Construction Projects in Vietnam

August 2018
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<th>Description</th>
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<tbody>
<tr>
<td>BIT</td>
<td>Bilateral Investment Treaties</td>
</tr>
<tr>
<td>BOT</td>
<td>Build Operation Transfer</td>
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<tr>
<td>BT</td>
<td>Build and Transfer</td>
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<tr>
<td>BTO</td>
<td>Build Transfer Operation</td>
</tr>
<tr>
<td>Circular 09</td>
<td>Circular 09/2016/TT-BXD dated 10 March 2016</td>
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<tr>
<td>CIT</td>
<td>Corporate Income Tax</td>
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<tr>
<td>CPC</td>
<td>Central Product Classification</td>
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<tr>
<td>Decree 37</td>
<td>Decree No. 37/2015/ND-CP dated 22 April 2015</td>
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<tr>
<td>DoC</td>
<td>Department of Construction</td>
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<tr>
<td>DTA</td>
<td>Double Taxation Agreement</td>
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<tr>
<td>EPC</td>
<td>Engineering Construction and Procurement</td>
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<td>FCWT</td>
<td>Foreign Contractor Withholding Tax</td>
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<td>FIDIC</td>
<td>International Federation of Consulting Engineers</td>
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<td>LCA</td>
<td>Law on Commercial Arbitration</td>
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<tr>
<td>LLC</td>
<td>Limited Liability Company</td>
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<tr>
<td>MoC</td>
<td>Ministry of Construction</td>
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<tr>
<td>NEC</td>
<td>New Engineering Contract</td>
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<td>OLC</td>
<td>Operation Licence for construction</td>
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<tr>
<td>PIT</td>
<td>Personal Income Tax</td>
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<td>PMO</td>
<td>Project Management Office</td>
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<td>PPP</td>
<td>Public-Private Partnership</td>
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<td>Rep. Office</td>
<td>Representative Office</td>
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<tr>
<td>SOE</td>
<td>State Owned Enterprise</td>
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<td>TRC</td>
<td>Temporary Resident Card</td>
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<tr>
<td>VAT</td>
<td>Value Added Tax</td>
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<td>WP</td>
<td>Work Permit</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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<td>WV</td>
<td>Working Visa</td>
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1. Executive Summary

Construction in Vietnam is developing fast. The demand for construction work on a high level of technology is increasing in all fields of construction. For much of the work, Vietnamese construction industry is well qualified. However, for specialized work in construction field, foreign experience and expertise is needed and contracted.

This Brochure is focusing on the legal, administrative and taxation framework for foreign construction work in Vietnam.

Compliance with the regulatory framework is not very complicated but will need time. Considering the specific requirements at an early stage is highly recommended.

With Decree No. 100\(^1\), a new regulation on construction work is coming into force on 15\(^{th}\) September 2018.\(^2\)

2. Legal Framework

2.1 Applicable Law and Contract Type

2.1.1 Law governing Construction Projects

Construction Projects are governed by Law on Construction\(^3\), Civil Code\(^4\) and depending on the case by other Laws, esp. Law on Environment Protection\(^5\), Law on Land\(^6\). Several detailing regulations exist. Here are some of them listed:

- Decree No. 1007;
- Decree No. 42\(^8\);
- Decree No. 119\(^9\);
- Circular No. 17\(^10\);

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\(^1\) Decree No. 100/2018/ND-CP on Amending and Abolishing some regulations on necessary business conditions in fields under the management of the Ministry of Construction, dated 16\(^{th}\) July 2018;

\(^2\) According to Article 5 of Decree 100/2018/ND-CP;

\(^3\) Law No. 50/2014/QH13 on Construction dated 18\(^{th}\) June 2014 amended and supplemented by Law No. 09/2016/QH14 dated 22\(^{nd}\) November 2016;

\(^4\) Law No. 91/2015/QH13 dated 24\(^{th}\) November 2015 – The Civil Code;

\(^5\) Law No. 55/2014/QH13 on Environment Protection dated 23\(^{rd}\) June 2014;

\(^6\) Law No. 45/2013/QH13 on Land dated 29\(^{th}\) November 2013;

\(^7\) Decree No. 100/2018/ND-CP on Amending and Abolishing some regulations on necessary business conditions in fields under the management of the Ministry of Construction, dated 16\(^{th}\) July 2018;

\(^8\) Decree No. 42/2017/ND-CP on amendments to the Government’s Decree No. 59/2015/ND-CP dated 18\(^{th}\) June 2015 on management of construction projects;

\(^9\) Decree No. 119/2015/ND-CP on obligatory insurance in construction investment dated 13\(^{th}\) November 2015;

\(^10\) Circular No. 17/2016/TT-BXD on Instructions on capacity of organizations, individuals involved in construction activities.
Construction contracts are defined as civil contracts\(^7\), therefore, construction contracts are also governed by Civil Code.

In case the construction project is financed from the State Budget, construction projects are also subject to Law No. 43/2013/QH13 on bidding dated 26\(^{th}\) November 2013.

The legal framework for construction in private sector does not impose restrictions on the contractual agreements. However, in case of contracts with State agencies or State-Owned Enterprises (SOE), special regulations on construction contracts will be applied.

In any case the contracts must be drafted carefully for avoidance of misunderstanding. Special considerations are required for all issues of enforcing contracts.

### 2.1.1.1 Operating Licence for Construction (OLC)

A foreign company working in construction field must obtain an Operating License in Construction (OLC) and register a Project Management Office (PMO) prior to taking up the work. The Law on Construction defines:

“10. **Construction work** means a product created by labor force, with building materials and equipment installed therein, affixed to land, which possibly includes underground and surface components, underwater and water surface components, and constructed according to design. Construction works include civil works, industrial works, traffic works, agricultural and rural development works, technical infrastructure works and other works.”\(^8\).

…

“21. **Construction activities** cover construction planning, formulation of an investment project to construct a work, construction survey, construction design, construction, construction supervision, project  

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1. Decree No. 59\(^1\)/2015/ND-CP on construction project management dated 18th June 2015;  
2. Decree No. 46\(^2\)/2015/ND-CP on quality control and maintenance of construction works dated 12th May 2015;  
3. Decree No. 44\(^3\)/2015/ND-CP on detailed regulations on construction planning dated 6th May 2015;  
4. Decree No. 37\(^4\)/2015/ND-CP on detailed regulations on construction contract dated 22nd April 2015;  
5. Decree No. 32\(^5\)/2015/ND-CP on construction cost management dated 25th March 2015;  
7. Article 138 Law on Construction 2014;  
8. Art. 3, Clause 10 Law on Constructions 2014;  

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management, selection of contractors, pre-acceptance test, handover of the work for exploitation or use, its warranty and maintenance and other activities related to its construction.”

Whether a foreign company works as foreign contractor for a Vietnamese company, or as foreign sub-contractor for a foreign contractor or foreign sub-contractor does not matter.

The three main conditions for granting an OLC are:

➢ the Vietnamese investor must have agreed on a contract with the foreign contractor. For the foreign subcontractor, this condition must be met by having a contract between the investor and the foreign contractor, and following that, between the two foreign companies the contract must be signed;

➢ the foreign contractor is eligible to execute the contract as prescribed by Law on Construction; how this is to be proven needs to be clarified. Under old law, it was required to publish information on the capacity and expertise of the foreign company on the website of the Ministry of Construction (MoC) or depending on the project of the Department of Construction (DoC). This regulation has been removed in Decree 100 without any hint on how to prove eligibility instead. Detailing regulations on this aspect are expected to be issued soon;

➢ to enter a contract on cooperation with a Vietnamese company on sharing part of the work. This can be a sub-contract or a consortium. The form of cooperation is not fixed. If there is no Vietnamese company capable of sharing part of the work contracted by the foreign contractor, no cooperation is required. The law does not provide any regulation on how this should be checked and proven to authorities. The practical requirement is, that the foreign contractor in the application for the OLC will explain in detail, why no Vietnamese company is capable of sharing part of the work.

The dossier of the request for issuance of an OLC must be filed at MoC or DoC. Timeline for decision on the request is 20 working days since the sufficient application is received. The decision might be a request for additional documents, which would prolong the timeline accordingly.

2.1.1.2 Project Management Office (PMO)

After issuance of the OLC, the Project Management Office (PMO) must be established. Normally, it must be established where the project is located. If the contract is on planning formulation, construction project formulation, construction survey or construction design, the foreign contractor may establish PMO in the area where the investor’s head office is located. If the contract is on construction and supervision construction of work that to be executed in multiple provinces, the foreign contractor may establish PMO in an area in any of these provinces.

A notice on PMO establishment must be sent to MoC or DoC.

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The PMO shall only exist during the duration of project performance and must be formally closed after that. The PMO shall have a seal, tax code and may have a bank account and recruit employees\(^1\) to perform the contract in Vietnam. After registering information about PMO, the foreign contractor shall send a written notification to DoC and other relevant agencies\(^2\). The PMO must report regularly on 20 December of each year\(^3\).

If the foreign contractor has a second project in Vietnam, a new OLC and PMO are required. The publication on capacity might be re-used; whether this publication will be required in future, is not clear now.

### 2.1.2 Use of International Standard Agreements

For a contract with a private company established in Vietnam, no restrictions exist on the use of contractual forms.

If the Vietnamese partner is a SOE or an organization of the State or in case the private company is using State Capital, or if the project is implementing tender packages including special kinds of construction contracts (BOT, BTO, BT and PPP), detailing regulations must be applied.

Decree No. 37\(^4\) is providing regulations on signing period, dispute resolution and other issues. Circular 09\(^5\) is applied mainly on projects funded by or relevant to State Capital. For contracts only involving private companies, applying Decree 37 and Circular 09 is encouraged but it is not obligatory.

The use of sample contraction conditions of the International Federation of Consulting Engineers (FIDIC) is legally encouraged. The New Engineering Contract (NEC)\(^6\) form, is not so common in Vietnam. But it can be agreed upon using this as well.

Every sample contract must be amended to match conditions of Vietnamese laws.

### 2.1.3 Government Contracts

Selecting providers of services, goods, construction, and installation for projects financed by state budget must follow the regulations on bidding.

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1 Including foreign employees but only experts and highly skilled persons are permitted. Vietnamese employees are given priority over foreigners in recruitment;

2 Clause 2 of Article 9 of Circular No. 14/2016/TT-BXD on Guiding the issuance of construction licenses and the management of foreign construction contractors in Vietnam;

3 Circular 14/2016/TT-BXD, Article 8. The report regimes may change from time to time when the MoC amends this Circular;

4 Decree No. 37/2015/ND-CP dated 22nd April 2015;

5 Circular 09/2016/TT-BXD dated 10th March 2016;

6 For further information on NEC, please see at: http://www.necontract.com;
The complicated decentralization of project management leads to several risks in the process of bidding, entering contract and managing the project. The investment decision-making institution\(^1\) shall establish a Management Board and such Management Board shall act as developer of the project. The Management Board can have the own separate seal and bank account. It will comprise of the director, deputy director(s), professional staffs and specialists. The Management Board has the full power to make decisions and must take responsibility for its decisions. However, the Management Board is subject to government administrative management and depends on other entities, especially the investment decision-making institution. Therefore, the Management Board may act like a separate legal entity but may just be executing non-transparent administrative decisions. This is one reason why many projects financed from the state budget are inefficient and costly.

The obligatory contract forms stated in Circular 09 are following some FIDIC standards but lack consistency.

2.1.4 Consortium

A consortium is usually used by contractors in Vietnam to join in construction projects. In a Consortium, two or more contractors are jointly and severally liable to perform construction contracts through a consortium agreement. Law on Construction allows consortium members to agree whether all consortium members must sign the contract with the developer or that only one of consortium member signs the contract on other members’ behalf. However, Law on Bidding requires that all consortium members must sign the construction contract.

2.1.5 Joint Venture

Parties might instead of agreeing on a Consortium, agree on a Joint Venture. This may be a special kind of cooperation agreement. It may also be a jointly owned Limited Liability Company (LLC).

2.2 Taxation

2.2.1 Foreign Contractor Withholding Tax

Every contract a foreign company is performing in Vietnam is subject to the Foreign Contractor Withholding Tax (FCWT). One important exception are contracts which do not include any kind of services to be provided in Vietnam, except for warranty.

The FCWT is not a separate tax. It is a special way of calculating and paying the Value

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\(^1\) Depending on the projects, the investment decision-maker may be the Prime Minister, a Minister (or equivalent), a Chairman of a provincial People’s Committee, a Chairman of District People’s Committee, a state economic group or a state corporation.
Added Tax (VAT) and the Corporate Income Tax (CIT) of the foreign contractor.

Normally, a simple Withholding mechanism is applied, which allows the Foreign Contractor to avoid any kind of tax registration or -declaration. All work must be done by the Vietnamese contractual partner. For details on the FCWT please refer to the respective Brochure, which can be downloaded from our website upon registration here.

The FCWT is applied on the full contractual turnover. If the different services and sales are not separated within the contract, the highest FCWT-rates are applied. With a clear separation, the FCWT-rates will be considerably lower.

The FCWT-VAT is to be deducted first and is input VAT for the Vietnamese contractual partner. The FCWT-CIT may be offset against the CIT payable in the home country of the Foreign Contractor or the full contractual turnover is not to be taxed again in the home country. This depends on the conditions and correct application of the respective Double Taxation Agreement (DTA).

For illustration of the practical handling, a sample calculation is inserted.

**The facts:**
The contract on construction work has a volume of 10 Mio USD. Within this volume, the price for goods without services, also no transportation is 6 Mio USD, the price for services is 4 Mio USD. The Vietnamese sub-contractor receives for services 2 Mio USD. The FCWT calculation is, that from the turnover of 10 Mio USD, 8 Mio USD are subject to the FCWT (the turnover of the Vietnamese sub-contractor is to be deducted).

<table>
<thead>
<tr>
<th>Contract Price</th>
<th>10,000,000 USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover Vietnamese sub-contractor</td>
<td>-2,000,000 USD</td>
</tr>
<tr>
<td>Taxable turnover</td>
<td>8,000,000 USD</td>
</tr>
<tr>
<td>FCWT-VAT on sale of goods (6 Mio USD)</td>
<td>0 % -0 USD</td>
</tr>
<tr>
<td>FCWT-VAT on services (2 Mio USD)</td>
<td>3 % -60,000 USD</td>
</tr>
<tr>
<td>Remaining before deduction of FCWT-CIT</td>
<td>9,940,000 USD</td>
</tr>
<tr>
<td>FCWT-CIT on sale of goods (6 Mio USD)</td>
<td>2 % -120,000 USD</td>
</tr>
<tr>
<td>FCWT-CIT on services (1,940,000 USD, the VAT has been deducted from the 2 Mio USD)</td>
<td>2 % -38,800 USD</td>
</tr>
<tr>
<td>Remaining</td>
<td>9,781,200 USD</td>
</tr>
</tbody>
</table>

60,000 USD of the deduction is input VAT for the Vietnamese customer, the deduction of FCWT-CIT amounts to 158,800 USD.
With a clear tax clause, parties may agree that the contractual price is to be understood as either after deduction of FCWT-VAT only or after deduction of all FCWT. This needs detailed consideration and agreement.

The foreign contractor may file a dossier claiming exemption from FCWT-CIT under a relevant DTA. No exemption is possible for FCWT-VAT. The dossier is not easy to draft, and the tax authority will not issue a decision on exemption. One of the conditions for the exemption is, that the project has not constituted a Permanent Establishment. This will be the case, if the project has a duration of exceeding 6 months.

Splitting the economically united business in 2 contracts and consider one of them as “offshore-contract” is according to our understanding of the legal requirements not reducing tax exposure (substance over form).

2.2.2 Personal Income Tax

All persons earning income in Vietnam (no matter whether it is paid in Vietnam or abroad and regardless of nationality) are obliged to pay Personal Income Tax (PIT). The taxable income and the applicable tax rates are different for residents and non-residents of Vietnam. No threshold exists for short-term stays.

Non-residents are taxed with 20% on their Vietnam-related income, residents are taxed at progressive rates with up to 35% on their world-wide income.

Resident is, who is:

1. residing in Vietnam at least 183 days in a calendar year or within the period of 12 consecutive months since the date of arrival;
2. having a regular residential location in Vietnam (location for which permanent residence has been registered or property has been leased for residential purposes);¹
3. residing in Vietnam below 183 days within one year but being unable to prove tax-residence in another country.²

Non-residents may reduce or eliminate the PIT liability under a relevant DTA. The procedure is not easy. Tax authority will not issue a confirmation on exemption. Upon checking at a later time, tax authority may well reject exemption.

For details on the issue, please refer to the respective Brochure, which can be downloaded from our website upon registration [here](#).

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¹ A leasing for residential purposes is assumed, where the leasing contract has a term of 183 days or more within the tax calculation year (Decree 65/2013/ND-CP, Article 2, No. 2 (b)).

² The residency in another country shall be proven by certificate of residence or by passport (only applicable to DTA-partner countries). Circular 111/2013/TB-BTC, Article 1, No. 2.
2.3 Establishing a Legal Presence in Vietnam

If the foreign contractor is involved in one or two projects in Vietnam, the operation under OLC and PMO is convenient. In case of more projects, establishing a separate legal entity might be beneficial because the administrative burden for applying for many OLC’s, registering and closing PMO’s is compared to establishing an entity high. The options are:

2.3.1 Representative Office

Even the establishment of a Representative Office (Rep. Office) is not so complicated, it is for most cases not recommended.

The legal activities or a Rep. Office are limited to promotion, marketing and market research. It is a dependent unit of the represented company and especially not allowed to generate profits within Vietnam.

Several Rep. Offices of foreign companies in Vietnam are engaged in business which is not meant to be operated by a Rep. Office. This is not in line with Vietnamese laws and causes some concerns on the taxation of the business the foreign company operates related to Vietnam.

2.3.2 Branch

A foreign entity which has been established and operating for 05 years in the country it is registered is permitted to set up a Branch in Vietnam. Branches can engage in activities for profit-making purposes and directly enter contracts with clients. Branch offices are not subject to a branch tax, instead the branch is taxed like a company registered in Vietnam.

2.3.3 Limited Liability Company

Establishing the Limited Liability Company (LLC) is the most common and recommended form of foreign investment. A 100% foreign owned company is allowed to operate construction business; specifically, this is:

- General construction work for building (CPC 1512);
- General construction work for civil engineering (CPC 513);
- Installation and assembly work (CPC 514, 516);
- Building completion and finishing work (CPC 517);
- Other (CPC 511, 515, 518).

Several sub-licenses must be obtained by the company.

The investor must pay in the Charter Capital which is not blocked but may be used for business operations right away. The amount of the Charter Capital depends on the intended scope of business, no fixed minimum is required for this field of business.

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1 Central Product Classification can: https://unstats.un.org/unsd/statcom/doc02/cpc.pdf

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2.4 Labor, Work Permit and Visa

2.4.1 Labor Law

Vietnamese Labor Law applies to employment of Vietnamese and foreigners. It is important, the all regulations must be in writing. Non-written agreements are no accepted, also not regarding issues of taxation.

2.4.2 Work Permit and Visa

2.4.2.1 Work Permit

Every foreigner working in Vietnam must obtain a Work Permit before taking up the work. The 3 important exemptions, are applicable in case the foreigner is:

1. entering Vietnam for a period of under three (3) months in order to offer (!) services;
2. entering Vietnam for a period of under three (3) months in order to resolve an incident (breakdown) or technically or technologically complex situation arising and affecting, or with the risk of affecting production or business with which Vietnamese experts or foreign experts currently in Vietnam are unable to deal;
3. coming Vietnam to work as an expert, managing person\(^1\), executive director or technician under 30 days and not than 90 days in total for 1 year;

Other exemptions might be applicable but will require the Confirmation on WP exemption. The mentioned 3 exemptions do not require any approval by authorities. However, the employer should document the considerations on applying them internally for cases of checking.

For details on the issue, please refer to the respective Brochure, which can be downloaded from our website upon registration [here](#).

2.4.2.2 Visa

For working in Vietnam, the foreigner must enter Vietnam on one of these options:

- Visa exemption (for example for holders of German passports: 15 days);
- Business Visa for cases of working without Work Permit;
- Working Visa for cases of working with Work Permit;
- Temporary Resident Card, which may be obtained after having a relevant Visa.

The Work Permit does not replace the Visa and no Visa replaces the Work Permit.

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\(^1\) “managing person” includes the owner of a private enterprise, an unlimited liability partner, the chairperson and members of a members’ council, a company president, the chairperson and members of a board of management, a director or general director, and an individual holding another managing position having the right to enter into transactions in the name of the company stated in the company charter.

The head or deputy head of an agency or organization is also considered as managing person.
Working in Vietnam without a WP or with an expired WP is a violation of Vietnamese law. This is subject to administrative sanctions for the employee as well as for the employer. It might also be considered being a criminal offense.

The sanctions can be as follows:

- Monetary fines to be paid by the employer with an amount from 30 to 75 million VND;
- Shutting down business operation of employer for a period from 1 to 3 months;
- Deportation of the employee.

For details on the issue, please refer to the respective Brochure, which can be downloaded from our website upon registration [here](#).

2.5 Dispute Resolution

2.5.1 State Courts

The Vietnamese court system consists of the Administrative Court, Economic Court, Civil Court, Labour Court and Criminal Court. Each type of court has a different jurisdiction depending on the type of dispute. The Economic Court has jurisdiction over most commercial and financial disputes.

The Vietnamese judicial court has 04 levels: Supreme Court, High-level Court, People’s Provincial Court and People’s District Court.

In civil cases, the selection of these court is quite important since it will take time to transfer the handled case to another court. The acceptance of a case from a court which is not within its jurisdiction is bureaucratic. However, it is quite complicated to choose the right court for handling the case as it is required to determine the level, the location along with the type of court, which can only be determined based on the characteristics of the cases, the parties and objects of the cases.

The dispute resolution by courts in Vietnam follows the fundamental principles as stated in the Procedure Codes\(^1\), in which some of the characteristics of the Vietnamese dispute settlement by court is the participation of the lay assessor, the publicity of trials and the regime of two-level adjudication. These principles are regulated in order to ensure the rights of the parties involving in the procedure. The procedure is a burden to most parties since it requires a lot of time and cost.

With the dispute resolution by Vietnamese courts, after the first instance, the parties remain the right to apply an appeal against the judgment to a higher-level court as long as such judgment has not come into effect. The case may be reconsidered by the court of appeal.

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\(^1\) In terms of civil cases, the applicable law is The Civil Procedure Code – Law No. 92/2015/QH13 dated 25th November 2015;
after the application for appeal is approved. However, once it becomes effective, it can only be reviewed by competent courts in some specific cases without being re-adjudicated.

The framework of substantive laws has greatly improved in the last few years, while the main legal documents adjusting the dispute resolution have been modified and supplemented. It is expected to improve the mechanisms for dispute resolution and enforcement to be more comprehensive and sufficient, as well as increasing transparency in the Vietnamese judicial system. One of the positive changes worth mentioning is the recognition of case law\(^1\) in Vietnam. Judges have to research and apply the selected case law, to ensure resolving the same ways to cases with the same details. In case not following case law, judges have to analyze, specify and state the reason in judgment of the court decisions. The intention is to create equality in the adjudication, help to predict the outcome of the dispute, save time and cost of proceeding parties, and create fairness in the society.

However, until now the judicial system of Vietnam is not very effective and it is very costly. For that reason, the dispute settlement by Arbitration is highly recommended for most commercial cases. For some disputes, the courts remain their rights in handling some cases. This includes cases involving disputes between goods/service providers and consumers whereby standard conditions on supply of goods and services include the arbitration clause. In this case, the consumers have the right to take the proceeding to the court regardless of such arbitration clause. Regarding disputes related to land use rights, the law is not so clear if such disputes can be resolved by arbitration.

### 2.5.2 Arbitration

Arbitration has been practiced successfully in Vietnam for many years under an Arbitration Ordinance. However, it was not until June 2010 that a full regulatory framework was introduced under the Law on Commercial Arbitration (LCA)\(^2\).

Arbitration can only be used to resolve commercial disputes. A “commercial dispute” is one where at least one party is a commercial individual or entity. A commercial dispute can only be settled by arbitration if the parties to the dispute have agreed as such in writing either before or after the dispute arose (the “Arbitration Agreement”). The Arbitration Agreement can be contained in one clause within a larger contract or it can be a separate document. In case there is an Arbitration Agreement, the Court must refuse to handle the case unless such Arbitration Agreement is declared invalid or being unable to be performed.

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1. The judicial council of the People’s Supreme Court issued the Resolution No. 03/2015/NQ-HDTP on process for selecting, publishing and adopting precedents, officially recognized the use of case law in Vietnamese courts dispute resolution.

2. Law No. 54/2010/QH12 on Commercial Arbitration, dated 17/06/2010;
Currently, there are 14 arbitration centres licensed in Vietnam. They are non-governmental organizations and have own Rules of Arbitration. The Vietnam International Arbitration Centre (VIAC)\(^1\) is among the most well-known arbitration centres.

### 2.5.3 Enforceability of State Court Decisions and Arbitral Awards

#### 2.5.3.1 Enforceability of State Court Decisions

A foreign State Court Decision which has been recognized and for which the Vietnamese courts have authorized enforcement in Vietnam will have full legal effect. This means that it will be treated as if it was a legally effective civil judgment or decision of a Vietnamese court and be enforced according to Vietnam’s civil judgment execution procedures. Civil judgments or decisions of foreign courts, which are not recognized by Vietnamese courts, have no legal effect and will not be enforced in Vietnam.

To date, Vietnam has entered treaties regarding the enforcement of civil judgment with Algeria, Belarus, Bulgaria, China, Cuba, Czech Republic, France, Hungary, Kazakhstan, Laos, Mongolia, North Korea, Poland, Russia, Slovakia and Ukraine.

These treaties, with the exception of France, only apply to civil judgments which relate to non-commercial disputes. Therefore, these bilateral treaties are neither useful for, nor applicable to commercial disputes.

If Vietnam and the foreign country in question have not entered into any bilateral or multilateral treaty which covers this issue, then in theory the foreign civil judgment may still be recognized and enforced in Vietnam on a reciprocal basis. In practice, however, it is very rare for a foreign civil judgment to be enforced on this basis.

#### 2.5.3.2 Enforceability of Arbitral Awards

Vietnam acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1995. Thus, foreign arbitral awards which are rendered by a recognized international arbitration institution should be respected by Vietnamese courts without a review of the case’s merits. However, this commitment only applies to awards which are made within the territory of another contracting State and only to those awards which are commercial in nature.

With regard to non-commercial awards or arbitral awards from non-contracting States, Vietnam will only recognize and enforce awards to the extent that the State in question grants reciprocity to Vietnam based awards.

Last but certainly not least Vietnam will only enforce arbitral awards where to do so would not conflict with the Constitution and the laws of Vietnam. In practice the only true way to satisfy this requirement is to consider the merits of the case in question. Thus, in most

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1 Website of VIAC: http://viac.vn
instances a party who wishes to enforce a foreign arbitral award in Vietnam will find that they must go through the process of having the case re-considered by a local court. This is challenging because local courts are not familiar with such procedure.

The enforcement of Arbitral Awards issued by arbitration centres in Vietnam is less difficult since the arbitral award creditor shall have the right to request the competent civil judgement enforcement agency to enforce like the procedure to enforce a decision issued by Vietnamese Court after the time-limit for voluntarily carrying out such arbitral award has expired.

It is highly recommended to agree on arbitration at an arbitration centre licensed in Vietnam.

3. General information

For several issues important for foreign investment and business activity, Brochures are provided for download upon registration here.

For receiving from time to time a Newsletter on updated Brochures, please consider registering here.

4. Disclaimer

All information provided is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.

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