

Doing Business In Viet Nam

2007

The logo for UHY, featuring the letters 'UHY' in a bold, blue, sans-serif font. The 'U' is underlined with a thick blue horizontal bar. The 'Y' has a distinctive curved tail that loops back under the 'H'.

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1. Introduction

UHY is an international organization providing accountancy, business management and consultancy services through financial business centers in nearly 60 countries throughout the world. Business partners work together throughout the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialist in various industry and market sectors are also available for consultation.

This publication outlines some of the key issues and necessary information to do business in Vietnam.

The information contained in the following pages is both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decision.

This publication is current at August 2007.

UHY Audit and Advisory Services Limited. (UHY Ltd.)

UHY Ltd. is the sole representative of UHY in Vietnam. The firm is rebranded from a core of experienced, dedicated professionals and consultants of International Auditing and Financial Consulting Company (IFC), which was established in 2001. UHY Ltd. is placed among the 10 largest firms in Vietnam in terms of the number of CPA holders and client service experience. Our firm's UHY membership demonstrates our intentions for a commitment to client service quality accompanied with a global reach. More than simple a new name, we present a mission statement: to provide our clients with real value and excellent services.

Our contacts can be found at part 9 – UHY firms in Vietnam of this publication.

We look forward to helping you do business in Vietnam.

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2. Business Environment

Background:

The Socialist Republic of Vietnam is the easternmost nation on the Indochinese Peninsula. With a population of over 85 million, Vietnam is the 13th most populous country in the world. Legend has it that Vietnam's origin lay in the harmonious union of Lac Long Quan, King of the Sea, and Au Co, Princess of the Mountains. In real life, Vietnam's history is characterized by a nearly continuous struggle for autonomy. Reunified in 1975 but for over two decades since then the country experienced little economic growth because of conservative leadership policies. Since 2001, Vietnamese authorities have committed to economic liberalization and enacted structural reforms needed to modernize the economy and to produce more competitive, export-driven industries. Political stability and encouraging foreign investment policies help Vietnam's FDI grow steadily. The country is listed among the "Next Eleven" economies; according to government figures GDP, growth was 8.17% in 2006, the second fastest growth rate among countries in East Asia and the fastest in Southeast Asia.

Geography

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

Map references: Southeast Asia

Area: total:	329,560 sq km
land:	325,360 sq km
water:	4,200 sq km

Coastline: 3,444 km (excludes islands)

Climate: Tropical in south; monsoonal in north with hot, rainy season (mid-May to mid-September) and warm, dry season (mid-October to mid-March)

Population: 83,535,576

Age structure: 0-14 years:	27.9% (male 12,065,777/female 11,212,299)
15-64 years:	66.4% (male 27,406,456/female 28,024,250)
65 years and over:	5.8% (male 1,889,585/female 2,937,209)

Population growth rate: 1.04%
 Life Expectancy: 72
 Literacy Percent: 94
 Languages: Vietnamese (official), English (increasingly favored as a second language), some French, Chinese, and Khmer; mountain area languages (Mon-Khmer and Malayo-Polynesian)

Economy

Vietnam is a densely-populated, developing country that in the last 30 years has had to recover from the ravages of war. Growth averaged around 9% per year from 1993 to 1997. The 1997 Asian financial crisis highlighted the problems in the Vietnamese economy and temporarily allowed opponents of reform to slow progress towards a market oriented economy. GDP growth of 8.5% in 1997 fell to 6% in 1998 and 5% in 1999. Growth then rose to around 7% in 2000-04 even against the background of global recession, making it the world's second-fastest growing economy. Simultaneously, investment grew three-fold and domestic savings quintupled. According to the CIA World Fact Book, the unemployment rate in Vietnam is one of the lowest in the world at 2%. The GDP growth was 8.4% in 2005, the second largest growth in Asia, trailing only China's.

Government figures of GDP growth in 2006, was 8.17%. According to Vietnam's Minister of Planning and Investment, the government targets a GDP growth of around 8.5% for 2007. Since 2001, Vietnamese authorities have reaffirmed their commitment to economic liberalization and international integration. They have moved to implement the structural reforms needed to modernize the economy and to produce more competitive, export-driven industries. Vietnam's exports to the US doubled in 2002 and again in 2003. Vietnam has successfully completed accession to the WTO in 2006.

Statistics:

GDP (purchasing power parity): \$227.2 billion (2004 est.)
 GDP - real growth rate: 8.4% (2005 est.)
 GDP - per capital: purchasing power parity - \$2,700 (2004 est.)
 services: 38.1% (2004 est.)
 Industrial sector: 41.52% (2006)
 Service sector: 38.08% (2006)
 Agriculture sector: 20.40% (2006)
 Labor force: 42.98 million (2004 est.)
 Unemployment rate: 1.9% (2004 est.) 4.4% for urban area (2006)

Distribution of family income - Gini index: 36.1 (1998)
 Inflation rate (consumer prices): 9.5% (2004 est.)
 Investment (gross fixed): 36.6% of GDP (2004 est.)
 Budget: revenues: \$10.66 billion
 expenditures: \$13.09 billion, including capital expenditures of \$1.8 billion (2004 est.)
 Public debt: 65.9% of GDP (2004 est.)
 Industrial production growth rate: 16% (2004 est.)
 Current account balance: \$-2.061 billion (2004 est.)
 Exports: \$23.72 billion f.o.b. (2004 est.)
 Exports - partners: US 20.2%, Japan 13.6%, China 9%, Australia 7%, Germany 5.9%, Singapore 4.8%, UK 4.6% (2004)
 Imports: \$26.31 billion f.o.b. (2004 est.)
 Imports - partners: China 13.7%, Taiwan 11.3%, South Korea 10.8%, Japan 10.5%, Singapore 10.5%, Thailand 6.2%, Hong Kong 4% (2004)
 Reserves of foreign exchange and gold: \$6.51 billion (2004 est.)
 Debt - external: \$16.55 billion (2004 est.)
 Economic aid - recipient: \$2.8 billion in credits and grants pledged by international donors for 2000 (2004)
 Currency (code): dong (VND)
 Currency code: VND
 Exchange rates: dong per US dollar – 16,034 (2006), 15,914 (2005), 15,746 (2004), 15,510 (2003), 15,280 (2002), 14,725 (2001), 14,168 (2000)

Legal System

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

All laws and regulations roots from the Constitution and then the Civil Code. Other important laws concerning foreign investment and trade include the Law on Investment in Vietnam; the Law on Enterprise; the Law on Commerce; the

Labour Code; the Law on Land; Law on Corporate Income Tax; the Law on Value Added Tax the Law on Competition; etc.

Forex Control

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

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

Land Use Right and Land Ownership

Vietnamese Government denies individuals' right to own land for it believes land is property of the people. Therefore, land ownership only belong to the State, the representative body of the people. In reality, the commonly used phrase "buy land" should be interpreted as "buy land use right". According to Vietnam Accounting Standard, land use right should appear in a balance sheet as an intangible fixed asset (as oppose to fixed asset in other country). Individuals and organizations can possess land use right, which, unless otherwise conditioned by the authorities, includes all rights except ownership. Most of the time, once obtained, land use right can be sold, bought, transferred, gifted, mortgaged, lease, inherited, contributed as capital, etc. However, land use right cannot be used as collateral for loan from foreign banks. Foreign entities can not

acquire land use right unless via an establishment of their branch/representative office in Vietnam; in other words, land use rights cannot belong to entities that do not physically present in the country. The Ministry of Natural Resources and Environment in charge of managing land uses.

There are several ways to obtain land use right. It can be bought from others, or be given by the State. A foreign entity wish to obtain land use right should (1) partnering with a Vietnamese company(ies) where land use right is contributed by Vietnamese partner(s) or (2) establish a company in Vietnam and lease land from the State or purchasing land use right from other owner.

If leasing, the foreign company will be paying land rent in accordance with the land rent frameworks set by the Ministry of Finance and provincial people's committee where the project is located. Except in case the project is located in the industrial zones, high tech zones, export processing zone, or economic zone, foreign investors have to arrange to receive the conveyance of land use right from the existing occupants.

If land use right is obtained via contribution from Vietnamese partner(s), once the company is established, the land use right title shall be transferred to the company.

Stock Market

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

As of the time of this writing, there are 88 companies listing in Hanoi Security Trading Center and 113 in Ho Chi Minh City Security Trading Center.

IPO

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

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

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

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

Oversea listing

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

Foreign participation

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

3. Foreign Investment

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

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

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

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

There have been over 2,400 projects worth more than US\$ 35 billion invested by hundreds of companies from over 70 countries and territories. The disbursed capital was US\$ 15.9 billion. The FDI sector covered 10.5% of Gross Domestic Products in 1999 compared with 3.6% in 1993. FDI now accounts for nearly 30% of the country's investment, 21% of export turnover and creates 300,000 direct jobs.

With regard to FDI distribution, up to April 2000, Ho Chi Minh City kept the largest share of FDI with the registered capital amounting to US\$ 9.7 billion, followed by Hanoi with over US\$ 8.1 billion. So far, 7 cities and provinces have had foreign investment of more than US\$ 1 billion namely Ho Chi Minh City, Hanoi, Dong Nai, Binh Duong, Hai Phong, Quang Ngai, and Ba Ria Vung Tau.

FDI sector currently accounts for nearly 35% of the industrial output and has considerably contributed to the high growth of industrial production, more than 10% since 1990. The annual growth rate of the FDI industrial sector has been double digit. Many FDI enterprises have advanced technology and modern

business operations. FDI has also helped establish the system of Export Processing Zones and Industrial Estates.

The decline of FDI was partly due to the impact of the 1997 - 1998 regional financial crisis. In face of this slowdown, the Government is well aware of the need to reform investment environment to create more favorable conditions for foreign investors.

Along with the promulgation of new legal documents granting more preferences to investors such as Decree No. 10/CP, Decision No. 53/QĐ-TTg, the revised Law on Foreign Investment in Vietnam was approved the X National Assembly last May. This new Law has made revision on 3 major groups of issues. First, there are provisions to remove difficulties and obstacles, and reduce risks for FDI enterprises in which responsibilities for compensation and land clearance are shifted from foreign partners to Vietnamese sides; allow FDI enterprises to mortgage their land use rights to borrow money from credit organizations, and relax currency balance regulations on foreign-invested enterprises.

The second group is provisions, which give more autonomy for FDI enterprises and lessen issues that require consensus in the Management Board. Investors are allowed more freely to change the investment forms, re-organize enterprises, and transfer capital. Procedures on Government's FDI management will continue to be improved.

Finally, the new Law gives more preferences to foreign investors, which increase the list subject to import tariff exemption and reduction, reduce profit transmittal tax rates from 10%, 7% and 5% to 7%, 5% and 3% respectively, and allow 100% foreign-owned enterprises and foreign partners to the BCC to forward losses. Furthermore, foreign investors will continue to enjoy preferences provided in case of changes in the Vietnamese laws. FDI enterprises will be granted more preferential provisions after receiving investment license.

4. Setting up a Business

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

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

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

Sole proprietorships

There are several restrictions upon the creation of Sole proprietorship (also often known as private enterprise)

The founder has to be older than 18 years of age. In order to legally manage or establish a sole proprietorship, the founder has to be mentally capable, without criminal record (or has been erased) and not being a state officials or a member of the army. One person can only establish one sole proprietorship.

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

Required registration documents are: (1) request for business registration in the standard form published by the authorized business registration body, (2) copy

of people's identity card, passport or other lawful personal identification, (3) document of an authorized body or organization certifying the legal capital in respect of enterprises conducting lines of business for which legal capital is required by law, (4) practicing certificates of the director and other individuals in respect of enterprises conducting lines of business for which a practicing certificate is required by law.

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

Partnership

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

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

Limited liabilities companies

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

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

Joint-stock companies

Required registration documents for joint-stock companies are similar to limited liabilities except for legal documentations for members which is an organization are only required for founding shareholders. Shareholders may be organizations or individuals; there must be at least three shareholders and there is no restriction on the maximum number. Such law entails that two or fewer members must choose another type of business entity for establishment therefore restricts the ability to issue security of such companies.

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

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

Foreign Company Branch

Foreign corporation, foreign trader is entitled to set up a trading branch of his/her corporation in Vietnam if having business registration or certificate of incorporation granted in their country for at least 5 years. Business scope of a trading branch is limited to the followings:

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

Representative Office

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

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

5. Employment

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

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

Labor Contract

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

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

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

Working Time

As per the code the working time shall not exceed 8 hours in a day and 48 hours in a week.

The labor user and the laborer may agree on extra hours work but the time of such work shall not exceed four hours in a day and 200 hours in a year.

Rest

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

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

Statutory Minimums

Salary rates must conform to the collective labor agreement (if applicable) and must not be less than the legally-regulated minimum rates. The monthly minimum wage for domestic enterprise is 450,000 VND (about 28 USD) and will be increase to 540,000 VND (about 33 USD) in near future. There are currently three levels applicable to employees working for foreign capital enterprises, which come down from 870,000 VND (about 55 USD) in the inner of Hanoi and HCMC, 790,000 VND (about 50 USD) in the suburb of Hanoi, HCMC, and the inner of Ha Long, Hai Phong, Bien Hoa, Vung Tau, Thu Dau Mot, to 710,000 VND (about 45 USD) in the rest of the country. In a near future, there will be no differences between required minimum wage for foreign-owned and domestic companies.

Mandatory Insurance

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

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

Establishment Of Labor Union

Foreign invested enterprises are required not to bar the establishment of the labor union in their enterprise. Labor union in an enterprise is a representative unit of all employees in that enterprise which will be established to protect legitimate rights of employees and to represent all employees in settlement of dispute to be arose. Employer in an enterprise is also required to enter into a collective labor agreement with all employees representing by the labor union.

Collective Labor Agreement

Representatives of both employers and employees in an enterprise are required to negotiate and sign a collective agreement. Normally, the employee's representative is the chairman of the enterprise's trade union.

A collective labor agreement must cover all matters such as wages, and working conditions for each category of jobs. A collective labor agreement shall have the validity depending on agreement between employer and enterprise's trade union executive committee. A copy of the collective labor agreement must be submitted to provincial labor department for registration.

The term of the collective labor agreement may be extended from one to three years.

This is the main legal framework stating rights and obligations of employers and employees to be carried out in course of business.

Labor Safety & Labor Sanitation

Labor Inspectors play an important role in maintaining an adequate working environment in Vietnam. They inspect regularly and fine companies do not follow the labor code on safety and sanitation.

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

Labor Dispute

It should be first noted that Vietnamese laws allow employees to strike works against employers. Attempts must be made to settle labor disputes through amicable negotiation between the employer and employee. If the dispute can not be settled through negotiation, the parties may refer the dispute to a conciliation

council comprising an equal number of representatives from each side, or an arbitrator from local labor agency.

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

6. Taxation

Legislation

The backbone of the taxation system are all the tax laws which for instance, include the Law on Corporate Income Tax, the amended Law on Value-Added Tax, the amended Law on Special Sales Tax, all passed on 17 June 2003 in replacement of the formers dated 22 May 1997 and June 1990.

There are also hundreds of decrees, circulars and other regulations being issued by the Government, various ministries and agencies, from time to time, with a view to guiding for the implementation of those laws.

Types of Taxes

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

Land use tax and fees are trivial.

Corporate Income Tax (CIT)

The standard tax rate is now 28%, decreased from 32% thanks to the issuance of the Law on Corporate Income Tax in 2003 (effective from 1 January 2004), and applicable to all legal entities, including Foreign Investment Enterprises (FIE) (the former CIT applicable to FIEs was 25%).

According to a new decree which takes effect on March 1st 2007, companies explores, mine natural gas and other precious metal will be taxed from 28% to 50%.

The incentive tax rates vary according to the level of socio-economic difficulties of the location where the projects took place. The highest and lowest of the incentive tax rates are below:

(a) The tax rate of 20% shall be granted to projects, for a period of 10 years from their production starting, which belong to the sectors where investment are

encouraged (including service projects in Industrial Zones – IZ), or invest in the locations with socio-economic difficulties.

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

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

Value-Added Tax

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

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

Special Sales Tax

Other than those subject to VAT, the following are being subject to the Special Sales tax with the rates ranging from 10% to 80% (lower than in the past which

varied from 15 to 100%), which are: cigarettes, beer (not including draft beer), alcohol, cars (less than 24 seats), gasoline, air conditioners (less than 90000 BTU), playing cards, joss papers, joss articles; trading in dancing clubs, massage, karaoke, casinos, jackpot game machine-based services, lottery trading, and golf course trading. Betting in horse race and motor race shall be excluded from the list of taxable services.

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

Withholding Tax

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

Import/Export Duties

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

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

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

Technology Transfer Tax

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

Foreign Contractor Tax

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

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

(i) Ordinary Method

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

(ii) Combined Method

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

Added values vary from 10%, 25%, 30% to 50% of the taxable revenues, subject to whether it is trading, production, construction with or without supplies. VAT will be calculated by multiplying the said added values with the respective rates as described in Section 16.4 above.

Payable corporate income tax varies from 1%, 2%, 5% to 10% of the taxable revenues, subject to whether it is trading; production, transport, construction; services; lending; and technology transfer.

Personal Income Tax

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

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

The taxable income minimum rate applicable when calculating tax for a locally-resident foreigner is VND 8 million.

7. Accounting and Reporting

Overview of Accounting Practice and Environment

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

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

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

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

Presentation of Financial Statements

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

- Balance Sheet

- Income Statement
- Statement of Cash flow
- Disclosure notes

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

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

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

Separate from independent audit firms, a National Assembly controlled body of auditing known as State Audit is also in the field. Its existence is expected to result better management of State-funding projects, higher overall financial transparency, corruption reduction, therefore allow the country to develop healthier.

8. UHY Firms in Vietnam

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