Doing Business in Vietnam - 2019

and

The EU - Vietnam Free Trade Agreement (EVFTA)

Doing Business in Vietnam

EU - Vietnam Free Trade Agreement

LEGISLATIVE SYSTEM

Vietnam applies the civil law system which is 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:

(i) The National Assembly issues the Constitution, resolutions, codes and laws; the National Standing Committee issues ordinances and resolutions;

(ii) 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

(iii) Resolutions of the People Councils and decisions and directives of the People's Committees.

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

Investors are allowed to invest in most sectors of the economy, except those which are detrimental to the national security, defense and public interests; and those under the State monopoly.

MAKING OF INVESTMENT

A. Foreign Direct Investment

Foreign direct investment in Vietnam is defined as investment by foreign investors who directly involve in management of investment activities in Vietnam.

Foreign direct investment vehicles include foreign wholly invested projects, joint venture projects with Vietnamese entities, business cooperation contracts (BCC), build operate-transfer (BOT) contracts, build-transfer-operate (BTO) contract, build-transfer (BT) contracts, investment in business development, purchase of shares of local companies where investors involve directly in management of investment.

(i) A foreign wholly invested company can be incorporated by (a) one or some foreign investors or (b) foreign investor(s) and established foreign wholly invested company(ies) in Vietnam.

(ii) A joint venture is a company established in Vietnam on the basis of a joint venture contract signed between two or more parties. At least one party must be Vietnamese. Foreign party can be either foreign organisations, companies or individuals or Vietnamese overseas while Vietnamese partner(s) can be either company(ies) and/or economic organisation(s) but not a Vietnamese individual. Foreign investor(s) can join with already-established joint venture to set up a new joint venture in Vietnam.

(iii) A BCC is a contract signed between foreign investor(s) and local partner(s) without setting up a legal entity in Vietnam. Parties to a BCC will contribute investment capital, jointly run business and share profits/losses.

(iv) BOT, BT and BTO refer to methods of project cooperation which can be operated under the forms of either joint venture or foreign wholly invested company. BTO, BT, and BOT are mostly established in arrangements between investor(s) and Governmental agencies, and involve such infrastructure construction as bridges, power plants, water treatment plants, airports and transportation.

Forms of company include the followings:

(i) **Limited liability company (LLC)**

Members of an LLC can be organizations or individuals. Members of an LLC shall be limitedly responsible for the operation of the company within the chartered capital proportion in the company. The number of members shall not exceed 50. Members' capital contributions are transferable but not flexibly like shares in JSC. The LLC cannot issue stocks.

There are two types of LLC, one member LLC and multi-members LLC. Such two types will have different corporate management structure.

(ii) **Joint stock company (JSC)**

A JSC has chartered capital divided into pieces called "shares". The number of shareholders is at least three. There is no cap for the number of shareholders. Shareholders are limitedly responsible for the operation of the JSC within their share proportion. Shares of a JSC encompass common shares and various kinds of preferential shares.

A JSC can issue stocks for mobilization of capital. Laws do not distinguish between publicly held JSC and closely held JSC. In fact, a publicly held JSC can be understood as a JSC offered stocks to the public.

(iii) **Partnership company**

A partnership company must have at least two partnership members (partners) jointly owning the company. Besides, it may have other capital contribution members. Partners are unlimitedly responsible for all operation of the company. Capital contribution members are limitedly responsible for the operation of the company.

(iv) **Sole proprietorship**

A sole proprietorship is defined as private enterprise which is owned by only one investor who is unlimitedly responsible for operation of the sole proprietorship. Sole proprietorships are not allowed to issue stock of any kind.

B. Licensing Procedures

Foreign investment projects in Vietnam must be licensed by competent authorities. Subject to the traits of the project, it can be subject to registration of investment or appraisal of investment.

An investment project having capital of less than VND300bn (approx. US$17.24ml) and not fallen within the list of conditional projects shall be subject to registration of investment. The rest shall be subject to appraisal of investment. The registration of investment shall be conducted with provincial departments of planning and investment or management boards of industrial zones, export processing zones.

C. Investment Incentives

Foreign investment in encouraged sectors, within areas with difficult socio-economic conditions, in building of industrial zones, export processing zones, high tech zones and economic zones shall be enjoying certain incentives. Investment incentives encompass typically tax reduction or exemption and incentives in use of land.

Encouraged sectors include:

(i) Production of new materials, new energy, high tech products, biological technology products, informatic technology products and mechanical technology products;
(ii) Cultivating and breeding in agricultural, forestry and aquatic sectors;
(iii) Use, research and development of high and modern technology, protection of environment;
(iv) Use of high number of employees;
(v) Construction and development of infrastructure, important and large scaled projects;
(vi) Development of education and training, healthcare services, gymnastics and traditional culture;
(vii) Development of traditional professions; etc.

D. Portfolio Investment

Portfolio investment includes the investment activities in forms of purchase of shares, stocks, bonds and other valuable papers, investment via stock investment funds, and investment via other intermediate financial institution, where foreign investors do not involve in management of their investment.

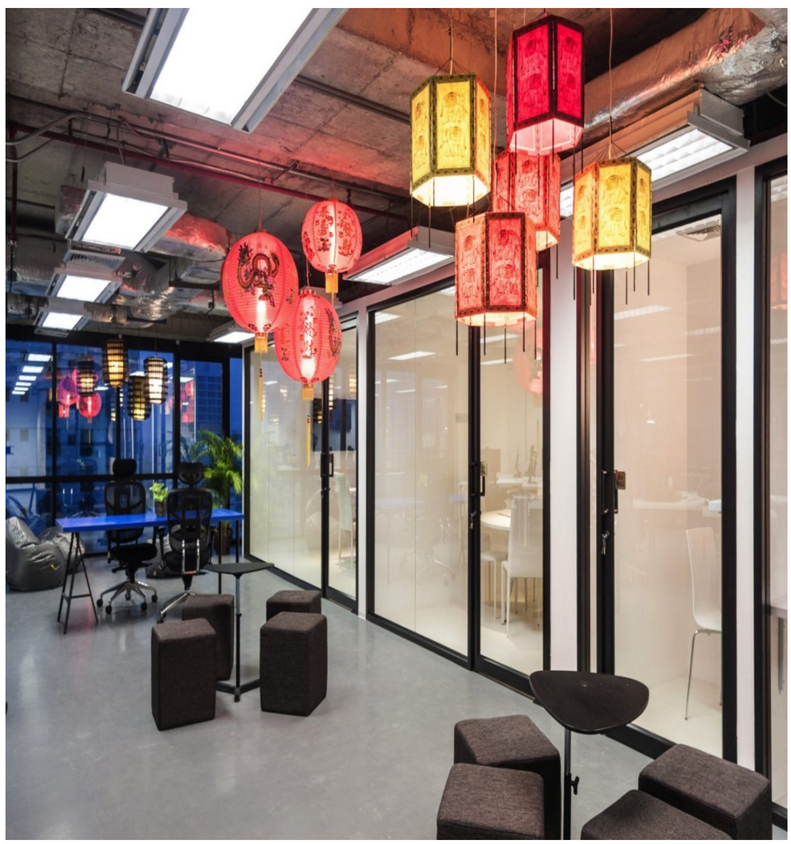
In buying shares of local companies, foreign investors can purchase shares without restriction (i.e. up to 100 per cent) in Vietnamese companies, except for sectors restricted by laws. The cap is opening up according to the commitments of Vietnam made under the framework of the WTO's regulations.

In purchase of stocks in the stock market, foreign investors are also limited to buy maximum 49% of total listed shares of a company.

BRANCH & REP OFFICE

A. Company Trading Branch

Foreign Corporation, foreign trader is entitled to set up a trading branch of his/her corporation in Vietnam if having operated for at least 5 years from its date of incorporation or business registration. Business scope of a trading branch shall be issued soon under a Circular from Ministry of Trade.



Trading branch can operate for a term of 5 year subject to subsequent renewals.

B. Representative Office

Foreign corporations are also entitled to set up one or several representative offices in Vietnam if having operated for at least 1 year from its date of incorporation or business registration. Activities of a representative office are limited to non-profit making activities, such as business links, follow up, and trade promotion. However, a representative office with duly authorization from its parent corporation may sign and carry out commercial contracts on behalf of its parent corporation. In that case payments cannot be made to bank account of the representative office in Vietnam. A representative office is allowed to do the following activities:

To act as liaison office; to promote cooperation projects of foreign traders in Vietnam;

To study business environment to accelerate the sale and purchase of goods and services of the foreign trader it represent; To supervise and speed up the implementation of contracts assigned by its head office with Vietnamese partners or related to Vietnam's market; To act on behalf of its head office to execute contracts, amend or supplement signed contracts on the case by case basis.

FOREIGN CONTRACTORS

Foreign companies or individuals (foreign contractors) can undertake to carry out projects and other undertakings in Vietnam in accordance with contracts signed with Vietnamese companies without establishment of a legal presence in Vietnam.

Presently, it seems that very limited business areas, such as construction, construction consulting services, surveying works, designing works, appraising services, verification, supervision and management of quality of construction works; supply of equipment and apparatus under Official Development Assistance (ODA), inter alia, are referred to by law for the operation of foreign contractors.

Foreign companies generating income from technology transfer or royalties or giving loans are also deemed foreign contractors for the sake of tax imposition. Business areas other than those can still be undertaken by foreign contractors provided that foreign contractor’s tax must be fulfilled.

To become a foreign construction contractor or sub-contractor in Vietnam, construction contractor permit shall be required.

LAND

A. Rentals

Land rent applicable to enterprises varies from USD0.932 to USD13.89/m2/year for urban land. Land rents of suburban lands surrounding Hanoi and Ho Chi Minh City will be from USD0.314 to USD1.31/m2/year. Land rents of other regions would be from USD0.04 to USD0.98/m2/year. Depend on the traits of each province the people's committees will decide specific rates in line with land rent framework. Many provinces are offering land rent abatement to foreign investment projects.

If investors lease land and infrastructures in industrial zones, rentals will be much varied (from USD20 to USD120/m2/year) and subject to location, infrastructures availability, and negotiation with industrial zone owners. Office lease in international class buildings in Hanoi and Ho Chi Minh City would cost from USD20 to USD100/m2/month, while local standard buildings charge only about USD5~15/m2/month.

B. Land Ownership and Use Right

In Vietnam, land ownership belongs to the State as the representative of all the people. Individuals and organizations are using land by allocation or lease from the State and they hold the land use right. No land ownership belongs to individuals or organizations. The Government and people's committees at all levels are assigned to daily manage land related activities. The specific authority being in charge of managing land is the Ministry of Natural Resources and Environment which is assisted by the provincial Departments of Natural Resources and Environment in provinces and Divisions of Natural Resources and Environment at municipal level.

Land use right encompasses right to use, transfer, lease, mortgage, inherit the land premises to other individuals or organizations, and contribute the land use right value as capital in a company. Foreign entities can neither hold land ownership nor land use right in Vietnam. However, land use right is extended to their companies established in Vietnam. Once a company obtained land use right, it can mortgage the value of land use right with Vietnamese joint stock banks, joint venture banks, foreign bank branches and other credit institutions in Vietnam. Any mortgage of land use right at foreign banks is not allowed.

TAXATION

A. Corporate Income Tax

Generally, all enterprises are equally subject to the same corporate income tax (CIT) rate of 25%. Foreign invested enterprises conducting prospecting, exploration and exploitation of petroleum and gas and other rare precious natural resources shall be subject to a rate of from 32% to 50%, specific rate to be decided by the Prime Minister on the case by case basis. Tax abatement can be obtained for certain enterprises.

B. Value Added Tax

Enterprises engaging in manufacturing and conducting business in value added taxable goods/services and enterprises importing value taxable goods shall be subject to value added tax, or VAT.

There are three levels of VAT rates 0%, 5% or 10%.

C. Special Consumption Tax

Enterprises doing business in the field of importation and sale of the following products/services shall be subject to special consumption tax: cigarettes, cigar, beer, alcohol, cars (less than 24 seats), two-wheeled motorbike, three-wheeled motorbike with capacity of more than 125cm3, aircraft, yacht, gasoline, naphtha, reformate component and other components for making up gasoline, air conditioners (less than 90,000 BTU), playing cards, joss papers, joss articles; trading in dancing clubs, massage, karaoke, casino, jackpot, slot and other game machine-based services, betting, lottery trading, and golf course trading.

Special sale tax rates range from 10% to 70%, lowest for gasoline, naphtha, reformate component, other components for making up gasoline and cars 10-24 seats, and highest for joss papers, joss articles.

D. Import and Export Duty

The Import Tariff and Export Tariff are being amended frequently from time to time to satisfy the State requirements import and export management. Import Tariff includes (i) preferential tariff applicable to the countries applying the Most Favoured Nation (MFN) treatment with Vietnam, (ii) special preferential tariff applicable to countries applying special treatment of import tariff with Vietnam, and (iii) normal tariff which is equal up to 150% of preferential tariff. Although there are three levels of import tariff, the preferential tariffs are applying to almost countries having trade relations with Vietnam. Dutiable prices are determined in accordance with the rules of the General Agreement on Trade and Tariff (GATT), adopted by the Government.

E. Foreign Contractor Taxes

Taxes applicable to foreign contractors comprise of VAT, CIT, special consumption tax, import and export duty, personal income tax and/or other taxes as appropriate.

F. Personal Income Tax

Incomes subject to personal income tax, or PIT, include: business income; income in forms of salaries and wage, allowances and subsidies, remuneration, bonuses; income from capital investment; income from transfers of capital portion, from transfer of securities; income from real property transfers; income being winnings or prizes; income from royalties; income from franchises; income being inheritance or being receipt of a gift of securities, of capital portion, of real property or other assets for which ownership or use rights must be registered.

Foreigners being present in Vietnam for less than 183 days shall be subject to PIT rate for non-resident individuals. Those who are living in Vietnam for 183 days or more within one western calendar year or within 12 consecutive months from the date of entry into Vietnam or having a regular residential location in Vietnam shall be subject to PIT rates for resident individuals.

FOREX CONTROL

Business transactions in foreign currency are tightly controlled by laws. Foreign investors wishing to transfer capital in foreign currency into Vietnam must open a specialized foreign currency bank account at banks legally operating 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 undertakings 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 salary to the executives of foreign capital enterprises and Vietnamese employees working in a foreign country; and abroad remittance of salaries and other legal incomes of foreigners.

MERGER & ACQUISITION

A. Available Modes of M&A

In the context of Vietnamese laws, M&A encompasses acquisition of shares/capital; merger, and consolidation.

(1) Acquisition of shares/capital

"Acquisition of shares/capital in a FIE" in this context means purchase or obtaining by an outside investor a part of or the whole capital assignment of one or more members in an existing company. This term is merely called under Vietnamese laws "assignment of capital".

(2) Merger of companies

One or some companies (non-surviving enterprise(s)) may merge into another FIE (merged enterprise, or surviving enterprise) by the method of transferring the whole of the assets, rights, obligations and legitimate interests to the merged enterprise and at the same time the non-surviving enterprises cease to exist.

(3) Consolidation of companies

Two or some companies (non-surviving enterprises) may consolidate to become one new company (consolidated) enterprise, or surviving enterprise) by the method of transferring the whole of the assets, rights, obligations and legitimate interests to the consolidated enterprise and at the same time terminating the existence of the non-surviving enterprises.

(4) Division of a company

A company (non-surviving enterprise) may divide into two or a number of other new companies and after that the former company shall cease to exist.

(5) Separation of a company

A company may be separated into two or more different companies by mean of transferring one part of the existing assets of the company (separating enterprise) in order to establish one or a number of new companies (separated enterprise(s)); or transferring one part of the rights and obligations of the separated enterprise to the separating enterprise(s), but maintaining the existence of the separated enterprise.

STOCK MARKET

Vietnam has two stock exchange centers, one in Ho Chi Minh City and another 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 Hanoi center which was commenced in March 2005.

A. Foreign Participation

Foreign organizations and individuals purchasing shares on the securities market of Vietnam may currently hold maximum of 49% of the total listed shares of any issuing organization. For some other sectors such as banking the room is stricter.

The EU - Vietnam Free Trade Agreement (EVFTA)

2019

Introduction

Currently, Vietnam is the EU's second biggest trading partner in the ASEAN, after Singapore, with bilateral trade in 2017 reaching US$ 50,4 billion. The trade agreement, which both parties aim to bring into effect by 2019, will eliminate over 99% of the tariffs. The FTA will boost Vietnam's GDP by $3.2 billion by 2020, $6.7 billion by 2025, and $7.2 billion by 2030**. With an objective to liberalise and facilitate trade and investment between the two geographies--the EU FTA is a win-win situation for both the signatories:

The Agreement is expected to create an expanded and secure market for goods and services and a stable and predictable environment for trade and investment, thus enhancing the competitiveness of their firms in global markets.

The two sides have pledged to build on their respective rights and obligations under the WTO Agreement and other multilateral, regional and bilateral accords and arrangements to which they are party. It also wants to promote the competitiveness of their companies by providing them with a predictable legal framework for their trade and investment relations.

The trade agreement will eliminate nearly all tariffs (over 99%). Vietnam will liberalise 65% of import duties on EU exports to Vietnam at entry into force, with the remainder of duties being gradually eliminated over a 10-year period. The agreement will also contain specific provisions to address non-tariff barriers in the automotive sector and will provide protection for traditional European food and drink products, like Rioja or Roquefort, in Vietnam.

Through the agreement EU firms will also be allowed to bid for public contracts with Vietnamese authorities and state owned enterprises. Alongside the recently agreed deal with Singapore, this agreement will make further strides towards setting high standards and rules in the ASEAN region, helping to pave the way for a future region-to-region trade and investment agreement.

As well as offering significant economic opportunities, the trade agreement also includes a comprehensive chapter on trade and sustainable development; setting the highest standards of labour, safety, environmental and consumer protection; as well as strengthening joint actions on sustainable development and climate change and fully safeguarding public services. Both agreements reaffirm obligations to respect universal human rights principles.

EU Vietnam FTA

The EU Vietnam FTA, expected to be ratified early this year (2019) will have a significant impact on Vietnam's economy. Sectors such as garments, footwear, textiles, agricultural products, machinery, and automobiles will benefit the most compared to other sectors.

The FTA is expected to attract higher investments not only from EU but also from European firms pursuing the China+1 strategy to diversify their operations in Southeast Asia. Vietnam will act as a gateway for European goods in Southeast Asia and may motivate EU to sign a trade agreement with ASEAN in the future. Going forward, Vietnam should continue to focus on reforming its legal framework in accordance with the FTA commitments to fully realize the benefits of the agreement.

Vietnam Investment Review reported that the European Union-Vietnam Free Trade Agreement (EVFTA) will likely be ratified in October or November 2018 and come into effect in early 2019:

Salient features

(i) The government procurement provisions in the EU-Vietnam FTA are a big step for Vietnam. Vietnamese suppliers will have access to the EU's US$500 billion public procurement market. For Vietnam and its people, the EVFTA's government procurement provisions should, over time, improve access to high-quality goods and services from EU suppliers.

(ii) Improvements are especially expected in the healthcare and life sciences sectors, as Vietnam's public procurement in these sectors takes up 67% of the total market value. Vietnam has committed to give EU suppliers the right to bid for up to 50% of the pharmaceutical purchases by the Ministry of Health and many of the hospitals under its control, as well as major research facilities. Even so, this is a very gradual process over a period of 15 years after the FTA comes into effect.

(iii) The right to participate in Vietnam's public tenders will initially be limited to relatively high-value contracts – those worth at least SDR1.5 million (currently, $2.1 million) or SDR3 million ($4.2 million) depending on the procurement agency. For construction work, the initial thresholds are even higher at SDR40 million ($56 million). This is probably meant to protect Vietnamese small and medium-sized businesses.

(iv) The EVFTA also contains specific transparency and other requirements to support the procurement process itself, including an independent administrative or judicial authority where suppliers can challenge awards."

(v) Besides public procurement in healthcare, the EVFTA also provides access to other important government contracts. EU suppliers will be able to bid for contracts from Electricity of Vietnam, the State-run power company, and those of other major infrastructure projects, including roads, railways, and airports.

(vi) The two groups shall reduce or eliminate its customs duties on goods originating from each other. For the calculation of the successive reductions the base rate for customs duties of each good shall be the one specified in the schedules included in Appendices 2-A-1 (Tariff Schedule of the Union) and 2-A-2 (Tariff Schedule of Vietnam) . If a Party reduces an applied most favoured nation customs duty rate below the rate of customs duty applied in accordance with its respective schedule included in Appendices 2-A-1 (Tariff Schedule of the Union) and 2-A-2 (Tariff Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties), the good originating in the other Party shall be eligible for that lower duty rate.

EU Vietnam relations

(i) 24 of the 28 EU nations have invested in Vietnam in 2,000 projects with total registered capital reaching US$21.5 billion. Industry, construction, and services were the major sectors that attracted EU capital.

(ii) Bilateral trade has increased from US$4.1 billion in 2000 to US$50.4 billion in 2017. Vietnamese exports increased from US$2.8 billion to US$38.3 billion, while imports increased from US$1.3 billion to US$12,1 billion during the same period.

(iii) Machinery, footwear, textiles, and agricultural products are the major Vietnamese exports, while machinery, transport equipment, chemicals, and animal products account for the majority of Vietnamese imports from EU.

Positive Outlook for European Businesses in Vietnam

According to the recent EuroCham's Business Climate Index (BCI), European companies continue to remain optimistic about Vietnam's business environment as well as the EU-Vietnam Free Trade Agreement (EVFTA) which will come into effect in 2019. The BCI for the first quarter of 2018 rose by one point compared to the last quarter of 2017, to 78 points. The BCI measures the business sentiments among European firms having a presence in Vietnam through surveys.

(i) Business situation

European firms operating in Vietnam have historically been fairly positive about the business environment in Vietnam. Respondents who rated the current business environment as "excellent" reduced by 10 % in Q1 of 2018 compared to Q4 of 2017. However, the percentage who rated the business environment as "good" grew by seven percent. Negative responses stayed at almost the same levels as Q4 of 2017.

(ii) Business outlook

With respect to Q2 of 2018, business sentiments remain positive. Respondents who replied "excellent" dropped 11 %, while ones who rated it as "very poor" increased by one percent. Overall, 69 % of the respondents rated the business outlook as positive.

(iii) Macroeconomic outlook

The macroeconomic outlook among European firms continues to remain positive, with 55% of the respondents confident in the macroeconomic situation, nine percent higher compared to the previous quarter. The percentage of respondents who believe that the macro monomeric situation could deteriorate stayed at the same level, while ones who do not expect any changes decreased by 10 %.

(iv) Impact of inflation

For European firms, inflation did not seem to be a major issue, with 65 % of the respondents stating that inflation will only have a "minor impact", while 19% believed that it will have "no impact" on their operations. Around 17% of the respondents believed that it may have "significant impact" on their operations.

(v) Hiring

Around 40% of the European firms expect to retain their workforce, same as Q4 of 2017, while 12% expect to "significantly increase" their workforce and 41% will hire reasonably. Companies looking to reduce workforce dropped from 10% in Q4 of 2017 to only five percent in Q1 of 2018, while ones who are planning to significantly reduce workforce accounted for two percent of the respondents.

(vi) Investment

EuroCham members who plan to maintain their investments accounted for 45% of the responses, a nine percent growth compared to the previous quarter. There was a drop of seven percent in the percentage of respondents planning on "significantly increasing" their investments and an 11% growth in respondents thinking of increasing their investments moderately.

(vii) Regulatory environment

The survey also included a question about the development of the regulatory situation in Vietnam in 2017. Around 37% of the respondents believed that there was no change compared to previous years, while 16 % said that it has become "slightly complicated". Almost a fifth (18%) of the respondents stated that the previous year's regulations made their operations "significantly more complicated". A quarter of the respondents agreed that the situation has slightly improved while two percent believed that there has been a significant improvement compared to previous years.

Investment Protection in EU Vietnam FTA

Vietnam and the EU recently completed the legal review of their EU Vietnam Free Trade Agreement (EVFTA). The agreement will now be translated into 22 EU official languages and sent to the European Parliament for final approval. Along with the FTA, EU and Vietnam has also concluded their discussions on an Investment Protection Agreement (IPA), which they decided to keep it separate from the FTA. The IPA, which is currently undergoing a legal review, aims to protect investors and investments in EU and Vietnam.

An IPA, part of the FTA, is an agreement between two or more countries which aims to protect investors and investments in a host country. It ensures that they will be accorded fair treatment and will not be discriminated.

Usually, when there is a dispute between an investor and a host country, investors can reach out to the World Banks's International Centre for Settlement of Investment Disputes (ICSID) or other similar tribunals permitted under their respective FTA for resolution.

In case of EVFTA, both parties have agreed to set up a permanent court, referred to as the "Tribunal" to handle such issues. This will not only protect investors and their investments but also protect a country's right to oversee the implementation of public policies. In addition, the court system will be an independent dispute resolution system.

(i) EU Vietnam tribunal system

Under the EVFTA, a permanent dispute resolution system will be set up that will handle disputes related to the investment protection provisions in the FTA, such as protection against expropriation without compensation. Domestic courts will not be allowed to intervene or question the decision of the tribunals to ensure transparency and fair treatment.

(ii) Members

According to the EVFTA, the tribunal will comprise of nine members. The EU and Vietnam will each appoint three members, while the remaining three members will be appointed from a third country.

(iii) Court hearing process

All cases will be heard by a three-member team from the tribunal, with the EU, Vietnam, and a third country represented equally. The three members will be selected by the President of the Tribunal, with one condition that the chair of the group belongs to the third country, and not the EU or Vietnam.

(iv) Appeals

According to the EVFTA, a claimant can appeal the decision of the tribunal to a permanent appeal tribunal within 90 days under numerous grounds such as errors of law, errors of fact, and procedural unfairness of the tribunal's decision. If not appealed within 90 days, the decision of the tribunal will be deemed as final. The appeal tribunal will consist of six members, two each from the EU and Vietnam, and remaining two from a third country.

(v) Alternative dispute resolution

Before reaching out to the tribunal, a claimant can request for a consultation or mediation. Consultations will be held either in Hanoi, Brussels, or the capital of a Member State of the EU concerned. It can also be conducted through video conference or in any other location, as agreed upon by the involved parties. In the case of mediation, a mediator is appointed by agreement of the disputing parties and can be a member of the tribunal.

If a dispute claim is not settled within 90 days of the submission of the request for consultations, a claimant can send a notice of intent to submit a claim. If a dispute is still not resolved within three months from the submission of the notice of intent to submit a claim or 6 months from the submission of the request for consultations, they can forward their claim to the tribunal. However, a claimant cannot submit a claim to the tribunal in case the claim is already pending before any other domestic or international tribunal or court.

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