and proof of tax obligation fulfillment, etc.). Foreign investors cannot remit through a legal parallel market, including utilizing convertible, negotiable instruments. There were no regulatory changes in investment remittance policies in 2015.

Vietnam is a member of the Asia-Pacific Group (APG), which assesses the implementation of anti-money laundering and counter-terrorist financing (AML/CFT) measures in Vietnam. While Vietnam is mostly technically compliant with the 2012 Financial Action Task Force's (FATF) AML/CFT standards, and is not one of the FATF blacklisted countries, over the last year it has not demonstrated effectiveness in reducing AML/CFT.

Bureau of International Narcotics and Law Enforcement's 2014 International Narcotics Control Strategy Report (INCSR) http://www.state.gov/j/inl/rls/nrcrpt/2014/database/index.htm.

3. Expropriation and Compensation

Under the U.S.-Vietnam Bilateral Trade Agreement (BTA), Vietnam must apply international standards of treatment in any case of expropriation or nationalization of U.S. investor assets, which includes acting in a non-discriminatory manner with due process of law and with prompt, adequate and effective compensation. The U.S. Mission is monitoring four foreign investment expropriation cases without just compensation; however, expropriation of U.S. entities' property is rare. Several foreign investors have reported that provincial or the national government pressured them to increase the pace of project development or to raise additional project capital or risk losing their investment license.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

The hierarchy of the courts in Vietnam is: (1) the Supreme People's Court; (2) the High People's Court; (3) Provincial People's Courts; and (4) District People's Courts. The People's Courts operate in five divisions: criminal, civil, administrative, economic, and labor. The People's Procuracy is responsible for prosecuting criminal activities as well as supervising judicial activities. The People's Procuracy can protest a judgment or ask for a review of a case. In addition, Vietnam has a system of independent arbitration centers established under the Commercial Arbitration Ordinance of 2003 that can grant enforceable arbitral awards.

Vietnam's legal system remains underdeveloped and ineffective in settling disputes. Negotiation between concerned parties is the most common means of dispute resolution. The Law on Arbitration does not allow a foreign investor to refer an investment dispute to a court in a foreign jurisdiction, and Vietnamese judges cannot apply foreign laws to a case before them, and foreign lawyers cannot represent plaintiffs in a court of law.

Vietnamese courts will only consider recognition of civil judgments issued by courts in countries that have entered into agreements on recognition of judgments with Vietnam or on a reciprocal basis. However, with the exception of France, these treaties only cover non-commercial judgments.

Under the 2005 Civil Code, all contracts are "civil contracts" subject to uniform rules. In foreign civil contracts, parties may choose foreign laws as a reference for their agreement, provided that the application of the law does not violate the basic principles of Vietnamese law. In addition, commercial contracts between businesses are regulated by the 2005 Commercial Law.

Bankruptcy

In 2014 Vietnam revised its Bankruptcy Law to make it easier for companies to declare bankruptcy. The new law clarifies the definition of insolvency as an enterprise that is more than 3 months overdue in meeting its payment obligations. The new law also provides provisions for when creditors can commence bankruptcy proceedings against an enterprise, and created for the first time procedures for credit institutions to file for bankruptcy. The new bankruptcy law is important as 71,400 companies suspended operations in Vietnam in 2015, up 22 percent over 2014. According to the World Bank's 2016 Ease of Doing Business report, it takes on average five years to conclude a bankruptcy case in Vietnam, and the recovery rate is only 14 percent.

Investment Disputes

In January 2014, the Prime Minister named the Ministry of Justice (MOJ) the government's legal representative in dealing with international investment disputes, while the Ministry of Finance (MOF) resolves disputes related to government loans, debts, and guarantees. The Vietnam International Arbitration Center (VIAC) handled 99 cases in 2013, up from 16 cases in 2003.

Under the investment chapter of the U.S.-Vietnam Bilateral Trade Agreement, U.S. investors have the right to choose a variety of third-party dispute settlement mechanisms in the event of an investment dispute with the government.

International Arbitration

The arbitration regime in Vietnam is still developing and awaits the issuance of implementation guidelines and regulations for the Arbitration Law. In 2014, the Ho Chi Minh City Economic Court recognized and enforced an arbitral award in Vietnam against an SOE, and the ruling was upheld on appeal. Although several other cases are pending, this is considered a healthy precedent.

The Law on Commercial Arbitration took effect in 2011. At present, there are no foreign arbitration centers in Vietnam, though the Arbitration Law permits foreign arbitration centers to establish branches or representative offices. Foreign and domestic arbitral awards are legally enforceable in Vietnam, although in practice it can be very difficult.

ICSID Convention and New York Convention

Vietnam has not yet acceded to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID). The Ministry of Planning and Investment (MPI) has submitted a proposal to the government to join the ICSID, but this is still under consideration.

Vietnam is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, meaning that foreign arbitral awards rendered by a recognized international arbitration institution should be respected by Vietnamese courts without a review of cases' merits. Only a limited number of foreign awards have been submitted to the Ministry of Justice (MOJ) and local courts for enforcement so far, and almost none have successfully made it through the appeals process to full enforcement.

As a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Vietnam is required to recognize and enforce foreign arbitral awards within its jurisdiction, with very few exceptions. However, in 2012, dozens of Vietnamese companies signed purchase contracts with U.S. cotton suppliers but failed to execute the contracts when world cotton prices fell. In compliance with standard contract provisions, international cotton traders referred the defaults to the International Cotton Association (ICA) for arbitration. The ICA rendered arbitration awards for the defaults valued at $76 million, but Vietnamese courts have not recognized the validity of these awards.

Duration of Dispute Resolution

The court system in Vietnam works slowly. International arbitration awards, when enforced, may take years from original judgment to payment. Between 2005 and 2014, 24 out of 52 applications for recognition and enforcement in Vietnam were dismissed.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

When Vietnam joined the World Trade Organization in 2007, it established minimum commitments on market access for U.S. goods and services, as well as treatment for Vietnamese and foreign companies. Vietnam undertook commitments on goods (tariffs, quotas, and ceilings on agricultural subsidies) and services (provisions of access to foreign service providers and related conditions). It has also committed to implement agreements on intellectual property (TRIPS), customs valuation, technical barriers to trade, sanitary and phytosanitary measures, import licensing provisions, anti-dumping and countervailing measures, rules of origin.

As part of its WTO accession, Vietnam also committed to remove performance requirements that are inconsistent with the TRIMS agreement. The new Investment Law specifically prohibits the following requirements: giving priority to the purchase or use of domestic goods or services; compulsory purchase of goods or services from a specific domestic firm; export of goods or services at a fixed percentage; restricting the quantity, value or type of goods or services that may be exported or that may be sourced domestically; fixing import goods at the same quantity and value as goods exported; requirements to achieve certain local content ratios in manufacturing goods; stipulated levels or values on research and development activities; supplying goods or services in a particular location; or mandating the establishment of head offices in a particular location.

In addition, Vietnam has excluded certain products from its WTO distribution services commitments, including rice, sugar, tobacco, crude and processed oil, pharmaceuticals, explosives, news and magazines, precious metals, and gemstones.

Investment Incentives

Foreign investors are exempt from import duties on goods imported for their own use and which cannot be procured locally, including: machinery, vehicles, components and spare parts for machinery and equipment, raw materials, inputs for manufacturing, and construction materials that cannot be produced domestically. Remote and mountainous provinces are allowed to provide additional tax breaks and other incentives to prospective investors.

In addition, projects in high tech, research and development, new materials, energy, clean energy, renewable energy, energy saving products, automobile, software, waste treatment and management, primary or vocational education; or projects located in difficult areas or economic and projects in industrial zones are entitled to investment incentives such as lower corporate income tax, exemption of import tariffs, or land rental.

Vietnam has instituted policies to attract investment by its diaspora community. Vietnam recognizes dual citizenship for Vietnamese expatriates, who are allowed to choose their status as either domestic or foreign investors. A 2008 law required that Vietnamese citizens who emigrated overseas before 2009 register their intent to retain Vietnamese citizenship with the Vietnamese Embassy in their country of residence by July 1, 2014. In April 2014, the Prime Minister agreed to postpone the deadline for registration for an additional five years, until July 1, 2019. U.S. citizens of Vietnamese descent may be treated as Vietnamese nationals unless they have formally renounced their Vietnamese citizenship.

The Law on High Technology came into force in 2009 to encourage investment in areas such as informatics, biotechnology, new materials and automation, and a number of companies now receive these incentives.

Research and Development

The list of high tech products that are given investment priority is updated on an ad hoc basis, and companies investing in research and development for items on the list are entitled to the highest tax incentives and may be eligible for funding from the National High Tech Development Program. Companies that develop infrastructure for high tech parks will also receive land incentives.

Performance Requirements

On 03 February 2016, the Government issued Decree No.11/2016/ND-CP guiding a number of articles of the Labor Code on foreigners working in Vietnam ("Decree No. 11"). Decree No. 11 will take effect on April 1, 2016 and replace Decree No. 102/2013/ND-CP ("Decree No. 102") and Resolution No. 47/NQ-CP of the Government dated 8 July 2014 ("Resolution No. 47"). The Decree proposes major changes, many of which represent positive developments from the viewpoint of the business community including changes to the conditions, paperwork, and timeline for work permit applications and exemptions. The most prominent feature of this decree is to clarify that the requirement for a work permit or an exemption certificate does not apply to foreigners coming to work for less than 30 days and whose cumulative working time does not exceed 90 days in a year.

Another encouraging point of Decree 11 is that it extends the time frame for lodging the re-issuance of work permits. Accordingly, work permit re-issuance applications will be accepted from 45 days prior to the expiry date, instead of the 15 days as per current regulations. Hence, foreigners have sufficient time to renew visas or obtain residence cards after the granting of the new work permit. The simplified terms of eligibility for work permit for individuals who have been previously granted such documents in Vietnam are also appreciated by the business community.

Data Storage

The Ministry of Information and Communications (MIC) is the lead agency for administrative enforcement of cyber-related regulations, including data storage requirements. The Ministry of Public Security's cyber division may also get involved if there is a suspected criminal violation of data storage rules. MIC's Decree 72/2013 on Management, Provision, and Use of Internet Services and Information Content Online, which came into effect on September 1, 2013, is the primary legal document establishing data storage requirements.

Decree 72 requires all organizations establishing "general websites," or social networks and companies providing online gaming services or services across mobile networks to maintain at least one server inside Vietnam. It also establishes requirements on the type of data that these companies must store (personally identifiable information of users, user activity logs, etc.) but it is unclear if that information must be stored on a local server.

Circular 09/2014/TT-BTTTT "Detailing Management, Provision and Use of Information on Websites and Social Networks," which guides implementation of Decree 72, requires Vietnamese companies that operate general websites and social networks, including blogging platforms, to locate a server system in Vietnam and to store posted information for 90 days and certain metadata for up to two years. To date, enforcement of the decree appears to be very limited, and the MIC has not released guidance on how the decree will apply to foreign cross-border service providers.

6. Protection of Property Rights

Real Property

State protection of property rights is still evolving, as the state can expropriate land for socio-economic development. Under the new Housing Law and Real Estate Business Law passed by the National Assembly in November 2014, land can only be taken if it is deemed necessary for social-economic development in the public or national interest, and is approved by the Prime Minister or the National Assembly, as well as the Provincial People's Council. However, 'socio-economic' development is loosely defined, and there are many outstanding legal disputes between land owners and local authorities. Disputes over land rights are a significant driver of social protest in Vietnam. Foreign investors also may be exposed to land disputes through M&A activities when they buy into a local company.

Real estate rights in Vietnam are divided into collective land ownership by the government, and land-use and building rights, which can be held privately. All land in Vietnam is collectively owned and managed by the state, and as such neither foreigners nor Vietnamese nationals can own land. The majority of land in Vietnam (94.5 percent) has been issued a land use rights certificate. Vietnam is building a national land registration database, and some localities have already digitized their land records.

In addition to land, collective property includes "forests, rivers and lakes, water supplies, wealth lying underground or coming from the sea, the continental shelf and the air, the funds and property invested by the government in enterprises and works in all branches and fields - the economy, culture, society, science, technology, external relations, national defense, security - and all other property determined by law as belonging to the State."

The new Housing Law and Real Estate Business Law extended "land-use rights" to foreign investors, allowing title holders to conduct real estate transactions, including mortgages. Foreign investors can lease land for renewable periods of 50 years, and up to 70 years in some poor areas of the country. Certain foreigners can own apartments, durable construction, durable trees and planted forests for production purposes in Vietnam.

Some investors have encountered difficulties amending investment licenses to expand operations onto land adjoining existing facilities. Investors also note that local authorities may intend to increase requirements for land-use rights when current rights must be renewed, particularly in instances when the investment in question competes with Vietnamese companies.

Intellectual Property Rights

The legal basis for property rights includes the 2005 Civil Code, the 2005 Intellectual Property Law as amended in 2009, and implementing regulations and decrees. Vietnam has joined the Paris Convention on Industrial Property and the Berne Convention on Copyright and has worked to meet its commitments under these international treaties. In 2009, Vietnam revised the Intellectual Property (IP) Law and IP-related provisions in the Criminal Code with respect to criminal penalties for certain acts of IPR infringement or piracy. However, enforcement agencies still lack clarity in how to impose criminal penalties on IPR violators and continue to wait for further implementing guidelines.

Although Vietnam has made progress in establishing a legal framework for IPR protection, very significant problems remain and new challenges are emerging. The country remains on the Special 301 Watch List. In 2015 Vietnam had mixed results in its efforts to protect intellectual property rights (IPR). Vietnam's continued integration with the global economic community through the conclusion of the Trans-Pacific Partnership (TPP) trade agreement negotiations and the European Union-Vietnam Free Trade Agreement negotiations were seen as harbingers of positive change. Nevertheless, infringement and piracy remained commonplace and the impact of digital piracy and increasing prevalence of counterfeit goods sold online continued to undermine the IPR environment. The increasingly sophisticated capabilities of domestic counterfeiters coupled with developing smuggling routes through Vietnam's porous borders were also worrisome trends.

Customs officers have authority to seize and destroy counterfeit goods and can charge the counterfeiter with the expenses for these activities. Vietnam's IPR agencies track and report seizures of counterfeit goods, although trend data may be difficult to discern due to varying data collection methods, cross-over from joint actions, and differing contributions from Vietnam's 63 provinces. Individual agencies have made efforts to improve their enforcement tracking in recent years, but coordination among them to aggregate data is very weak.

The Ministry of Science and Technology (MOST) inspectors carried out 55 inspections in 2015, 9 less than the previous year. However, the inspectors discovered almost the same number of violations (41 compared to 42 the previous year) and issued 37 fines, equaling the number of fines levied in 2014. MOST inspectors also reported destroying 17,000 articles of counterfeit clothing, labels and fashion accessories and removed the infringing aspects of 73,000 infringing goods, primarily food, cosmetics, and pharmaceutical products. In May 2015, the MOST inspectorate discovered an establishment in Hanoi producing 1,607 fake hand bags and belts of well-known brands including Dior, Hermes, and Louis Vuitton. The case was transferred to the police for further criminal investigation.

- In 2015, the MOCST Inspectorate cooperated with the Ministry of Public Security (MPS) to carry out inspections for software licensing compliance on 89 individuals and companies throughout the country, the same inspection rate compared to 2014. The Authorities discovered 81 violations that resulted in fines of $114,500, a 40% increase over 2014. MOCST officials reported that the copyright compliance rate of inspected companies was higher than in previous years. The inspectors also carried out five inspections of individuals and companies selling art and photography and found no infringement.

- During 2015, the Copyright Office of Vietnam (COV) handled 31 copyright-related complaints (a 24 percent increase from 2014). In addition, COV reported that it issued 5,510 copyright certificates in 2015, a 17 percent increase from the previous year.

- In 2015, the National Office of Intellectual Property (NOIP) received 93,985 total IP applications, an increase of 20 percent in comparison to 2014.

Most often, authorities use administrative actions such as warnings and fines to enforce IPR protection because they are less demanding on enforcement time and resources. The United States and other countries have conducted training for enforcement agencies, prosecutors and judges. Some businesses and rights holders have started to assert their rights under the law more forcefully. One positive sign is the growth of Collective Management Organizations (CMO), particularly for the music and publishing industries. Vietnam's most successful CMO, the Vietnam Center for the Protection of Musical Copyrights (VCPMC), boasts a membership of over 90 percent of Vietnam's music composers and collected nearly $1 million in royalties on behalf of its members in 2015. However, the ability of other CMOs to protect their members IP and collect royalties on their behalf remains weak. In recent years, the government pledged and but only partially implemented a plan to rid government offices of pirated software.

Vietnamese enforcement bodies have investigated, and in some cases raided and fined, businesses suspected of using pirated software. According to statistics from the Business Software Alliance, Vietnam reduced its online piracy rate by almost 20 percent over the last decade, one of the largest reductions for any country during that time period. However, Vietnam still has one of the highest rates of online piracy in the world (over 80 percent in 2013). Rights holders continue to seek additional enforcement actions against websites containing infringing digital content. To date, however, very little enforcement action has been taken to punish or prevent digital and internet piracy.

Substantial compensation for IPR violations is only available under the civil remedies section of the IP Law. Vietnam has yet to establish specialized IP courts, and knowledge on IP issues within the judiciary remains low. Significant improvements are still needed, but legal experts are optimistic that the court system is slowly improving its ability to handle civil IP cases. Criminal offenses are prosecuted under the Criminal Code, and criminal proceedings are regulated under the Criminal Procedure Code. In practice, however, criminal prosecutions are rarely used to prosecute IPR violations.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Resources for Rights Holders

NAME of IP Economic Officer: Heather Rogers
TITLE: Economic Officer
TELEPHONE NUMBER: (84 4) 850 5027
EMAIL ADDRESS: RogersH@state.gov

Local lawyers list: http://vietnam.usembassy.gov/list-of-attorneys---hanoi-consular-district.html
AmCham Hanoi: http://www.amchamhanoi.com/
AmCham Ho Chi Minh City: http://www.amchamvietnam.com/
U.S. ASEAN Business Council Vietnam: https://www.usasean.org/countries/vietnam

7. Transparency of the Regulatory System

Vietnamese regulations in general have low transparency which in turn leads to different interpretation by government authorities. Legislative quality is uneven, and often requires subordinate legal documents to be effective. Vietnam has its own national accounting standards which are being improved to match international norms. Publicly listed companies adhere to the national accounting standards.

The Law on the Promulgation of Legal Normative Documents requires all legal documents and agreements to be published online for comments for 60 days, and published in the Official Gazette before implementation. The strong presence of business associations and chambers of commerce, the availability for online commentary on draft laws and regulations, and the biannual Vietnam Business Forum all open up opportunities for direct dialogue between the foreign business community and Vietnamese government officials. However, when issuing more detailed implementing guidelines, government entities regularly issue circulars without public notification or with little advance warning or opportunity for comment by affected parties, arguing that these binding decisions are not legal documents. In several cases authorities just receive comments for the first draft, and then make subsequent draft versions unavailable to the public.

8. Efficient Capital Markets and Portfolio Investment

Challenges to raising capital domestically include Vietnam's weak and poorly regulated financial system, low transparency, and non-compliance with internationally accepted accounting standards. While the government has acknowledged the need to strengthen both the capital and debt markets, there has been no substantial progress, leaving the banking sector as the primary capital source for Vietnamese companies.

Vietnam has two stock exchanges: the Ho Chi Minh City Stock Exchange (HOSE) and the Hanoi Stock Exchange (HNX). As of March 2016, 348 stocks were listed on the HOSE with total market capitalization of approximately $19.6 billion, and 380 companies were listed on the HNX with total market capitalization of approximately $6.8 billion. A trading floor for unlisted public companies (UPCOM) was launched at the Hanoi Securities Center in 2009. As of March 2016, 272 companies were listed on UPCOM, with total market capitalization of approximately $3.7 billion. Government bonds are traded on the HNX. UPCOM is important because equitized SOEs first list on the UPCOM (due to lower transparency requirements) before moving to an exchange.

Money and Banking System, Hostile Takeovers

The State Bank of Vietnam's (SBV) actions in the wake of the economic downturn – injecting cash into banks, arresting bank CEOs, merging weaker banks with stronger banks, and taking over three failed banks, have resulted in a stronger banking sector that is better positioned for increased competition from the ASEAN Economic Community (AEC) formation at the end of last year.

However, Vietnam's banking sector continues to be concentrated at the top and fragmented at the bottom. State-owned or majority state-owned banks accounted for 45 percent of total assets and 35 percent of equity capital in the banking sector as of March 2016. Vietnam's 28 joint stock commercial banks are all smaller than the state-owned commercial banks, but are gradually gaining market share, and the government has plans to reduce the number of private banks to 15-17 by the end of 2017. In 2015, SBV took over 3 joint stock banks (Construction Bank, Ocean Bank and GP Bank) at zero cost and placed Dong A Bank under special supervision. The SBV assigned some personnel from the state-owned banks (Vietcombank, Vietinbank and BIDV) to take charge of management of the failing banks. There was no run on the banks and no systemic failure occurred.

This year, the SBV for the first time allowed a joint venture bank (VID Public Bank) to convert to a 100 percent foreign owned company. Currently, the ceiling for total foreign ownership in a Vietnamese bank remains at 30 percent, but can be raised by approval of the Prime Minister.

Despite progress, most domestic banks remain under-capitalized and have high non-performing loan (NPL) levels that continue to drag on economic growth. By law, banks must maintain a minimum chartered capital of VND3 trillion (roughly $134 million). The SBV continues to underreport the level of NPLs, and accurate data is not available. Other issues in the banking sector include state-directed lending by state-owned commercial banks, cross-ownership and related-party lending under non-commercial criteria, and preferential loans to SOEs that crowd out credit to SMEs.

9. Competition from State-Owned Enterprises

According to the 2014 Law on Enterprises, a state-owned enterprise (SOE) is an enterprise in which the state holds 100 percent of its equity, a definition that does not follow international standards and obscures the true number of SOEs in Vietnam. The TPP defines an SOE as an enterprise that is principally engaged in commercial activities in which the government directly owns more than 50 percent of the share capital.

In 2015, Central Institute for Economic Management (CIEM), a government think tank, reported there were 2,000 SOEs in Vietnam where the state retained a majority interest, and 781 SOEs where the state retained 100 percent ownership (the World Bank 2035 report estimated over 3,000 total SOEs under majority state control), employing around 1.5 million people, and accounting for 15 percent of all enterprise employees. Although the wholly state-owned enterprises accounted for just 0.2 percent of the total number of enterprises in Vietnam at the end of 2014, they accounted for 28-29 percent GDP (slightly lower than the World Bank 2035 report's estimate of one-third of GDP) and control the majority of natural resources and land. SOEs do not operate on a level playing field with domestic companies and continue to benefit from preferential access to resources such as land, capital, and political largesse.

OECD Guidelines on Corporate Governance of SOEs

In 2015, the GVN issued Decree 81/2015/ND-CP in order to improve corporate governance and transparency. The decree requires SOEs to implement strict information disclosure procedures in accordance with listed company requirements. However, as there is no clear punishment for violations, SOEs have little incentive to follow the decree.

According to the World Bank, SOEs would benefit from a "modern corporate governance system that separates state ownership rights from regulatory functions and implements an objective and transparent mechanism for the selection of Chief Executive Officers (CEOs) and board members." The government framework for 100 percent SOEs is fragmented and incoherent, and the management of SOEs is not in line with sound corporate governance. Part of the issue is Vietnam does not have one ministry or agency that has oversight over all SOEs. Central SOEs (those that fall under the central government) are overseen by a specific ministry. Local SOEs (those that fall under provincial authority) are controlled by the provincial government. The State Capital Investment Capital manages the state share in equitized SOEs. While SOE senior officials do not typically retain their government positions, they still retain their links to the Vietnamese government and may return to government service once they terminate their employment with the SOE.

State management of equitized SOEs falls under Section 1 of Chapter III of the 2014 Law on Enterprises. The organization and management of 100 percent state-owned enterprises must comply with Section 2 of Chapter III. In additions, ministries/provincial governments that have ownership in an SOE can have their own regulations over the SOEs under their ownership. In additions, ministries/provincial governments that have ownership in an SOE can establish their own regulations.

10. Responsible Business Conduct

The government issued regulations intended to protect individuals from adverse business impacts in relation to labor rights, consumer protection, and environmental protection. However the enforcement of these laws is very weak. The new Enterprise Law allows shareholders to take court action against the management of a company and can nullify fully or partly a resolution of a shareholder general meeting through a court order or an arbitration decision. Companies are required to publish their corporate social responsibility activities, corporate governance work, information of related parties and transactions, and compensation of the management. Companies must also announce extraordinary circumstances such as changes to management, dissolution or establishment of subsidiaries within 36 hours of the event.

Most multinational companies implement Corporate Social Responsibility (CSR) programs that contribute to improving the business environment in Vietnam, and awareness of CSR programs is increasing among domestic companies. However, currently only the largest Vietnamese companies have CSR programs. The Vietnam Business Forum (VCCI), which is the Vietnam Chamber of Commerce, conducts CSR training and has a web page dedicated to CSR: http://www.csr-vietnam.eu/. In 2015, the U.S. American Chamber of Commerce started a Corporate Social Responsibility Group that organizes events and activities to raise awareness of social issues, and hosts a yearly awards ceremony to honor U.S. companies who excel in CSR in Vietnam. (http://www.amchamvietnam.com/amcham-corporate-social-responsibitly-group/)

Vietnam is an observer in the Extractive Industries Transparency Initiative (EITI). In 2015, there were public debates calling for Vietnam to prepare an EITI report, but to date Vietnam has not agreed to do so. Payments made to governments for projects related to the commercial development of oil, natural gas, or minerals are not made public; only aggregate contributions to the state budget from oil and gas sector are published together.

11. Political Violence

The only incident of violence against foreign investors in Vietnam was against China in May 2014. The GVN successfully maintained public order and worked with investors to offer mutually negotiated compensation packages.

12. Corruption

Vietnam's 2005 Anti-Corruption Law requires government officials to declare their assets and sets strict penalties for corrupt practices. However, enforcement remains problematic.

Vietnam ratified the UN Convention on Anti-Corruption in 2009, but has not signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Government has tasked various agencies to deal with corruption, including the Central Steering Committee for Anti-Corruption (led by the Prime Minister), the Government Inspectorate, and line ministries and agencies. The Central Steering Committee for Anti-Corruption was formed in 2007 and since February 2013 has been under the CPV Central Commission of Internal Affairs.

Corruption is due in large part to a low level of transparency, accountability, and media freedom, as well as low pay for government officials and inadequate systems for holding officials accountable for their actions. Competition among agencies for control over business and investments has created overlapping jurisdictions and bureaucratic procedures that in turn create opportunities for corruption. Anti-corruption efforts are localized and have a limited overall impact on corruption. In 2015, on the national level anti-corruption campaigns were focused on the banking sector, culminating in the arrest of then CEO of PetroVietnam (PVN) Nguyen Xuan Son for alleged corruption during his tenure at Ocean Bank, which was taken over by the State Bank of Vietnam last year. The PVN CEO was the only high profile arrest for corruption of a government official in 2015.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Vietnam signed the UN Anticorruption Convention in December 2003 and ratified it in August 2009.

Resources to Report Corruption

Contact at government agency or agencies are responsible for combating corruption:

NAME: Mr. Phan Dinh Trac
TITLE: Chairman
ORGANIZATION: Communist Party Central Committee Internal Affairs
ADDRESS: 6 Ba Huyen Thanh Quan, Ba Dinh District, Hanoi
TELEPHONE NUMBER: (84) 0804-3557

Contact at NGO

NAME: Ms. Dao Thi Nga
TITLE: Executive Director
ORGANIZATION: Towards Transparency
ADDRESS: 12B Floor, Machinco Building, 444 Hoang Hoa Tham, Tay Ho, Hanoi
TELEPHONE NUMBER: 84 (04) 3715-3532
EMAIL ADDRESS: DaoNga@towardstransparency.vn

13. Bilateral Investment Agreements

Bilateral Taxation Treaties

Vietnam does not have a bilateral investment treaty with the United States. Vietnam has 58 bilateral investment agreements with the following countries and territories: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium and Luxembourg, Bulgaria, Burma, Chile, China, Cuba, Czech Republic, Cambodia, Denmark, Egypt, Finland, France, Germany, Hungary, Iceland, India, Indonesia, Italy, Iran, Japan, Kazakhstan, Korea, Kuwait, Laos, Latvia, Lithuania, Malaysia, Mongolia, Mozambique, Netherlands, North Korea, Oman, Philippines, Poland, Qatar, Romania, Russia, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Tajikistan, Thailand, Ukraine, United Kingdom, Uruguay, Uzbekistan, United Arab Emirates, and Venezuela.

Vietnam completed the negotiation of a Double Taxation Avoidance Agreement with the United States in 2015. The two countries are finalizing the steps for entry into force.

14. Foreign Trade Zones/Free Ports/Trade Facilitation

In recent years Vietnam has worked hard to establish free trade zones (FTZs). Vietnam currently has approximately 300 industrial zones (IZs) and export processing zones (EPZs). Many foreign investors note that it is easier to implement projects in industrial zones because they do not have to be involved in site clearance and infrastructure construction, and enterprises pay no duties when importing raw materials if the end products are exported.

Customs warehouse keepers in FTZs can provide transportation services and act as distributors for the goods deposited. Additional services relating to customs declaration, appraisal, insurance, reprocessing, or packaging require the approval of the provincial customs office. In practice the time involved for clearance and delivery can be lengthy and unpredictable.

Most import or export pending goods can be deposited in bonded warehouses under the supervision of the provincial customs office. Exceptions include goods prohibited from import or export, Vietnamese-made goods with fraudulent trademarks or labels, goods of unknown origin, and goods dangerous or harmful to the public or environment. The inbound warehouse leasing contract must be registered with the customs bond unit at least 24 hours prior to the arrival of goods at the port. Documents required are a notarized copy of authorization of the holder to receive the goods, a notarized copy of the warehouse lease contract, the bill of lading, a certificate of origin, a packing list, and customs declaration forms. Owners of the goods pay import or export tax when the goods are removed from the bonded warehouse.

15. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) ($M USD)	2014	186,200	2014	186,200	www.worldbank.org/en/country

Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country ($M USD, stock positions)	2015	11,301	2014	1,473	BEA data available at http://bea.gov/international/direct_investment_ multinational_companies_comprehensive_data.htm
Host country's FDI in the United States ($M USD, stock positions)	2015	N/A	2014	126	BEA data available at http://bea.gov/international/direct_investment_ multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	2015	13%	2014	N/A	N/A

* General Statistic Office of Vietnam – Pledged FDI, not disbursed.

Table 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations (US Dollars, Billions)					
Inward Direct Investment			Outward Direct Investment		
Total Inward	24.1	100%	Total Outward	N/A	100%
South Korea	6.9	29.0%			
Malaysia	2.4	10.0%			
Japan	1.8	7.4%			
Taiwan	1.4	6.0%			
Samoa	1.3	5.7%			
"0" reflects amounts rounded to +/- $ 500,000.					

Source: Vietnam's Foreign Investment Agency under the Ministry of Planning and Investment (MPI)

Table 4: Sources of Portfolio Investment

IMF Coordinated Portfolio Investment Survey data are unavailable for Vietnam.

Section 5 - Government

Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - [Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments]

Legal system:

civil law system; note - the civil code of 2005 reflects a European-style civil law

International organization participation:

ADB, APEC, ARF, ASEAN, CICA, CP, EAS, FAO, G-77, IAEA, IBRD, ICAO, ICC (NGOs), ICRM, IDA, IFAD, IFC, IFRCS, ILO, IMF, IMO, IMSO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, MIGA, NAM, OIF, OPCW, PCA, UN, UNCTAD, UNESCO, UNIDO, UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO

Exchange control

According to current regulations, a Foreign Investment Enterprise ("FIE") will be required to open and operate a Vietnam dong currency account at a commercial bank in Vietnam. The FIE is also allowed to open a foreign currency account.

The current foreign exchange regulations of Vietnam require all transactions within the country and between Vietnam residents be made in Vietnam dong.

The laws also prescribe the number and type of transactions which the FIE can conduct in foreign currencies. The frequently conducted transactions include payment for purchases of goods and services from individuals and organizations outside Vietnam. In these cases, regulations require that there must be adequate evidence to justify the remittance. One important supporting document is the commercial contract between the offshore supplier of goods and/or services and the FIE.

Other transactions include the repayment of foreign loans and interest, of which certain requirements must be satisfied when obtaining foreign loans, such as conditions to obtain short term, medium term and long term loans, and registration and report requirements; Collection of revenues from the provision of goods and services to foreign customers outside Vietnam: and finally the payment of salaries, bonuses and allowances to expatriate employees.

Treaty and non-treaty withholding tax rates

Country	Dividend (%)	Interest (%)	Royalties (%)
Algeria	15	15	15
Australia	10	10	10
Bangladesh	15	15	15
Belarus	15	10	15
Belgium	5, 7, 10 or 15	10	5, 10 or 15
Bulgaria	15	10	15
Canada	5, 10 or 15	10	7.5 or 10
China	10	10	10
Cuba	5, 10 or 15	10	10
Czech Republic	10	10	10
Denmark	5, 10 or 15	10	5 or 15
Finland	5, 10 or 15	10	10
France	7, 10 or 15	Nil	10

Germany	5, 10 or 15	10	7.5 or 10
Hungary	10	10	10
Iceland	10 or 15	10	10
India	10	10	10
Indonesia	15	15	15
Italy	5, 10 or 15	10	7.5 or 10
Japan	10	10	10
Korea	10	10	5 or 15
Laos	10	10	10
Luxembourg	5, 10 or 15	10	10
Malaysia	10	10	10
Mongolia	10	10	10
Myanmar	10	10	10
Netherlands	5, 7, 10 or 15	7 or 10	5, 10 or 15
North Korea	10	10	10
Norway	5, 10 or 15	10	10
Pakistan	15	15	15
Philippines	10 or 15	15	15
Poland	10 or 15	10	1, 10 or 15
Romania	15	10	15
Russian	10 or 15	10	15
Seychelles	10	10	10
Singapore	5, 7 or 12.5	10	5 or 15
Spain	7, 10 or 15	10	10
Sri Lanka	10	10	15
Sweden	5, 10 or 15	10	5 or 15
Switzerland	7, 10 or 15	10	10
Thailand	15	10 or 15	15
Ukraine	10	10	10
United Kingdom	7, 10 or 15	10	10
Uzbekistan	15	10	15

Methodology and Sources

Section 1 - General Background Report and Map

(Source: CIA World Factbook)

Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
FATF List of Countries identified with strategic AML deficiencies	Not Listed	AML Deficient but Committed	High Risk
Compliance with FATF 40 + 9 recommendations	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
US Dept of State Money Laundering assessment (INCSR)	Monitored	Concern	Primary Concern
INCSR - Weakness in Government Legislation	<2	2-4	5-20
US Sec of State supporter of / Safe Haven for International Terrorism	No	Safe Haven for Terrorism	State Supporter of Terrorism
EU White list equivalent jurisdictions	Yes		No
International Sanctions UN Sanctions / US Sanctions / EU Sanctions	None	Arab League / Other	UN , EU or US
Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network	>69%	35 – 69%	<35%
World government Indicators (Average)	>69%	35 – 69%	<35%
Failed States Index (Average)	>69%	35 – 69%	<35%
Offshore Finance Centre	No		Yes

Section 3 - Economy

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: CIA World Factbook)

Section 4 - Foreign Investment

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: US State Department)

Section 5 - Government

Names of Government Ministers and general information on political matters.

(Source: CIA World Factbook / https://www.cia.gov/library/publications/world-leaders-1/index.html)

Section 6 - Tax

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: OECD Global Forum on Transparency and Exchange of Information for Tax Purposes PKF International)

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