EXHIBIT 14

DECISION No. 679/2002/QD-NHNN OF JULY 1, 2002 PROMULGATING A NUMBER OF PROVISIONS RELATING TO FOREIGN CURRENCY TRANSACTIONS OF CREDIT INSTITUTIONS LICENSED TO DEAL IN FOREIGN CURRENCIES

THE STATE BANK GOVERNOR

Pursuant to December 12, 1997 State Bank Law No. 01/1997/QH10 and the December 12, 1997 Credit Institutions Law No. 02/1997/QH10;

Pursuant to the Government's Decree No. 15/CP of March 2, 1993 on the tasks, powers and State management responsibilities of the ministries and ministerial-level agencies;

At the proposal of the director of the Department for Foreign Exchange Management,

DECIDES:

Article 1.- The general directors (directors) of credit institutions licensed to deal in foreign currencies shall be allowed to set Vietnam dong's spot exchange rates against foreign currencies according to the following principles:

1. For US dollar: They must not exceed the amplitude ± 0.25% (zero point twenty-five percent) as compared to the average exchange rate on the inter-bank foreign currency market, announced by the State Bank on the nearest preceding transaction day.

2. For other foreign currencies: They shall be determined by the general directors (directors) of credit institutions licensed to deal in foreign currencies.

3. The difference between the buying rate and the selling rate shall be determined by the general directors (directors) of credit institutions licensed to deal in foreign currencies.

Article 2.- Credit institutions licensed to deal in foreign currencies shall be allowed to conduct forward and swap transactions only under the following terms:

1. The minimum term: 7 (seven) days as from the date of signing transaction contracts;

2. The maximum term: 180 (one hundred and eighty) days as from the date of signing transaction contracts.

Article 3.- The exchange rates for foreign exchange forward and swap transactions shall comply with the following principles:

1. For Vietnam dong-US dollar transactions: The maximum exchange rate applicable to each term must not exceed the ceiling spot exchange rate applicable at the time of signing contracts on forward or swap transactions (the average exchange rate on the inter-bank foreign currency market announced by the State Bank plus 0.25%) plus the permitted incremental rate (a certain percentage of the ceiling spot exchange rate) prescribed for each specific term as follows:

- For the term of between 7 and 30 days: 0.5%;
- For the term of between 31 and 60 days: 1.2%;
- For the term of between 61 and 90 days: 1.5%;
- For the term of between 91 and 180 days: 2.5%.

2. For transactions involving other foreign currencies: They shall be determined by the general directors (directors) of credit institutions licensed to deal in foreign currencies.

Article 4.- Credit institutions shall collect transaction charges according to current regulations of the State Bank.

Article 5.- This Decision takes effect after its signing and replaces the following documents: Decision No. 65/1999/QD-NHNN7 of February 25, 1999 of the State Bank Governor prescribing the principles for determining foreign currency selling and buying rates of credit institutions licensed to deal in foreign currencies, Decision No. 289/2000/QD-NHNN7 of August 30, 2000 of the State Bank Governor amending Clause 1, Article 2 of Decision No. 65/1999/QD-NHNN7 of February 25, 1999, and Decision No. 1196/2001/QD-NHNN of September 18, 2001 of the State Bank Governor amending a number of provisions relating to forward and swap transactions of credit institutions licensed to deal in foreign currencies.

The previous regulations which are contrary to the provisions in this Decision are hereby all annulled.

Article 6.- The director of the Office, the director of the Department for Foreign Exchange Management, the heads of units under the Central State Bank, the directors of the State Bank's provincial/municipal branches, and the chairmen of the Management Boards and the general directors (directors) of credit institutions licensed to deal in foreign currencies shall have to implement this Decision.

State Bank Governor
LE DUC THUY

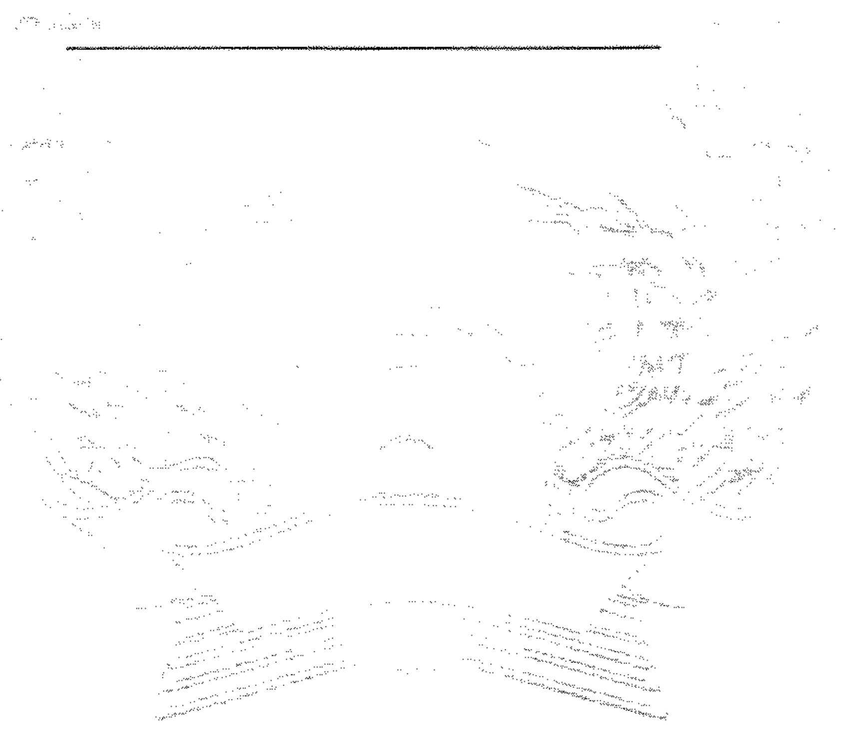

EXHIBIT 15

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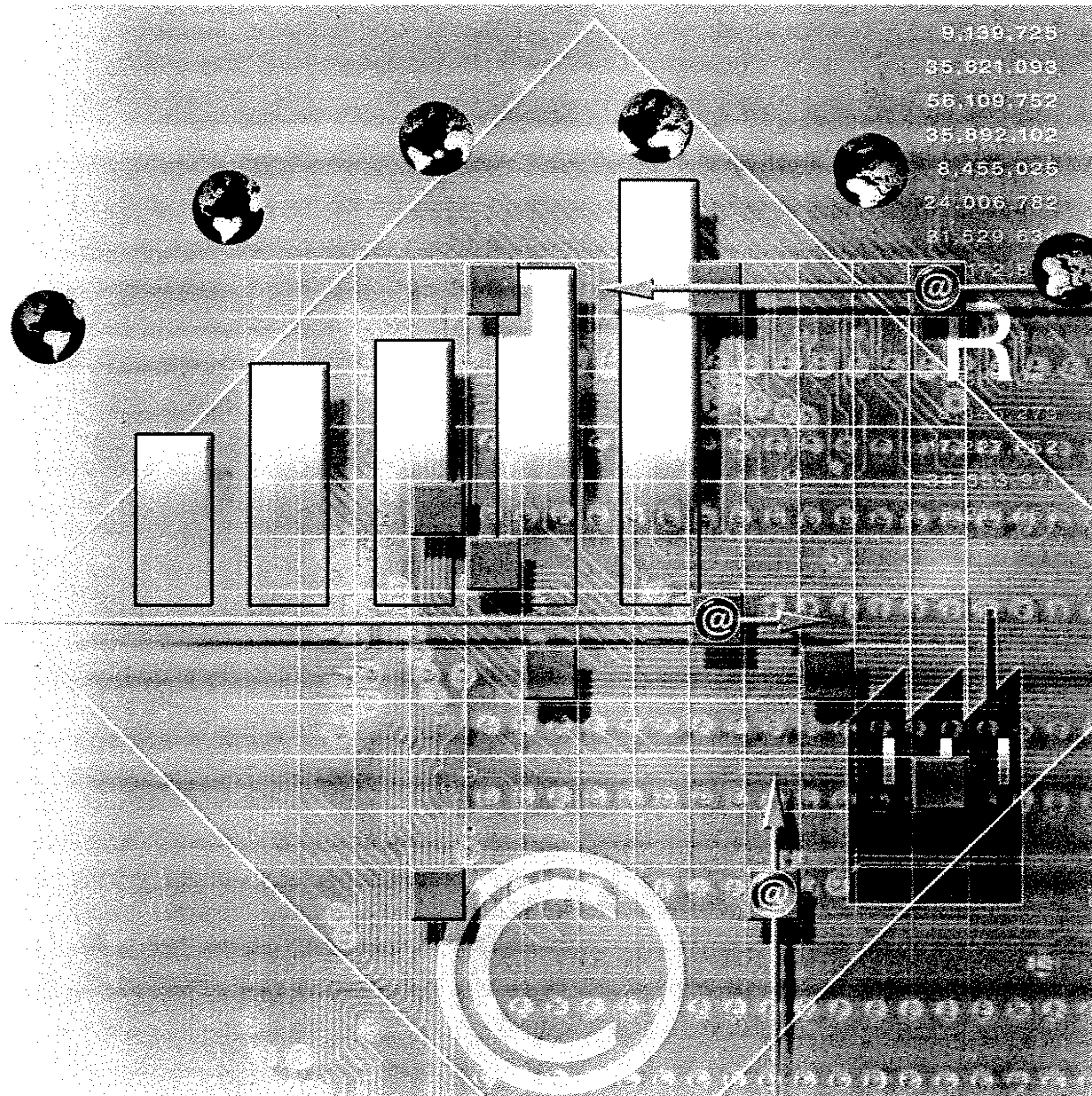
MAIN REPORT

Country Commerce
Vietnam 2001



A business guide to investing, licensing and trading in the new economy

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Vietnam

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Regulatory/market alerts

Economy

- The government reported GDP **growth of 6.7% for 2000**, since Vietnam profited from soaring world prices for its crude oil exports. GDP growth was estimated at 7.2% for the first quarter of 2001 (1.2) 8

Foreign exchange

- In a further loosening of foreign-currency regulations, the government announced new **rules in January 2001 that permit the conversion of the dong**, the local currency, into US dollars (1.3, 6.1) 9, 37

International agreements

- Vietnam signed a **landmark bilateral trade agreement with the United States** in July 2000. The US will reduce punitive tariffs on Vietnamese imports; Vietnam will implement a seven-year programme giving US investors wide access to most sectors of the economy. Vietnam has also committed to making its legal and administrative system more transparent (1.6) 15

Foreign investment

- **Foreign investment staged a strong recovery in 2000**, rising 9% to $2.4bn. But much of this was from Vietnam's largest-ever investment deal, the Nam Con Son gasfield project—which puts investment statistics in a less optimistic light (1.5) 13
- The government promulgated a series of **amendments to the Foreign Investment Law** in mid-2000. They were significant but fell short of foreign investors' hopes. The changes affect foreign-invested enterprises (FIEs), wholly foreign-owned enterprises, joint-ventures, foreign-currency rules, investment incentives and taxes, among other things (2.1,3.1,6.3,7.3) 16, 24, 38, 40
- In early 2001 the government approved **amendments to the tax system to encourage FIEs**—particularly those in key sectors such as software and information technology (3.3, 7.2) 25, 39

Intellectual property

- The government continues to strengthen its legislative armoury in the **fight to stamp out violations of copyright and industrial property**. Two decrees issued in the 12 months to March 2001 impose new penalties and widen the scope of the laws to cover trade secrets, trade names and well-known trademarks (4.2) 27

Competition

- **Telecoms** is the latest sector **opened to domestic competition**. Two small firms—one run by the army, the other a privatised firm—entered the market in October 2000. The giant state-owned VNPT still controls their network access and has sought to keep them in check, but they are providing enough competition that even VNPT is introducing reductions in call charges (5.1) 35

Capital sources

- Vietnam's stockmarket, the Securities Trading Centre, opened in July 2000 in Ho Chi Minh City. By March 2001 there were **five listed companies and two classes of tradeable bonds**. Daily price movements are capped at 2%, and prices have climbed steadily, and demand typically outstrips supply by 1,000 to one. The government acknowledges that more listings are needed, but it also does not want to see the market develop too quickly (9.3) 48

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Regulatory market outlook

State role in the economy

- The Communist Party's ninth national congress, a meeting held every five years, is scheduled for the end of April 2001. As a gesture towards transparency and populism, the **blueprint for this year's congress will be made available to the public** for comment (1.1) 7
- The government failed to meet its privatisation targets in 2000, so it is now working on a series of **measures to speed up the privatisation process.** These include allowing worker buy-outs, increasing the maximum stakes available to a single investor, holding auctions instead of managed sales, allowing state firms to convert to limited-liability status and changing the valuation methods used for state firms' assets (1.4)......... 9

Competition

- The government is planning to introduce a **competition and antitrust law.** Initial work on drafting the law was performed at the end of 2000, but **passage is not expected until 2003.** Although it will have standard provisions regarding monopolies and oligopolies, the law is significant in that it will exempt a wide range of key industries (5.2) 35

Taxation

- According to a decision announced in late 2000, the government will **amend the relatively new value-added tax (VAT) in stages over the next five years.** Other proposed reforms include simplifying the labyrinthine system of exemptions and amendments to the corporate tax, introducing an assets tax and an overhauling the tax rates applied to Vietnamese employees (7.2, 7.6, 7.14, 8.1) 39, 41, 43, 44

Capital sources

- The government's **plan to allow foreign firms to equitise** could eventually see them list on Vietnam's new stockmarket. In the meantime, the government would like to see about ten new stockmarket listings per year, but few firms are eager to join in the near term (9.3) 48

Trade

- As part of Vietnam's commitment to join the Association of South-East Asian Nations (ASEAN) and its Free-Trade Agreement (AFTA) by 2006, the country will **begin dropping tariffs in the next 12 months** (11.1,11.2) 53
- The Trade Ministry announced plans to free up enterprises' ability to export and import over the course of 2000. One of the most significant changes will be the **removal of items that are now restricted from import or export** (11.5, 11.6) . 56, 57

E-commerce

- E-commerce will probably not develop significantly in the immediate future, given the severe **infrastructure-based obstacles** that hinder its growth (12.1)........... 57
- As a first step towards online banking, state-owned Vietcombank **plans to develop an Internet-based information-technology platform** in 2001 (12.1) 57
- The government is working to finalise a **legal framework for electronic commerce by the end of 2001.** The legislation is expected to cover intellectual property, privacy and consumer protection, and security issues (12.4, 12.5) 59

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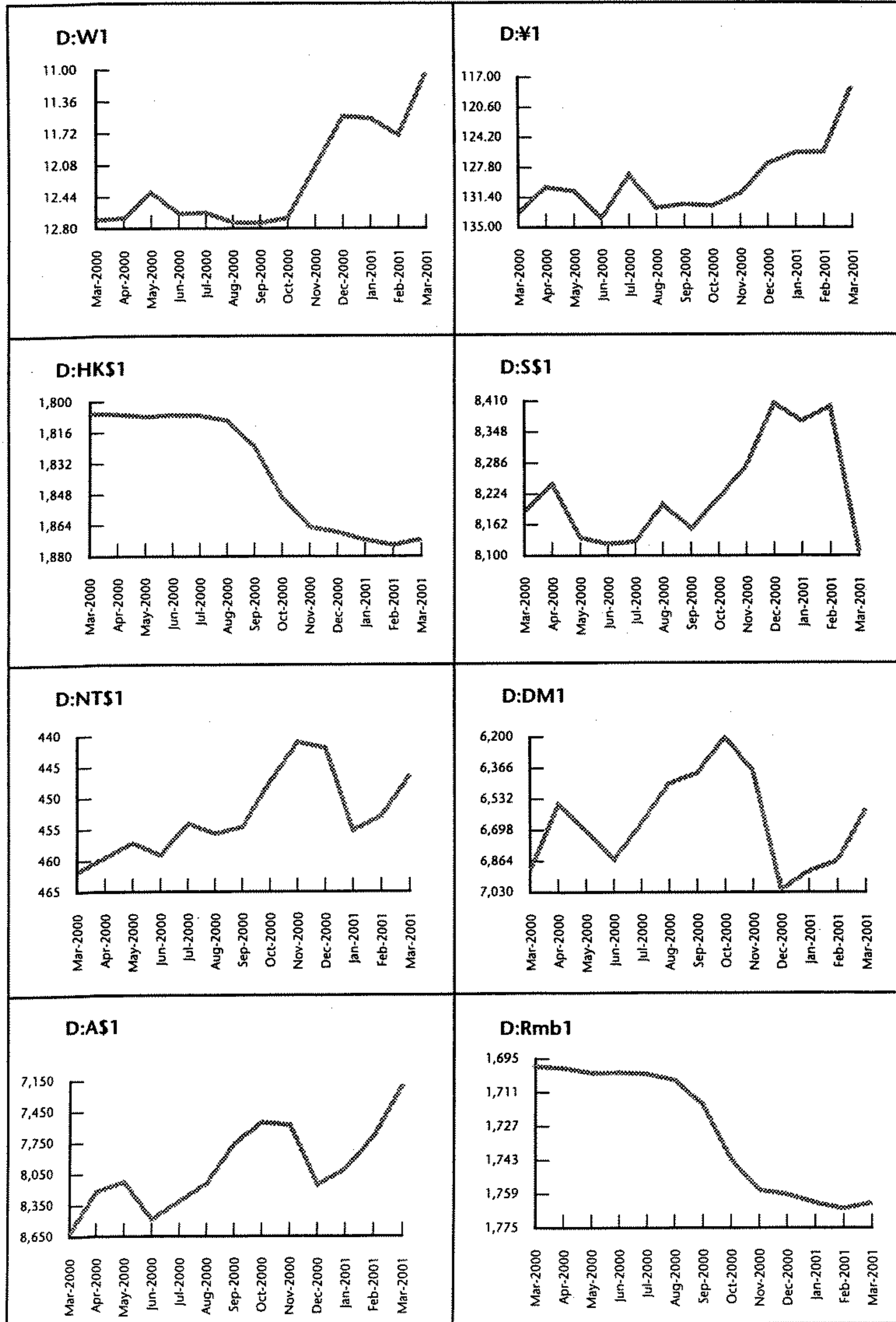
Fundamental indicators: exchange rates with major trading partners



Source: Pacific Exchange Rate Service (monthly averages).

Note: Some scales are inverted so that an upward-sloping line always indicates a strengthening dong.

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Vietnam: key commercial indicators

Investing: foreign-investment indicators

Indicator	Value
Level of foreign direct investment, 1999[1]	$1.6bn
FDI as % of gross domestic investment, 1998[1]	15.4%
FDI as % of GDP, 1998[1]	4.4%
Main sources of foreign investment, 1999[2]	Singapore, Taiwan, Japan
Sectors with highest foreign investment, 1999[3]	crude oil, light industry, heavy industry

Licensing: intellectual property indicators

Indicator	Value
Level of software piracy, 1999[4]	98%
Estimated retail losses from software piracy, 1999[4]	$13.1m
Protection of intellectual property[5]	fair
Patent applications filed by residents, 1997[6]	201
Patent applications filed by non-residents, 1997[6]	2,323

Trading: crossborder indicators

Indicator	Value
Value of world merchandise exports, 1999[7]	$11.5bn
Share of world merchandise exports, 1999[7]	0.2%
Value of world merchandise imports, 1999[7]	$11.6bn
Share of world merchandise imports, 1999[7]	0.2%
Exports as % of GDP, 1999[5]	47.7
Imports as % of GDP, 1999[5]	49.9
Mean tariff rate for all goods (1999) [6]	15.0
Tariff nomenclature[8]	Harmonised System

E-commerce indicators

Indicator	Value
Personal computers per 1,000 people, 1998[6]	6.4
Internet hosts per 10,000 people, July 1999[6]	0.0

Sources: (1) United Nations Conference on Trade and Development, *World Investment Report 2000;* (2) Ministry of Planning and Investment; (3) Vietnam Access; (4) Business Software Alliance, May 2000 *Global Software Piracy Report;* (5) EIU Vietnam *Country Forecast*, July 2000; (6) World Bank, *World Development Indicators 2000;* (7) World Trade Organisation, *Annual Report 2000;* (8) World Customs Organisation.

1.0 The operating environment

1.1 Political conditions. Vietnam is widely considered to be at a critical political juncture. The country has been carrying out market-oriented reforms for 15 years, but the ruling Communist Party remains internally divided about the pace and nature of change. Fears remain within party ranks that the ongoing process of dismantling state dominance of the economy and opening up to world markets will destabilise Vietnamese society, erode the party's authority, and create an unacceptably large gap between rich and poor.

These issues are about to come to a head at the Communist Party's ninth national congress, held every five years. This event, to be held in late April 2001, will set the broad political and economic agenda for the next five years and reshuffle the party leadership. In a bid to shore up its popular legitimacy, the party has for the first time opened its five-year policy blueprint for public comment. The document is quite general but signals a continuation of present policy and contains some tough measures to curb corruption in the bureaucracy.

Changes at the top of the hierarchy are expected to favour the proponents of market reform. The ardour of many reformists is tempered, however, by an instinctive sense of caution and widespread political pragmatism among most of the party's senior leadership. Although some observers express hope that the younger generations, the future leaders, will be more flexible and market-friendly, there are also concerns that they have weaker moral standards and may undermine Vietnam's relatively strong commitment to sound governance at the centre.

Last year was probably the most encouraging yet for foreign investors and proponents of market liberalisation. A raft of new legislative changes appealed to domestic and foreign enterprises alike. A mood of cautious optimism has emerged among Vietnam-watchers.

The country appears set to resume borrowing from the International Monetary Fund during the first half of 2001, and foreign investment inflows are increasing. A tariff-cutting programme has been announced ahead of the country's 2006 deadline for joining the Association of South-East Asian Nations (ASEAN) and the ASEAN Free-Trade

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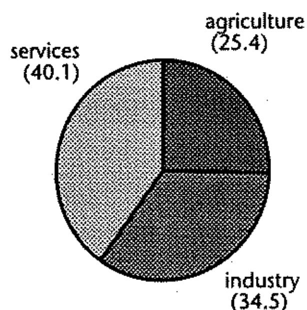
Vietnam's economy at a glance

% of 1999 GDP



Fiscal year: January 1st–December 31st.
Source: EIU *Country Forecast*, March 2001.

Agreement (AFTA), and more efforts are being made to accelerate the privatisation process.

Many obstacles remain. The law-making process is slow, and the legal system is complex, cumbersome and sometimes inconsistent. The bureaucracy remains far from transparent and dogged by red tape and corruption, particularly at lower levels. A government inspection of 69,000 Communist Party officials during 2000 found that 43% had been involved in corruption; moreover, a survey of corporate executives based in Asia by the Political and Economic Risk Consultancy in March 2001 rated Vietnam as the most corrupt country in South-east Asia.

1.2 Market conditions. Vietnam has continued to make a steady recovery from the Asian financial crisis. Soaring world prices for crude oil buoyed its export performance during 2000.

Government figures—which are often slightly higher than estimates by the World Bank or market analysts—suggest that economic growth was 6.7% for 2000. If crude oil exports are excluded, however, the World Bank estimates growth may have been as low as 3.5%. Official figures suggest gross domestic product (GDP) rose 7.2% for the first quarter of 2001.

Industrial output rose by 15.7% last year according to government data, and the year-on-year change was 9.9% in the first quarter. The garment and textile sector exported $1.7bn last year, and its total revenue including domestic sales was about the same. Oil exports reaped $3.6bn, although Vietnam's lack of refineries meant much of this was cancelled out by the $2.2bn cost of importing petroleum.

Exports rose 24% to $14.3bn; however, since imports grew 30.8% to $15.2bn, the trade deficit widened from $113m in 1999 to $892m in 2000. In the first quarter of 2001, initial government estimates suggest that exports rose 14.3% year-on-year to $3.55bn and that imports fell 8.4% to $3.65bn, leading to an $86m trade deficit—65% below that of the first quarter of 2000.

The agricultural sector struggled in 2000, as rising output of key crops such as rice and coffee encountered falling world prices. The value of output rose 5%, according to official data, but incomes were down. Fishing, now mostly concentrated in onshore fish farms, is proving an increasingly lucrative source of export revenue, netting $1.4bn last year.

The government statistics office has released figures that, if correct, suggest an extraordinary turnaround in the contribution of state-owned firms to the economy. After contributing 40% of GDP during 1999, the state-owned sector was responsible for just 18.2% during 2000. The contribution of private firms doubled, from 3.4% to 7.3%, as did the household sector, rising from 33% to 67%.

Inflation remains subdued, and movements in the price index have only just returned to positive territory after recording monthly declines for much of last year. The official inflation rate at year-end 2000 was 0.1%; the rate was 0.4% year-on-year in February 2001. External economists tend to offer higher estimates, however; the IMF estimated in late 2000 that core inflation (excluding the price of food) was running at 2% a year. The EIU expects inflation to average 4% in 2001, boosted by stronger domestic demand, the phasing out of subsidies on fuel and electricity, the depreciation of the dong and the effects of the rapid credit expansion feeding through into the economy.

Investment rose 20%; according to official statistics, state spending moved up by 10%, and investment capital from the private sector grew by 38%. Official development assistance reached $2.1bn—though disbursement is often slow.

International aid donors have promised to commit a total of $2.4bn in official development assistance during 2001. The International Monetary Fund has agreed in principle to extend $800m in loans, with a final deal expected by mid-2001.

Vietnam's stockmarket opened its doors in Ho Chi Minh City last July, and there are now five listed companies. Demand vastly outstrips the supply of stock, distorting the market: prices tend to rise relentlessly, unless there is news of a large share release from one of the listed firms. The government wants to see ten new firms list each year, but many companies are reluctant to expose themselves. A plan has been put forward to allow foreign companies to list, but it is improbable that this will occur in 2001.

Bank lending rose 25% in 2000 from a year earlier, double the rate of growth in the previous year. Deposit-taking rose 29%. Banks have been given

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Fundamental indicators: production and consumption

% growth

	1999 *actual*	2000 *estimate*	2001 *forecast*
GDP	4.8	6.7	5.2
Private consumption	1.9	8.7	6
Government consumption	0.5	5.8	6

Source: EIU Vietnam *Country Forecast*, March 2001.

slightly more room to set their own interest rates within a very narrow band around the prime lending rate set by the central bank. The prime rate was cut twice in March 2001, by 2.5 basis points each time; at the beginning of April, it stood at 0.7% a month (or 8.4% a year).

The budget deficit for 2000, according to government figures, was 4.9% of GDP. Current expenditure and development investment were reined in, but an attempt to stimulate domestic demand during 2001 is expected to widen the deficit to 6%. The money will be spent on large development and infrastructure projects and will be offset by domestic and foreign borrowings.

The government's ten-year target is to double the size of the economy, implying an annual average growth rate of 10%. Vietnam fulfilled its ten-year plan for the 1990s despite the 1996–97 regional financial crisis; nevertheless, the present target still seems a tall order, particularly since it requires domestic private-sector investment to rise from 7% of GDP to 30%.

GDP growth is expected to be 7.5% this year, assuming oil prices hold up. The increasingly important role of the industrial and service sectors bodes well for development, even though the growth of competition in the economy will make life more difficult for the big state-owned firms. Meanwhile, the World Bank's estimate for GDP growth is 6.5% in 2001; the IMF's is 5.4%; and the Asian Development Bank forecasts 6.4%.

For more information on the economic outlook, refer to the EIU *Country Forecast* on Vietnam for the most recent month.

1.3 Currency. The local foreign-exchange market is tightly controlled, but the winds of regulatory change blow regularly every year, easing the system slightly. Foreign-currency sale and conversion regulations were loosened in 1999, and foreign companies were finally given the right in January 2001 to convert dong, the local currency, into US dollars to cover current payments. Unfortunately, the new rules also require foreign firms to sell half the foreign currency they earn to a Vietnamese bank (6.1,6.6).

The government continues to set the official foreign-exchange rate by averaging rates from the previous day's interbank transactions. This crawling-peg system has set up a trading band that allows dong/dollar exchange deals to be executed within 0.1% of the official rate.

Over the course of 2000, the official exchange rate slipped from D14.009:$1 to roughly D14,500:$1. The interbank market is undeveloped—some say stagnant—and heavily guided by the government. The authorities are reluctant to allow a rapid depreciation, since state-owned firms hold much of the country's external debt, and these firms' already-weak finances would be further undermined by a falling dong.

Credit growth and rising imports may start to put more pressure on the dong, and the World Bank suggests the trading band may need to be widened if economic expansion continues.

There was a widespread move during 2000 to hold bank deposits in dollars rather than in dong, until the government forced dollar deposit rates down and increased the reserve ratio for banks' dollar holdings. This is part of a general attempt on the part of the government to discourage the dollarisation of the Vietnamese economy and to promote use of the dong.

1.4 State role in the economy. The government's goal, as stated in its political blueprint for this year's Communist Party national congress, remains "to pursue a long-term policy of developing a multi-sector market economy under state management in the direction of socialism—in short, a socialist-oriented market economy".

The conflicts between socialism and the free market are played out on a daily basis in Vietnam; they are also echoed in the authorities' inconsistent approach to regulating economic activity. Although the rhetoric stresses deregulation and liberalisation, the practice is to inch along with reform and to continue the tradition of state interference in business activity.

The government began making a concerted effort during 2000 to relax its overly enthusiastic regime of inspecting and monitoring private enterprises. Some companies reported getting at least one visit a week from a government inspector, and the average has been reported at 10–50 visits a year. The more corporate-friendly

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Vietnam's main state-owned enterprises

Vietnam's approximately 5,400 state enterprises participate in nearly all sectors of the economy, from ice-cream parlours to national utilities. Almost all of them are 100% state owned. Following is a list of the largest state firms in the sectors most important to foreign investors.

Agriculture and food

Agrimex (Vietnam National Agricultural Products), Ben Thanh Cigarette, Vietnam Beer Liquor and Beverages, Saigon Brewery, Viet Ha Brewery (maker of Halida beer), Vinacafe (Vietnam National Coffee Export-Import), Vinafood Hanoi (Hanoi Food Export-Import), VinaFimex (Vietnam National Food Import-Export), Vinamilk (Union of Dairy Product Enterprises), Vinapoultry (Union of Poultry Enterprises), Vinasugar (Union of Sugar Enterprises), Vinataba (Vietnam Union of Tobacco Manufacturing Enterprises), Vinatea (Vietnam National Tea Development and Export-Import), Vissan (Foodstuff Company No. 1).

Auditing

Auditing and Accounting Services, MSC (Auditing and Accounting Financial Service), Vietnamese Auditing Company.

Aviation

Vietnam Airlines, Pacific Airlines (part-owned by private investors).

Banking and finance

Eximbank (Vietnam Export-Import Bank), Maritime Bank (Vietnam Maritime Commercial Stock Bank), Seafic (Seaprodex Finance), Saigon Finance, Vietcombank (Bank for Foreign Trade), Agricultural and Rural Development Bank (Agribank), Industrial and Commercial Bank, Investment and Development Bank.

Communications

Vietnam Post and Telecommunication (VNPT), VNPT's Internet subsidiary Vietnam Datacommunications Corp (VDC), Saigon Postel (Saigon Post and Telecommunications), Vietel (Vietnam Electronics and Telecommunications Company). Later in 2001 these will be joined by ETIC (Electricity Telecommunications Information Company).

Construction materials

Vinaconex (Vietnam Construction Import-Export Corp).

Culture

Vinafilm (Vietnam National Film and Videotape Export-Import), Xunhasaba (state Enterprise for the Export-Import of Books, Periodicals and Cultural Commodities), Culturimex (Cultural Commodities Import-Export Company), Dihavina, Audio Film, Fafilm.

Electricity

Electricity of Vietnam (EVN).

provinces around Ho Chi Minh City have told their bureaucrats to ease off.

Many companies have to operate under complex rules that set prices, output and/or marketing budgets. For example, the state dictates lending policies to Vietnamese banks to suit the needs of public policy. Companies must obtain a licence for every import of raw materials or equipment they require.

The state is heavily involved in many sectors, such as finance, energy and manufacturing, and the state-owned sector is often given preferential treatment over the private sector in areas like tendering for public projects or access to tax breaks.

Mergers and liquidations have helped reduce the total of 12,300 state-owned firms to just 5,400, but only 40% of these are in a financially sound position. Their ongoing losses and debts are a drain on state finances and a danger to the stability of the banking system. Official estimates suggest that up to 80% of state-owned enterprises (SOEs) are loss-making. SOEs had accumulated a total debt of $12.9bn by late 2000, of which 11% was considered bad debt.

One hope for the future is the ongoing progress in the programme of partial divestment of SOEs, known as equitisation. Although the target of 1,000 equitisations between 1992 and 2000 was

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Vietnam's main state-owned enterprises *(continued)*

Insurance

Bao Viet (Vietnam Insurance), PVIC (PetroVietnam Insurance Company), Petroleum Joint-Stock Insurance Company (PJCO), VIA (Vietnam International Assurance Company) VinaRe (Vietnam Reinsurance), Bao Long Insurance, Bao Minh Insurance.

Minerals

Vinacoal (Vietnam National Coal Export-Import and Materials Supply), Minexport (Vietnam National Minerals Export-Import), Vietgoldgem Company (Vietnam Gold, Silver and Gems Company).

Oil and gas

Petechim (Vietnam National Oil Equipment and Technology Import), Petrolimex (Vietnam National Petroleum Products Import-Export), PetroVietnam (Vietnam National Oil and Gas), Vietsovpetro (Vietnamese-Russian joint venture for oil exploration).

Seafood

Seaprodex (Vietnam National Sea Products, Seaprodex Hanoi, Seaprodex Ho Chi Minh City, Seaproducts Nha Trang.

Shipping and transport

Vinaline (Vietnam Marineline), Vitranschart (Vietnam Transportation and Chartering Company), Falcom (Vietnam Oil and Gas Transportation Company), Gemadept (Union of Vietnam Maritime Companies), Saigon Shipyard, Vietrans (Vietnam National Foreign Trade Forwarding and Warehousing), Vinashin (Union of Vietnam Shipbuilding Enterprises), Vosco (Vietnam Ocean Shipping).

Technology

Fostecco (Vietnam National Company for Scientific and Technological Co-operation with Foreign Companies), FPT (Corporation for Financing and Promoting Technology), Netnam.

Textiles and garments

Vinatex (Vietnam National Textile and Garment), Garmex Saigon (Union of Garment Manufacturing Enterprises HCMC). Legamex (Leather Goods, Garment, Textile, Export-Import HCMC—recently equitised, with the majority of shares still in state hands), Silkvina (Vietnam National Silk Import-Export), Textimex (Union for Textiles Production and Export-Import), Thaloga (Thang Long Garment Factory), Viseri (Union of Vietnam Sericulture Enterprises), WEC Saigon (Wool, Embroidery and Carpet Export).

Tourism

Hanoi Tourism, OSC (Vietnam Oil, Gas Service/Tourism), Saigon Tourist, Vietnam National Tourism.

undershot (only 540 firms made the transition), moves are afoot to free up the process. Auctions, worker buy-outs and changes to the complex valuation procedures are all anticipated to help the process along. Single investors will also be able to take larger stakes.

Other hindrances to the process include suspicious SOE managers, who are keen to avoid change and restructuring, and worried workers, who are concerned about losing their jobs. But a key problem is that the asset-valuation process is often arbitrary and leads to excessively high or low valuations of a company's worth. This, in turn, means stakes in the company are either impossible to sell or sell too cheaply, thus depriving the government of the firm's true worth.

Meanwhile, the government continues to pursue broader efforts to reform SOEs to boost their efficiency and competitiveness. An intensive merger programme was conducted in the late 1990s, with the aim of establishing a strong and stable core of 17 "conglomerates" and 77 "special corporations" in important sectors (such as telecommunications, petroleum, aviation, construction, steel, garments and textiles, tobacco, paper, food, chemicals, rubber and cement) to ensure a degree of state control. Together, these firms account for around 80% of the state sector's pro-

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Investment approval checklist

The investment procedure in Vietnam is governed by the Foreign Investment Law of Vietnam, as issued and modified by subsequent regulations, memos and circulars.

Registration and licensing

The investor first needs to determine if a project belongs to Group A or Group B (2.0). Group A projects are submitted to the Prime Minster's Office for consideration; Group B projects need to be approved by the Ministry of Planning and Investment (MPI) or sometimes by provincial or municipal authorities. However, if all the project's products are for export or if it exports 80% of its product and has either less than $5m in capital or is in an industrial zone, then only registration, not application for approval, is required. It is best to approach the local authorities first.

Licensing arrangements that involve state-owned enterprises must be approved by the Ministry of Science, Technology and Environment (MoSTE); licensing deals between private companies do not need this approval. All licensing arrangements must be registered with the National Office of Industrial Property (NOIP).

If the investment is a business co-operation contract (BCC)—a written commitment between foreign and Vietnamese entities to conduct business in partnership—an application must be filed with the MPI. If the investment is in the form of a joint venture (JV), the parties must reach an agreement before approaching the MPI.

When applying to the MPI for a licence, the applicants must submit the BCC contract or the JV's charter and also a feasibility study and documentation of their legal and financial status. The applicants must also demonstrate their ability to access capital by supplying supporting documentation from either a bank or the parent company.

The MPI will also review the project's conformity with current government policy priorities, the investors' technical qualifications and environmental and land-use issues.

Environment, land use and zoning

Local authorities assess the environmental effect of projects. They must first be satisfied on this account before a licence is obtained from the MPI. According to the Environmental Law of 1993, an environmental-assessment evaluation must be submitted to the environmental committee for approval.

The provincial or municipal chief architect's office needs to be consulted on design plans and zoning requirements. A local partner is usually employed for contributing land and arranging clearance from local authorities for its use. The JV contract must detail the partners' responsibilities. Construction permits are needed before construction can commence; there are some exemptions, but it is best to check on this. Investors need to lodge drawings taken from approved technical designs with construction management authorities for supervision and records.

After the investment is licensed

Some of the steps a foreign-invested operation will need to take after licensing are as follows:

- ✔ announce the establishment of the enterprise via a newspaper advertisement;
- ✔ register the office address and company seal with the authority that issued the licence;
- ✔ open a bank account;
- ✔ apply to the Finance Ministry to use a foreign accounting system (if necessary);
- ✔ obtain visas and work permits for foreigners;
- ✔ organise the issuance of a land use rights certificate;
- ✔ register an export plan with the local trade department;
- ✔ register an import plan with the local customs service;
- ✔ obtain technical permits for construction work;
- ✔ tender for contractors and sign labour contracts;
- ✔ appoint a board of management.

duction capacity. There is a possibility that these companies may someday be equitised and their shares listed on a local bourse; for the time being, however, equitisation is concentrated on smaller firms. And although the process will affect many SOEs, it will involve only around 10–15% of total SOE capital.

Another form of privatisation can be through foreign investment in SOEs. In fact, most foreign-invested joint ventures (JVs) feature foreign firms partnered with SOEs. Some investors prefer this arrangement because direct connections to the government can make things happen faster. Many foreign investors complain, however, that their JV

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Foreign direct investment in Vietnam

Insurance. ***Prudential Insurance*** (US) became the first wholly owned life insurer in Vietnam in 1999. It now has 700 full-time staff in four locations and 7,000 sales agents. The company sold 100,000 policies in 2000, a 15.3% market share, earning $17.2m in revenue. The local operations manager attributes Prudential's success to several years of preparation before obtaining its licence. Foreign insurers must take their premiums in dong, however, so finding avenues to invest the capital is a major challenge. Of the other life insurers, wholly foreign-owned ***Chinfon Manulife*** of Taiwan has a 7.4% market share, US insurer AIA has 1.2% and Australia's ***Colonial Mutual's*** joint venture with local insurer Bao Minh-CMG has 0.8%. State-owned giant Bao Viet commands a 75% share, and the market is expected to grow 10% this year.

Gas. The largest foreign investment deal ever seen in Vietnam was finally signed in December 2000: a $1.5bn project to bring gas onshore from the Nam Son Con gas reserve off the country's southern coast. The three-way consortium gave an overall 55% stake to ***ONGC*** (India), 30% to ***BP Amoco*** (UK) and 15% to ***Statoil*** (Norway). Negotiations spanning several years were required to reach agreement on the price PetroVietnam would pay for the deal and how the project would be parcelled out. The consortium will build a $582m pipeline, which PetroVietnam will pay for by granting the foreign partners 2.1m cubic metres of gas in the first year of production and 2.6m cubic metres a year in each of the following three years. Despite the fanfare surrounding this deal, potential foreign investors in the sector remain wary: there are no clear rules yet on pricing, exports or access to the consumer market. There have also been complaints that PetroVietnam is not sharing enough of the exploration risks. Meanwhile, Statoil already decided to sell out of Nam Son Con in March 2001, the result of a strategic decision to focus on China. The withdrawal includes its 36% stake in building the downstream Phu My 3 power plant.

Steel. A major capacity overhang in the Vietnamese steel industry has not dented the fortunes of Australian-backed ***Vinausteel***, which sold $42.5m of steel last year and is planning a $13m upgrade to its production facilities in 2001. The foreign firm is said to have picked the high-value, lower-cost end of the chain, in contrast to the inefficient state firms that are churning out low-quality product far in excess of domestic demand.

Telecommunications. Fledgling telecoms carrier Saigon Postel, once state-owned but now equitised, is to introduce Vietnam's third mobile phone network, based on code division multiple access (CDMA) technology, in a $230m business co-operation contract with ***SLD Telecom*** of South Korea. The 15-year deal, signed in December 2000 but still awaiting government approval in April 2001, involves $8m in capital contributions from the local partner but allows Saigon Postel a 25% share in profits for the first seven years, increasing to 45% in the eighth year and rising another 1% every two years thereafter. The venture is due to kick off in the second half of 2001. ***Telstra***, an Australian telecoms firm, increased its ten-year business co-operation contract by an additional $40m in late 2000, in another vote of confidence in Vietnam's telecoms sector.

partners are only looking for handouts, without contributing anything in return except land rights. The government likes this arrangement because it ensures a continued degree of state involvement in the economy. Control of JVs is sometimes turned over to the Vietnamese partner at the end of the project's term. Even when this does not happen, the government reasons that associating inefficient state-run companies with vastly more efficient foreign companies is bound to have a positive influence on the foreign-invested enterprise.

1.5 **Foreign investment** is measured both in terms of registered capital (the value of planned foreign investment by foreign firms that received a licence) and in disbursed capital (the amount of capital that foreign-invested firms actually spent). Foreign investment staged a dramatic recovery in the second half of 2000. During the first half of the year, the continuous decline since the Asian financial crisis ended in 1998 looked set to continue: by July, registered foreign direct investment (FDI) was 35% lower than a year earlier. But in the second half of the year, a fortuitous combination of events occurred: Vietnam signed a $1.5bn deal in December with British Petroleum, Statoil (Norway) and ONGC (India), which greatly inflated the year's final FDI tally; and the government passed a series of amendments to the FDI law that sent an encouraging signal to investors. The amendments, with effect from July 2000, allowed foreign-invested enterprises to set up offshore bank accounts, eased foreign-currency rules, protected incentives and tax breaks from arbitrary changes, and reduced the ability of local partners to frustrate a joint venture's activities.

Registered foreign direct investment (including additional capital for existing projects) rose 9%, to $2.4bn, in 2000, but disbursement rose only 2%. The 303 licensed projects had $1.9bn in combined capital, and a further $414m in new capital was added to already licensed projects. The government's official target is to at-

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Holding patterns

Insurance. ***AXA***, a French insurance giant, obtained a licence to sell medical insurance in June 2000, but it then sought permission to withdraw from Vietnam in December, citing narrow business scope. Other insurers such as the UK's ***Commercial Union*** and ***Zurich*** are also pulling out of the country. ***ACE INA International*** of the US, however, is still seeking a non-life licence. The main problem is that the new insurance law of December 2000 prevents foreigners from selling non-life policies to Vietnamese, restricting them to the relatively small pool of foreign investors and firms. It is unlikely that authorities would approve more foreign life insurance ventures in the near future, and some insurance companies are said to be considering diverting more of their regional resources to China.

Tourism. The joint venture partners in the 18-storey, $80m Hanoi Sheraton Hotel, which is fully built but standing empty, have agreed to seek another investor to revive the project. Ho Tay, the Vietnamese partner, holds a 30% stake via its land-use rights, and ***Faber Group*** (Malaysia) holds 70% but cannot commit more funds. Another $18m is needed to complete the project.

Property. As in the tourism sector, many commercial and residential property projects have been on ice since the Asian financial crisis of 1997–98. The joint-venture partners in the mammoth $520m Saigon Cultural and Commercial Centre, licensed in 1995 but little more than a construction site since 1997, have asked for another two years to get the project (a mega-mall and 38-storey office tower) off the ground. ***Jin Wen***, the Taiwanese partner, holds a 70% stake but faces bankruptcy. The company has laid off half its staff and owes more than $1.5m to construction contractors and equipment suppliers. Lacking the capital or the capacity to continue on their own, the local partners—Urban Development Services Company, Ben Thanh Tourist, and Green Plantation and Parks—are planning to find short-term uses for the cleared site as they await either Jin Wen's recovery or the entry of a new foreign investor.

Sugar. ***Bourbon Group*** of France is seeking to exit its 51% stake in the Bourbon-Gialai sugar mill joint venture, worth $7.4m. The sugar industry has had a difficult few years, with cane shortages causing unpredictable price fluctuations. Another foreign-invested plant in the central region made a costly relocation to the north after three years of losses.

tract another $2bn of FDI in 2001; however, given that some $1.1bn of the figure during 2000 came from a single project—the Nam Con Son gasfield deal—and given the somewhat gloomy outlook for Asian economies, it is unclear if the target can be reached.

Manufacturing projects accounted for 214 of the licences and $488m (25.6%) of the total capital. There was a roughly even split between heavy and light industry, and the average project size ($2.3m) was quite small.

The healthcare and education sector, newly opened to private participation, attracted nine projects worth $67m. The food-processing industry attracted 14 projects with total capital of $68.5m, and there were two hotel and tourism projects worth a combined $22.8m. The 27 projects in the services sector were worth just $18m altogether.

Thirty-four licences were given to agriculture and forestry projects, but many of these are reportedly having trouble raising capital and attracting foreign investors. The total capital required is $50.2m.

Most FDI flows to the south of the country: Ho Chi Minh City and the neighbouring provinces of Binh Duong, Dong Nai and Ba Ria-Vung Tau. These provinces boast a number of industrial parks, which offer tenants special incentives and tax breaks. Costs are also 20–30% lower, and these provinces are close to ports and to the country's wealthiest citizens. More than 80% of new FDI went to the south of the country in the first three months of 2001.

Sixty-nine FDI projects had their licences withdrawn in 2000; all these had been licensed between 1998 and May 2000. Many big-ticket property and tourism projects, often involving Asian investors, continue to struggle. The reasons given for failure included inability to raise enough capital (such as the Non Nuoc resort near Danang), lack of demand, high business costs (including telecommunications and the cost of land clearance and compensation). Low efficiency killed off 13 oil and gas projects.

In the first two months of 2001, 35 projects have been licensed with $72.5m of investment capital, mostly in industry and health and education. This marks a 20% increase over the same period in 2000, and the government is targeting a 32% increase in registered FDI for 2001.

Most of the major investors in Vietnam are its regional neighbours. According to the Ministry of Planning and Investment, the top investor in 2000 was Singapore, with $6.76bn worth of investment registered, and $2.1bn disbursed. Taiwan is second ($5bn registered, $2.4bn disbursed), followed by Japan ($3.8bn, $2.6bn), South Korea ($3.2bn, $1.9bn) and Hong Kong ($2.7bn, $1.5bn). France,

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in sixth place, is the largest European investor, followed by Russia and the Netherlands. The UK is tenth and the US 13th.

One of the best-performing sectors for foreign investors was banking. The foreign banks in Vietnam reported combined net profits of $19.5m in 2000, an 87.5% increase on 1999. Of the 27 foreign bank branches, 22 reported profitability, led by Tokyo-Mitsubishi of Japan, ANZ of Australia and Citibank of the United States. Another area showing early promise is information technology. Incentives to investors in this sector are very generous, and early entrants like Hewlett-Packard (US) have taken large market shares (though the market is still small).

At the other end of the FDI scale is agriculture, where rates of return are said to be low and risks are high. Mining is also an area that asks for large capital investment over long time frames, and several large foreign mining companies have recently withdrawn from Vietnam.

Wholly foreign-owned projects, which were almost unknown before 1992, have gained in popularity as investors soured on joint ventures with unco-operative local partners. The government has been quick to respond to this trend (2.1). As with countries such as China, investors have started to re-evaluate the importance of doing business in a country without earning any (or very little) profit. Joint ventures have proven less successful than originally hoped, partly because of the regional slump but also because of slack domestic demand. Foreign partners have been taking over the entire partnership, since domestic companies have been unable to raise sufficient capital to pay for their end of the operations.

There has been little technology transfer from foreign investors in joint-venture operations to date. The glue that has kept foreign investors with their local partners has been the local control of land entitlements. The only sectors expressly forbidden to foreign investors (under the Foreign Investment Law and the more recent Decree 10) are projects detrimental to national security, defence and public interests; detrimental to historical and cultural relics, fine customs and fine traditions of Vietnam; and prejudicial to the ecological environment. Also forbidden are projects for treating toxic waste imported from foreign countries and projects for producing toxic chemicals or using toxic agents that are prohibited under international treaties.

Conditional licensing of a joint venture or business co-operation contract (BCC—2.1) is used in sectors like construction and operation of telecom networks; exploitation of oil, natural gas, and other precious and rare resources; construction and operation of industrial zones; air, rail and sea transport (BOT, BTO and BT projects are subject to separate regulations); production of cement, steel and iron; production of industrial explosives; reforestation and planting of perennial crops; tourism; and culture, sport and entertainment. Conditional licensing approval also applies to investment projects that must export at least 80% of their output.

The government has opened some former monopoly sectors such as insurance. Certain sectors that had been strictly state run (like education and health) have also been opened to foreign investment. JVs with state firms that dominate these sectors are encouraged. Most utilities, such as telecommunications, remain state owned and controlled, although Vietnam's anticipated bid for membership in the World Trade Organisation and the new bilateral trade agreement with the United States will change this picture dramatically over the next ten years.

BCC and JV participation in peripheral equipment supply and operations have been permitted. Certain professions, including teaching and medicine, are no longer off-limits; private, foreign-invested schools and hospitals are now approved. Foreigners have been permitted to practise as lawyers and accountants since 1992, but foreign law firms are in theory completely prohibited from advising on Vietnamese law. In practice, most find ways around the prohibition. Accountancy firms, on the other hand, are not similarly restricted; in fact, since there is no prohibition on their giving advice on Vietnamese law, accountancies have a significant advantage over law firms.

Most exploration for oil and gas in Vietnam is via production-sharing contracts, which are BCCs under the foreign investment law (2.1). The government's shift to favour 100% foreign-owned projects for BOT (build-operate-transfer) infrastructure projects seems to be aimed at facilitating such projects, which are vital to development plans. One of the country's largest oil projects, the $1.3bn Russian-Vietnamese JV building Vietnam's first oil refinery, is now awarding contracts for various aspects of construction. Lung Lo Construction won the $44m tender in March 2001 to build the wharf and pipeline, but the biggest contract is the $750m tender to design and install the refinery's control and distribution systems.

1.6 International agreements. Vietnam became a member of the Association of South-East Asian Nations (ASEAN) in 1995; it formally became a member of the Asia–Pacific Economic Co-operation (APEC) on November 14th 1998. APEC is a grouping of countries rimming the Pacific Ocean that includes the United States, China and Japan.

Vietnam signed a wide-ranging bilateral trade agreement on July 13th 2000 with the US, which both governments are expected to ratify in 2001.

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The agreement has the potential to alter dramatically the investment and business climate in Vietnam over the medium to long term. Although much of the agreement is concerned with lifting two-way trade and investment between the US and Vietnam, including granting most-favoured-nation status to Vietnam, many of its provisions will affect all foreign firms.

The agreement allows US firms greater access to certain Vietnamese service sectors: law, accountancy and audit, advertising and market research, management consultancy, architecture, engineering, information technology (IT), construction, banking and finance, health, education, and film production and distribution. There are highly specific rules for each industry, but in general, in the next 5–7 years US investors will be permitted to take a maximum of 51% equity in a joint venture.

Some industries—including construction, accountancy and IT—will be able to service only other foreign-invested enterprises for the first two years after the pact is ratified. Some others—law, market research, management consultancy, education and insurance, for example—will eventually be able to run wholly US-owned operations.

US banks are permitted take up to 49% equity in a JV for the first nine years, it can then become a 100% US equity subsidiary. US banks will also gradually be allowed to accept deposits in local currency, as this rule is phased in over nine years. Financial institutions with 100% US equity will be able to take mortgage interests in land-use rights of foreign enterprises, and all US-invested banks will be on a par with Vietnamese banks in terms of central bank discounting and swap-and-forward facilities. After eight years, US banks will be able to issue credit cards.

At a more general level, the treaty commits Vietnam to making a concerted effort to increase transparency. The government has pledged to issue advance notice of all forthcoming regulations and decrees, to publish these documents and make them available, and to provide specific contact points within the bureaucracy for obtaining further information. There will also be a fair and well-documented process of judicial appeal against legal and administrative decisions.

Under the agreement, the Vietnamese government has also committed itself to World Trade Organisation standards for intellectual property protection within 18 months of the treaty's ratification (4.1).

Another section of the agreement will see Vietnam adopt the WTO's Basic Telecom Reference Paper, meaning that regulatory controls will be loosened and cost-based interconnection fees introduced. Foreign JVs will be permitted in so-called value-added telecom ventures two years after the agreement is ratified by the US Congress (which should occur in 2001), and JVs may participate in Internet ventures one year after that. In the fourth year, foreign JVs will be permitted to offer mobile phone and satellite services, and in the sixth year the voice telephone services market will be opened.

2.0 Organising an investment

2.1 Basic investment approval. Foreign investors in Vietnam must adhere to the Foreign Investment Laws as enacted and modified by subsequent regulations, memos and circulars. These are issued by the National Assembly, the office of the government (prime minister's office) or the relevant ministries. The power of each organisation to modify an existing law is the main source of confusion and lack of transparency in the laws.

The Ministry of Planning and Investment is in charge of approving most applications for private-sector foreign investment—both joint ventures and 100%-foreign-owned entities. There are suggestions, however, that over the next few years more decision-making power will be given to provincial and municipal authorities, particularly for smaller projects. The Ministry of Trade (see the Appendix on page 60) licenses representative offices.

It is useful to note certain aspects of the Vietnamese legal system:

- Laws are not based on common law;
- There is limited available history to help a researcher understand the rationale behind particular laws;
- There is a lack of detailed history of prior interpretations of particular laws, either by executive order or by judicial tribunals;
- Laws once enacted by the government can and are routinely changed by the ministries via circulars that are legally binding and sometimes retrospective;
- The National Assembly and the ministries are not bound to uphold even their own earlier enactments or interpretations of Vietnamese laws; and
- Lengthy contracts covering all conceivable possibilities with traditional covenants and warranties are not well received and are unlikely to be enforced even if executed.

An interesting amendment was made to the Foreign Investment Law in 2000, however, under which foreign laws can be applied in Vietnam if existing Vietnamese law does not cover a particular situation—and on condition that the foreign law does not conflict with any other Vietnamese law. How this will work in practice remains to be seen.

A prospective investor must be wary of agents who offer to get work done in lieu of paying large fees to the relevant agencies. Decisions in Vietnam

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are not made by individuals but by the consensus of relevant government bodies. Aside from that, a bribe of $450 can lead to imprisonment; one of $45,500 or more leads to capital punishment.

All foreign-investment projects in Vietnam are classified as either Group A or Group B. Group A projects are infrastructure construction of industrial zones and export-processing zones; build-operate-transfer (BOT) projects; projects with investment capital of at least $40m in electricity, mining, oil and gas, metallurgy, cement, chemicals, seaports, airports, culture and tourism, and real estate; sea- and air-transport projects; postal and communications; cultural, publishing, press, audio, visual broadcasting, training, scientific research and healthcare; insurance, finance, auditing, specialised assessment projects, projects for the exploitation of rare and precious resources; national defence and security; and projects using five or more hectares of urban land or 50 ha or more of land of other categories.

All other projects belong to Group B. Since June 1997 several provinces and cities have gained the power to approve Group B investments worth less than $5m, including Ba Ria-Vung Tau, Binh Duong, Danang, Dong Nai, Hanoi, Ha Tay, Hai Duong, Haiphong, Ho Chi Minh City, Khanh Hoa, Lam Dong, Nghe An, Quang Nam, Quang Ninh, Thua Thien Hue and Tranh Hoa. Industrial zones in Binh Duong, Dong Nai, Dung Quat, Haiphong, Hanoi, Ho Chi Minh City and Quang Nam Da Nang, likewise, may grant investment licences.

Group A projects must be submitted to the prime minister's office for consideration; Group B projects may be approved by the Ministry of Planning and Investment (MPI) directly or sometimes by provincial or municipal authorities. Under Decree 24/2000/ND-CP of July 2000, however, some Group B projects (listed in Article 114) can obtain a licence simply by registering, rather than by having to go through an evaluation and approval process. Eligible projects include those that export all their output, that are in an export-processing zone and export a high proportion of their products (the exact ratio is set by the MPI), or that have investment capital of less than $5m and export 80% of more of their output.

An important legal instrument for foreign investors is government Decree 88/1999/ND-CP, dated September 1st 1999, on tendering. This decree, which replaced Decree 43/CP and Decree 93/CP, covers the nature of projects that must be put out for tender, procedures and conditions for selecting consultants, procuring goods, constructing and installing, tendering small packages and selecting project partners.

Following Decree 10 in late January 1998, the MPI or other investment-licensing body guarantees to respond to an investment application within 15 days of receiving the proper documents. Decree 10 also eliminated the need for a company already holding an investment licence to obtain a separate business or practising licence. Enterprises already holding approval need only register their operation with the local authorities.

Circular 12/2000 TT-BKH, which took effect in October 2000, reaffirms the 15-day time limit for issuing an investment licence if only registration is required, but it allows 45 days for evaluating a project. The circular also stipulates a list of activities a foreign direct investment (FDI) project must complete once its licence is issued. These include publishing a notice of the company's establishment in a local newspaper, registering the head office address and company seal, opening a bank account, applying for approval to use a foreign accounting system, registering an export plan with the local department and a range of other activities. The circular also cut from three months to 30 days the amount of time a joint venture has to finalise the make-up of its board of directors.

Before making a full-fledged investment, an investor can establish a presence in Vietnam by opening a representative office. Decree 45/2000/ND-CP of October 2000 allows businesses to set up more than one such office. The decree reaffirms that representative offices may not conduct business, but they may serve to familiarise the prospective investor with business opportunities and the market and to establish business relations. They may provide customer support and undertake feasibility studies.

The government believes, sometimes correctly, that some foreign investors are carrying out full-scale commercial activities under the guise of a representative office. Consequently, it is considering tightening the rules and possibly requiring firms in some sectors—freight forwarding, consultancy, advertising, tourism and insurance, for example—to establish branches instead. Letter 4443/TM-PC of October 5th 2000 raised the fee for setting up a representative office from around $70 to roughly $345.

Vietnam's foreign investment law provides for four types of foreign participation. The details of investment procedures, which vary slightly for each type, are in an English-language MPI booklet (*Guidance on Project Document Preparation for Various Forms of Investment*, published in September 1991).

The four types of foreign investment are as follows:

Business co-operation contracts (BCCs) are written commitments between foreign and Vietnamese partners to conduct business in partnership. Before licensing such arrangements, the MPI reviews the parties' co-operation agreement, their legal and financial status, and the economic and

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technological bases of the deal. The overall application procedure is less burdensome than a joint venture. It should be noted that a BCC does not have any legal standing, and may not be treated as a first step to create a new legal entity. Hence, parties in a BCC bear their own unlimited liability to the other party and to third parties.

Under Decree 24/2000/ND-CP (July 31st 2000), a foreign party to a BCC may open an operations office to carry out the contract. The operations office is permitted to have a company seal, open a bank account, recruit employees, sign economic contracts and conduct business activities.

Joint ventures (JVs) require a minimum of 30% foreign equity, though this may sometimes be reduced to 20% in special cases. The parties to a prospective JV should reach agreement on a contract before approaching the MPI for a licence. The MPI also requires the following documentation:

(1) proposed charter of the JV (similar to a company's articles of association);

(2) economic and technical feasibility study;

(3) approval by the government authority in charge of the Vietnamese party to the deal; and

(4) documentation of the legal, financial and technical status of all parties.

Strictly speaking, the Vietnamese partner should hold no less than 30% of the committed capital. However, Procter & Gamble, a US-based toiletries giant, succeeded in negotiating a restructuring of its joint venture to control 93%, reducing its Vietnamese partner's share from 30% to just 7% in 1999; it bought out its foreign partner completely in 2000.

It is estimated that 70% of all foreign-invested projects are JVs, and they may be given preferential treatment, especially if the Vietnamese partner is a state-owned enterprise (SOE).

However, JVs have often proved to be nonviable, and there is an increasing trend among foreign investors to use 100% wholly owned companies. Many JVs fail to get licensed, and almost half of all licensed JVs fail because of an inability to raise capital or to reach agreement on contractually defined "Important Matters" requiring unanimous consent. Changes outlined in Decree 24/2000/ND-CP, which came into effect in July 2000, removed the unanimity requirement for decisions and actions in several important areas, including financial accounts, balance sheets and decisions on borrowing investment capital.

The long-standing requirement of a minimum 30% domestic capital contribution is almost always contributed in the form of artificially high land-use fees, which burdens the JV from the start. Earlier, foreign investors would accept these burdens and try to "level the playing field" by withholding cash and importing less-valuable machinery. Investors now realise that these tactics distract from their ability to set clear performance incentives, and they prefer to set up wholly owned companies. Changes have been made to try to remedy these problems. The government, seeing the failure of many JVs, is also more open to wholly foreign-owned companies.

Wholly foreign-owned enterprises (WFOEs) are now the favoured form of investment since the hope is that they will lead to more tax revenue for the government and because foreign investors have had difficulties with JVs. Before granting a licence for this type of investment, the MPI requires copies of the proposed enterprise's charter, a feasibility study, and documentation of the investors' legal and financial status. The government announced in January 1998 that no WFOEs would be allowed in the forestry sector.

Decree 24 of July 2000 has opened new areas to WFOEs, including infrastructure construction in industrial zones and export-processing zones, cement, steel and iron production, cash crops, sport and entertainment. In the first three months of the decree's operation, 20 JVs switched to WFOE status, compared with 94 in the entire 11 years prior to that. Coca-Cola, PepsiCo, Colgate-Palmolive and Procter & Gamble, all of the US, have moved to buy out their local partners within the last six months.

Build-operate-transfer (BOT) ventures are intended to boost infrastructure development by allowing the foreign investor to profit from user fees or toll charges while transferring project ownership to the state at the end of the licensed term. The foreign investor is responsible for financing, constructing and operating the project. The government has devised added incentives for BOTs, including the possibility of rent-free land; reduced rates of profit tax, withholding and turnover taxes; and exemption from import taxes on project-related capital goods. The response from investors has been lukewarm, primarily because of concerns about a lack of regulatory and legal conditions. The government has sought to respond to this with the passage of Decree 62 early in 1999.

New amendments under the decree clarify the rights and obligations of all firms under BOT ventures, defining the rights of financiers in the event of a breach of contract and stipulating mechanisms for dispute resolution.

Notice 82/TB-VPCP, issued on July 12th 2000, restricted foreign investors' BOT activity in the power sector, banned foreign BOT contracts in water-supply projects and mandated an investigation into the use of BOT contracts for foreign firms carrying out major road projects.

When putting together an investment, the best approach is the simultaneous one: negotiating a joint-venture contract or 100%-foreign-owned project with the local authorities while

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making contacts and checking regulations and laws in Hanoi.

The assistance of a local expert (Vietnamese or foreign) is extremely helpful. Many pitfalls await the unknowing newcomer: choice of the wrong partner, acceptance of verbal promises on face value, escalation of costs once a contract has been signed and misunderstandings with local authorities.

The maximum duration for a foreign investment project, depending on the deemed "merit" of the project, is 50 years. Tax incentives, including exemptions and preferential rates, are available to both 100%-foreign-owned projects and to foreign-invested joint ventures.

With special permission from the State Bank of Vietnam (the central bank), an enterprise with foreign capital may open an overseas bank account to obtain debt finance. Amendments to the Foreign Investment Law made in July 2000 suggest—although implementing regulations are yet to appear—that this rule has been widened so that an offshore bank account can be used for a wider range of purposes, including receiving foreign currency payments.

The amended law did not address a key complaint of foreign investors: the cumbersome procedure for adjusting legal capital (to either upgrade or downscale the size of an investment). Adjustments to legal capital continue to require approval from the enterprise's investment licensing body.

Some changes to the legislation, however, were more favourable. One amendment, given effect in Circular 12/2000/TT-BKH of September 15th 2000, recognises that foreign-invested enterprises (FIEs) and BCCs that divide, separate, merge or consolidate are simply changing their legal status. Previously, they were seen as having liquidated one form of investment and established another, creating many legal complications.

The circular also amends the rules on terminating a foreign-invested project or business: approval from the Ministry of Planning and Investment is no longer required, and the parties to a JV or BCC may now lay out the conditions for terminating their FIE in their contract or charter. The circular spells out the procedure for foreign investors wishing to terminate their investment.

In the last quarter of 2000, the government issued a new list of areas in which it will work hardest to encourage foreign direct investment. These include export-oriented industries, agriculture, biotechnology, information technology, waste treatment and environmental technology.

2.2 Acquisition of an existing firm. The idea of acquisitions and takeovers in the Western corporate sense does not exist—at least not formally. The prime minister has approved applications for state firms to sell a minority stake to a foreign company seven times. Each of those approvals was granted at the request of the same foreign investor—Dragon Capital, a Dublin-listed closed-end investment fund. Among Dragon's successes was engineering the issue of convertible bonds in REE, a local air-conditioning firm, and the acquisition of a stake in a small cement-making factory. Dragon says that it invested in these and other companies in anticipation that they will one day be listed on Vietnam's stock exchange. Indeed, REE listed on the new stock exchange in July 2000, and Dragon became the first investment fund to receive a securities code allowing it to trade shares on the market.

With the opening of the stockmarket in July 2000 (9.3), foreigners are permitted to take small stakes in listed firms. The limits are tight: an individual investor may hold no more than 3%, an institution may hold 7% (Dragon must sell down its REE holding) and total foreign ownership may not exceed 20%.

For unlisted shareholding companies, such as equitised state firms, there is a 30% foreign-ownership limit. But new rules proposed in late 2000 by the Ministry of Planning and Investment would prevent foreign investors buying into private firms involved in banking, finance, insurance, retail, travel, telecommunications, property and legal services. But these rules had not been formally issued by March 2001.

Mergers and acquisitions between foreign wholly owned firms and joint ventures already established in Vietnam are easier, following the issuance of Decree 24/2000/ND-CP on July 31st 2000. The decree sets out the legal, economic and tax consequences of a foreign investment vehicle changing its structure, merging with another such vehicle or buying out its local partner. A great deal of specific regulation has yet to be issued.

2.3 Building and related permits. Zoning on the national level is the responsibility of the government office. But sub-national zoning and granting permission to build or expand operations falls within the jurisdiction of the local people's committee of the city or province involved.

Zoning requirements tend to be applied on an ad hoc basis. Local authorities are also responsible for assessing the environmental effect of investments. Most serious delays in the investment process tend to occur at this level, since many provincial authorities refuse to follow directives of the Ministry of Planning and Investment (MPI) on the maximum rents to be charged to foreign investment projects or on the period of time within which a decision on a building licence must be made.

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The process is almost always smoother if local support is obtained first. In any real estate development, for example, the provincial or municipal chief architect's office must be consulted on design plans and zoning requirements (which tend to be ad hoc). Failure to seek support from this office at an early stage will only delay project implementation once an MPI licence is obtained.

Since amendments to the foreign investment law were made in 1996, construction permits should no longer be necessary, but this rule remains to be tested in practice.

Inter-ministerial Circular 09/1999/TT-LT-BXD-TCDC, dated December 10th 1999, of the Ministry of Construction guides grants of construction permits for projects that require them. Since December 25th 1999 the circular applies to construction of private dwellings of individuals not exempted from obtaining construction permits, construction under projects funded by private entities or private organisations not funded by the state budget or by state guaranteed loans, construction for diplomatic agencies or international organisations, and construction for religious purposes.

Prior to construction of foreign direct investment projects, BOT (build-operate-transfer) projects or projects in industrial parks exempted from construction permits, investors must submit drawings taken from approved technical designs to construction management authorities. If the authority approving the technical designs and the construction management authority is the same body, these requirements do not apply. This circular also sets out requirements in documents to be submitted for construction permits and procedures to grant construction permits.

The government has promoted the creation of export-processing zones to offer investors a chance to avoid bureaucracy and restrictions. Since access to land is not an issue within the zones, there are more 100%-foreign-owned ventures there (over two-thirds) than elsewhere in Vietnam.

2.4 Environmental law. Vietnam passed its first Environmental Law on December 27th 1993. The law applied retroactively to all projects in specified sectors that must submit environmental-impact evaluations to the environmental committee for appraisal. If a factory or development fails to meet prescribed standards, the owner will be given a deadline for improving performance.

Projects that fail to meet such a deadline might be closed until corrective measures are taken. The law stipulates that these environmental-impact studies are an important consideration in granting foreign (and local) investment licences.

The 1987 Land Law prohibits and imposes fines for the wilful destruction or misuse of land—for example, using designated forests or farmland for other purposes—and provides for discharge fines, restoration charges and other fiscal measures to protect the environment. The only requirement for projects that are not required to prepare an environmental-impact report is that the investors set out in the investment application an explanation of any factors that might affect the environment and measures proposed to deal with them.

The Ministry of Science, Technology and the Environment (MoSTE) sets the guidelines for environmental-impact-assessments reports (EIARs) for FDI projects. These outline what types of projects require EIARs, which documents are necessary and which authorities are in charge of evaluating the reports. But the guidelines seem to have been ignored by other regulatory authorities, except for large projects.

Circular 02 of March 2nd 2001 has cut the maximum time allowed for MoSTE officials to appraise an EIAR from 60 days to 45 days. It also adds waste-processing and pollution-treatment projects to the list of foreign-invested projects required to submit EIARs for appraisal.

Under Circular 10/2000/TT-BXD, dated August 8th 2000, the Ministry of Construction provided guidelines on preparing EIARs for construction-planning projects. The circular applies to all construction and property-development plans for urban and residential areas, and it requires the EIAR to contain the following: surveys, geodetic observations and assessment of the current environment; forecasts on the effect of the construction plan on the natural and social environment; recommendations on completing construction-planning solutions and environmental measures; plans for supervising the environmental effects; and maps and forecasts.

Work began in April 2000 on a new trans-national north-south highway through the centre of the country. The highway's route cuts straight through one of Vietnam's oldest and most biologically diverse national parks, Cuc Phuong. Following accusations by international environmental groups and aid donors that the original environmental-impact study was fudged, work has halted on that stretch of the road. This level of concern for environmental factors is unusual in Vietnam, and may indicate a gradual shift in attitude on the part of the authorities. No resolution to the problem has yet been announced.

2.5 Acquisition of real estate. Both the country's constitution and the foreign investment law make clear that foreigners may not own land in Vietnam—even Vietnamese may own only long-term "use rights". A June 1993 amendment to the Land Law confirms that "the people" own the land, which is administered by the state. But the legisla-

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tion does further commercialise the "right to use" land for "stable and long-term use", which for urban property may be inherited, transferred and even used as collateral for a loan, though only at Vietnamese banks.

The 1987 Land Law places land under exclusive administration of the state. Investors must buy the right to use land from the previous user—be it an individual, a state enterprise or the local people's committee. If the previous user had no legal right to it, a foreign investor normally provides some payment to encourage the squatter to move elsewhere.

In fact, it is almost impossible to remove squatters legally, so resettlement fees are a necessary cost no matter what the legal status of the squatters. The question of dealing with the previous owners of land further muddies the waters. One foreign developer estimated that at least 70% of all land in Ho Chi Minh City is under dispute. It is best to check, then double-check, whether a Vietnamese partner has undisputed rights to the land before undertaking a joint venture (JV).

Difficulties in finding and preparing a site are one reason that many investors have in the past preferred to arrange a JV, with the local partner contributing the land and arranging clearance from local authorities for its use. Construction costs are high, as are rents, so it is best for a JV contract to detail the local partner's responsibilities in these areas. In addition, negotiating the removal of residents or even squatters from the land is sometimes more important than negotiating the land rent itself. Compensation disputes with relocated residents are winding up in court with increasing frequency.

One of the main reasons JVs have encountered delays in the past, however, is that the foreign and local partner disagree over who is to settle these compensation and land clearance issues. Under Decree 24/2000/ND-CP of July 2000, resolving these issues is identified as the responsibility of the Vietnamese partner.

This is not to say that the compensation issues will become any less complex. Land-clearance issues are causing great discontent among affected residents, turning what was previously a business headache into a political issue. Measures are now under consideration to set compensation payments at market rates, with the hope of cutting back on long and tortuous negotiations with irate locals.

Land-use rights may be contributed to the legal capital of a JV. The JV then pays only annual land taxes, and the Vietnamese party is responsible for the rental costs. Alternatively, JVs and 100%-foreign-owned firms may lease land-use rights directly from the state. The ability to use land-use rights as collateral has been a contentious issue, and Decree 24/2000 addressed the issue without fully resolving it.

Under the new rules, foreign and domestic banks may accept land-use rights as collateral. But the foreign enterprise must have paid rent in advance with at least five years of the lease remaining. If the enterprise is a JV in which the Vietnamese partner's capital contribution took the form of land-use rights, then there must still be at least five years remaining of the period in which the land-use rights are considered as the capital contribution. Banks have requested clarification of these rules, and a draft circular being prepared in March 2001.

Decree 24 also rules that the remaining value of land-use rights considered as a capital contribution may be counted in the assets of the JV in the event of bankruptcy.

A transfer tax of 5–60% of the land value (as set by the government) is designed to discourage rampant speculation, which in the event is explicitly prohibited. Because of these property restrictions, foreigners lease the right to use land through their licensed joint ventures for limited periods of time, ranging up to 50 years (though terms longer than 20 years require special approval by the prime minister).

Under Decree 60/CP passed in 1994, foreigners legally residing in Vietnam have been permitted to buy houses. (In practice, this rarely occurs except among foreign nationals with Vietnamese origins—so-called Viet Kieu, those with Vietnamese ethnicity but foreign nationality.) The decree states that such purchases must be through house-buying agencies and that the house must be sold within 90 days if the foreigner decides to leave Vietnam. Otherwise, ownership of the house may revert to the state. Such conditions are designed to discourage speculation and absentee landlordism while encouraging long-term investment. It should be made clear, however, that this decree does not allow a foreigner to buy the land on which the house sits and on which taxes must still be paid. But new regulations are soon to be enacted that will allow Viet Kieu to buy land-use rights themselves.

Some progress has been made in clarifying issues about renting and leasing land. A Ministry of Finance Directive (S1/TC/TCT) in 1992 provided specific guidelines for land rent for foreign JVs. This directive was designed to curb Vietnamese companies' abuse of lax land-evaluation regulations and use of land as a sole contribution to joint ventures. The directive established five classifications for land in and around cities, tourist destinations and industrial areas, and two classifications for rural areas, mountainous regions, bare hills and wasteland.

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The Ministry of Planning and Investment has set maximum rental prices in dollars on all categories of land. Annual rents have fallen of late, but they are still high for prime property in Ho Chi Minh City. Rents are reviewed every five years, with a 15% cap on any increase. Office rents have fallen as foreign companies have backed out of projects in Vietnam's major cities. Occupancy rates are climbing but are still only 70%. There will have to be further recovery for construction to resume on the abandoned construction sites dotting Hanoi and Ho Chi Minh City.

Any house owner may rent to foreigners, but local residents need permission from their local People's Committees or (in Ho Chi Minh City) the Land and Housing Authority to do so. International-standard office rentals are slightly less expensive in Ho Chi Minh City than in Hanoi.

2.6 Local-content requirements. Vietnam is only just beginning to support import-substitution industries. It will face considerable problems in doing so, however, until it can reduce the level of smuggling. Local-content requirements were announced for the country's motorbike industry in Official Letter 162/TB-VPCP, which went into effect January 1st 2001. Every motorbike assembly factory or joint venture must register the proportion of Vietnamese-made components used in their production process (the so-called localisation rate) with the Ministry of Industry. The producers are expected to lift their localisation rate to at least 30% in 2001. If the target is not met, a punitive tax is levied that rises as the producer's imports rise. If a producer fails to register its localisation rate, it will be barred from business. The eventual target is a 70% localisation rate across the motorbike industry, which most foreign-backed joint ventures are confident of meeting.

2.7 Business associations. Foreign business associations have been growing exponentially since a decree enabling their creation was announced in late 1998. More than ten associations have been given approval to operate in Ho Chi Minh City, including national business chambers representing companies from Australia, France, Germany, Hong Kong, India, Japan, Thailand, the UK and the United States. There is also a Nordic Business Association (Nord-Cham) that represents companies from Denmark, Finland, Iceland, Norway and Sweden. Vietnam has allowed the creation of foreign business associations so it can better respond to issues of concern to foreign investors.

The largest and most influential business association in Vietnam is still the Vietnam Chamber of Commerce and Industry (VCCI—see the Appendix on page 60), which is based in Hanoi. The VCCI, a state-run organisation under the Ministry of Trade, assists Vietnamese firms in trade and in finding investment partners. Foreign firms may be accepted as members. A statute revision in 1993 transformed the chamber into a more autonomous body with more clearly defined duties. Particularly for entities involved in trade, it is considered politically expedient to join the chamber. The first foreign company to join was Mitsui of Japan; there are now nearly 200 foreign members. The VCCI's influence should gradually decline since firms now have other options, although it serves as an advocate for more legislative and administrative reform.

2.8 Establishing a local company. The Law on Enterprises, which became effective January 1st 2000 (supplementing the Law on Companies and the Law on Private Enterprises), is a key legislative development and has had a remarkable effect on business start-ups in Vietnam. It sets out the framework for the establishment, management and operation of most domestic businesses, including limited liability companies, shareholder companies, partnerships and private enterprises.

The new law uses the concept of "negative regulation", by specifying those acts that are banned rather than those that are allowed. The law also provides for the re-organisation of enterprises. Five forms of re-organisation are specified: consolidation, merger, division, de-merger and transformation.

The 1990 Company Law, passed in line with doi moi and other efforts to promote foreign investment, provides a legal basis for private-sector organisations. The law identifies three types of private-sector companies: a limited-liability company, a shareholding firm (a form of privatised state firm) and a private enterprise. See the box on page 23 for a summary of the requirements for the limited company, the most significant form.

Foreign investors are limited to 100%-foreign-owned companies, joint ventures (JVs), business co-operation contracts (BCCs) and several variations of build-operate-transfer (BOT) arrangements. All of these are licensed by the Ministry of Planning and Investment (MPI) or by certain local officials.

The government has drawn up plans to allow foreign-invested firms to "equitise", that is, to issue share capital. The MPI wants to see a pilot version of this scheme carried out in 2001, and 14 foreign firms have asked to participate. Foreign investors are keen on the plan, which could reduce their dependence on debt financing. But if the trial does go ahead in 2001—and this is not at all certain—it is likely to involve just four or five relatively small foreign enterprises.

The reason for the government's caution is that it wishes to avoid giving foreign investors a quick and easy exit strategy: they could simply sell off

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Requirements of a limited company in Vietnam

The following outline distinguishes between limited companies that are organised as joint ventures (JVs) and those that are 100% foreign owned.

Capital. ***Both forms:*** Total investment capital is divided into legal capital (equity, sometimes referred to as prescribed capital) and loan capital. Legal capital must be at least 30% of the total invested capital. Legal capital is like equity and may not be increased without approval from the Ministry for Planning and Investment (MPI). Loan capital includes shareholders' loans or third-party finance and is subject to State Bank approval. There is no minimum capital investment level.

Founders, shareholders. *JV:* The minimum foreign contribution to a JV is 30%, with a ceiling (in theory) of 99%. The Vietnamese partner is generally a state enterprise—though it can be a private company as well—whose contribution to the investment is usually in terms of land-use rights rather than capital. ***Wholly foreign-owned:*** Any such investment must be a legal entity distinguishable from its owner, with limited liability under Vietnamese law.

Management. *JV:* A board of directors, called the board of management, is required. The investors appoint board members in proportion to their contribution to legal capital, but in a two-party venture, each party must have at least two representatives; in a multiparty venture, each party must have at least one representative. A unanimous decision by the board of management is required for the following: the appointment and dismissal of the general director, the first deputy director or the chief accountant; amendments of and additions to the charter of the enterprise. In effect, this gives the Vietnamese partner veto power over these matters, no matter how minor its capital contribution may be. The board of management has the authority to appoint a general director and deputy general directors. Either the general director or the first deputy must be a Vietnamese citizen residing in Vietnam. ***Wholly foreign-owned:*** Organisational and management structure must be described in the charter presented to the MPI during the investment-approval process. Any changes require MPI approval.

Disclosure. ***Both forms:*** The Vietnamese accounting system must be used, unless the Ministry of Finance gives prior approval for another system. The MPI also requires investors to submit various documents, including the memorandum and articles of association, certificate of incorporation, share certificates and bank statements, to verify their legitimacy. Audits may be performed either by an independent Vietnamese auditing company or by another independent auditing company permitted to operate in Vietnam. Financial statements must be completed three months before the December 31st end of the fiscal year and submitted to the Ministry of Finance, the MPI and the General Department of Statistics.

Taxes and fees. ***Both forms:*** Taxes are to be paid in accordance with other tax laws. The incorporation fee varies according to the amount of capital involved but is limited to a maximum of $10,000, payable to the MPI. Bonds and securities are not yet an issue.

Control. *JV:* The board of management is the controlling body in any JV. Given the rules for representation and unanimous voting applicable to the board (see above), the question of control is largely moot. Changes to the Foreign Investment Law in 2000 removed the unanimity requirement for financial matters, but the issue is still a major source of complaint from foreign investors. Delegation of decision-making authority to the foreign-appointed management positions and other contractual mechanisms can help to secure a substantial degree of management control for the majority investor. ***Wholly foreign-owned:*** Obviously, one of the chief advantages of full ownership is that the foreign investor has clear managerial control, although state administrative departments may still try to become involved in a company's business decisions to the extent it is within their jurisdiction.

their stake in an under-performing operation and leave. As a result, equitisation will be permitted only for foreign firms that have been in Vietnam for at least five years, have been profitable for at least two consecutive years and are planning to expand their operations or invest in new technology. Another complication arises in valuing the stakes of JV partners, where the Vietnamese partner has contributed land-use rights instead of capital.

Representative offices are permitted if approved by the Ministry of Trade, but they may not engage in direct profit-making activity (2.1). Decree 45/2000/ND-CP of September 6th 2000 stated that any representative office set up before October 10th 2000 was required by October 30th to send notification to the agency that issued its licence stating the name of the foreign trader, the name of the representative office, its address, location and details of its operation.

2.9 Establishing a branch. The commercial law of May 10th 1997, which came into force January 1st 1998, says foreigners may operate as merchants—which the law defines as enterprises in-

volved in buying and selling of all goods and services—in representative offices or branch offices. This created a legal basis for setting up foreign company branches in Vietnam, but the implementing regulation (Decree 45) came out only in October 2000.

The new rules restrict branch operations to a specific list of exporters (handicrafts, processed and unprocessed agricultural products (except rice and coffee, industrial consumer goods, meat products) and licensed importers of machinery and equipment for the mining, fishery and agricultural industries, or of materials used by producers of pharmaceuticals, fertiliser and insecticides.

Unlike representative offices, branches may receive income. Branches are also permitted to operate under specific legislation: banks, law firms and tobacco companies have received "branch" licences from the Ministry of Trade without specific legal basis. There are also plans to allow branch status in other industries such as freight forwarding, consultancy, advertising, tourism and insurance—partly because of suspicion that representative offices in those industries are carrying out profit-making activities anyway.

Under Decree 24/2000/ND-CP (July 31st 2000), a foreign-invested enterprise based in Vietnam is permitted to open branches and representative offices in foreign countries, repatriating the profits on an annual basis to Vietnam.

Circular 08/2001/TT-BTC of January 18th 2001 altered the tax treatment of foreign branches, increasing their tax rate from 25% to 32% but scrapping the 7% profit remittance tax they formerly paid. The fine print contains some negative changes to a branch's ability to deduct expenses (7.10). The branches must also pay provisional tax on a quarterly basis, but the new circular provides no detail on how rebates or tax credits will be given if the branch's provisional tax payment turns out to exceed actual taxable income.

3.0 Investment incentives

3.1 Overview. The government offers tax breaks to foreign investors in priority industries, with the possibility of profits tax being reduced to as little as 10% in sectors where investment is "especially encouraged". It also exempts foreign investors from a variety of import duties. The tax incentives are codified in the foreign investment law; nevertheless, there remains a good deal of discretion for the authorities to offer incentives on a case-by-case basis.

The range of incentives offered to some foreign firms was widened last year under Inter-Ministerial Circular 10/2000 dated August 15th 2000, which allows foreign nationals of Vietnamese origin (overseas Vietnamese) and foreigners residing permanently in Vietnam to access the same investment incentives Vietnamese firms enjoy under Decree 51/CP of July 8th 1999. This same circular scrapped certain elements of Vietnam's notorious dual-pricing system, under which foreigners used to pay higher rates for everything from transport to hotel rooms to utilities (3.2).

On paper, there have been more tax privileges for foreign-invested operations than for state-operated or private Vietnamese companies, since most foreign-invested companies have paid a maximum profits tax of 25%. But given the hidden costs of being a foreign investor in Vietnam—high salaries for expatriates, higher telecommunications costs, the possibility of corruption costs—the reality is that the lower profits tax is not a significant advantage for foreign investors over local companies.

The authorities generally prefer export-oriented investments since these avoid competition with state companies and help reduce the nation's trade deficit. The exception is with import-substitution industries, which are preferred, and the State Bank guarantees them the right to change their dong profits into hard currency.

The government launched a new suite of incentives for software and other high-tech companies (3.3) during 2000. Industrial parks are proliferating across the country, and many are now starting to offer land rent reductions and other incentives to lure more foreign tenants (3.4). In a series of announcements in early 2001, the government highlighted its intention to launch new incentive programmes this year for foreign investment in primary industries, as well as for machinery and electronics manufacturing and projects in remote areas. Foreign-backed vocational training schools may also be offered reductions in rent and tax bills.

Decree 24/2000/ND-CP of July 31st 2000 has insured foreign investors against any unexpected changes to foreign-investment regulations or incentive policies. The decree states that if a change in law would damage the interests of a foreign-invested enterprise or the parties to a business co-operation contract (BCC), the enterprises or the parties involved can continue to enjoy the incentives already in their investment licence. Otherwise, they may get compensatory incentives or be permitted to alter their operations. If the law is changed to provide more favourable incentives after a BCC or foreign firm gets an investment licence, those changes automatically apply to the foreign firm or BCC contractor.

In the past, the MPI was the final authority on most projects, except especially large or sensitive projects, which had to be approved by the prime minister. Under amendments to the foreign-investment law and over the past three years, provincial People's Committees and sometimes

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industrial parks have the power to license some projects (2.1). To avoid significant delays later, it is always best to check with local authorities first about the category into which a project falls.

3.2 General incentives. Through legislation passed in 1999, a larger number of investment projects are eligible for privileges that previously applied only to those on the list of projects encouraged for investment. Although corporate tax rates are now a flat 32% (7.2), the Law on Foreign Investment allows the Ministry of Planning and Investment to grant special tax incentives to investments it deems exceptionally important to the economy—for example, from 2001 software firms will pay just 10% (3.3). Other special treatment areas are outlined in Decree 10 of January 1998.

Investment projects licensed before November 23rd 1996 now enjoy preferential tax rates and extended exemptions and reductions from the profits tax previously detailed in Decree 12/CP, of February 18th 1997. Wholly foreign-owned enterprises may now carry forward losses, similar to joint ventures.

Investments encouraged in Decree 10 enjoy a four-year profit-tax exemption, starting from the first profit-making year, and companies will also enjoy a 50% reduction for an additional four years. Profit-tax exemption in the past was valid for only 1–4 years. Decree 10 also stated that levies on imported goods would be determined strictly on the basis of the import price.

A measure passed in August 1998 gave similar benefits to build-operate-transfer (BOT—2.1) projects. For BOT projects in transport, power, water, drainage, waste treatment and other industries, there will be a four-year tax exemption and a 50% tax break in the following four years. If BOT projects are in specified locales, developers will receive even more generous benefits—such as an exemption from tax on profits for eight years. After eight years, tax will be paid on only 10% of profits until the project is completed.

A broader incentive has been offered under Circular 13/2001/TT-BTC of March 23rd 2001, which offers a full or partial rebate of corporate income tax payments if the corporate taxpayer either puts all its legal capital to use or reinvests all its profits into domestic projects (7.2).

Previously, goods were often taxed according to a scale drawn up by the Ministry of Finance. Enterprises are permitted a 90-day deferral on payment of import duties on goods used in manufacturing for export. The Ministry of Finance may adjust this period according to the production cycle of the products in question.

Imported construction materials not otherwise made locally may be considered part of the fixed assets of a company. Materials and components used for manufacturing equipment in high-tech industries were added to the existing list of goods exempt from import duties.

In addition, enterprises engaged in hotels, offices and apartments for lease, commercial centres, supermarkets, sports facilities, hospitals, clinics, banking, insurance and consultancy services are eligible for a one-off exemption from import duties for items listed in Decree 10's Annex II (B).

Such items include office furniture, kitchen equipment, audio-visual equipment, water pumps, air conditioners, electrical and lighting systems, and an array of specialist machinery and spare parts needed to run these businesses.

Certain other types of investment mentioned in Decree 10 are entitled to an exemption on import tax of up to five years on production materials. Enterprises making goods or selling goods to another company in Vietnam that are destined for export are entitled to exemption from import tax and turnover tax. For determining taxable profits, interest on loans to enterprises is to be treated as part of the cost of capital construction or production. All contributions paid by enterprises and their investors to Vietnamese organisations for charitable purposes are tax deductible.

Vietnam does not offer special loans, guarantees or grants to foreign investors. There are no personal tax incentives, and none are envisioned—a significant concern for investors with expatriate staff since marginal tax rates rise as high as 50% and may be applied to worldwide income.

Meanwhile, the ongoing phase-out of Vietnam's system of price discrimination against foreigners is not so much an implementation of an incentive as the removal of a disincentive. Inter-Ministerial Circular 10/2000 of August 15th 2000 outlines the procedures for getting a "single-price certificate" from the local people's committee; however, only resident foreign investors and foreign nationals of Vietnamese origin are eligible. The pool of eligible foreigners may be widened in 2001, and the scope of the changes may increase to cover more areas where foreigners now pay more than locals. Most transport and utility charges are still 50–100% higher for foreign residents and investors, but the state-owned telecoms firm, airline and electricity company are all working to narrow the gap.

3.3 Industry-specific incentives. Although the Foreign Investment Law and Decree 10 do not single out any given industry for special investment incentives, the government does give particular encouragement to enterprises that will either export all their goods made in Vietnam or locate in remote and underdeveloped regions clearly identified in Decree 10. Investments in

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high-tech industries or infrastructure development are also given priority.

The government finalised an incentive package for high-tech investments in March 2001. This includes the software industry, but it remains unclear whether hardware and telecoms enterprises are also included. The policy offers foreign-invested information-technology companies a 10% corporate income tax rate, but no tax is payable for the first four years of operation. In the second four-year period, the firms will enjoy a 50% reduction in corporate tax. To qualify, the enterprise or project must source 30% of its materials in Vietnam and export at least 30% of its product. The incentives are even more generous for domestic firms.

Software firms locating in the newly built Quang Trung Software Industrial Park near Ho Chi Minh City qualify for more incentives (3.5).

3.4 Regional incentives. Decree 10 reiterated the special incentives that apply to foreign investment in particular regions of the country—such as mountainous, isolated and remote areas. Such investments under Circular 24/TC/TCT enjoy reductions in turnover tax.

They may also enjoy favourable profit-tax rates. Land rents in remote areas have been reduced to very low levels. Rents have been halved in industrial zones and export-processing zones.

Industrial parks and zones in the southern region of Vietnam have led the way in offering incentives, and they have also streamlined administrative procedures and formalities. The government is concerned that the north and centre of the country may fall behind, and it is moving to implement new incentive packages for investors in these areas.

Authorities in these areas have announced a plan (still to be finalised) to offer land rent incentives for foreign projects in industrial zones. Investors will receive a total rent exemption during the first two years of business and a 25% reduction over the following two years. Build-operate-transfer (BOT) projects will have their rent waived indefinitely, and investors in priority areas will get a seven-year rent exemption followed by three years at 50% rent. It may be some time, however, before these plans get off the ground.

3.5 Export incentives and zones. The government charges zero export tax on most goods from Vietnam, and it offers import tax rebates on goods used to process other goods destined for export. Exporters can now recoup value-added tax (VAT) charges, under rules introduced in 1999 (7.14), or have their goods grouped within the zero-percent VAT tax bracket. Reduced land rents apply to export-processing zones and industrial zones. Customs clearance can also be made inside the zone to speed up the export process. In general, the government encourages any business activities focused on exporting goods.

A new industrial park aimed solely at software and information-technology companies opened in March 2001 in Quang Trung, near Ho Chi Minh City. The park boasts the country's most advanced telecoms infrastructure and modern facilities; it will probably spawn several similar parks in the next year or so. Besides the software-industry incentives outlined in section 3.3, each tenant of the park will get preferential export-tax concessions, lower Internet charges and a $2,000 development grant. Employees of companies in the park will have a higher tax-free threshold for personal income tax.

Meanwhile, industrial zones in the north are still failing to attract much foreign direct investment (FDI), accounting for only 25% of all FDI capital licensed in the country to date. In the northern port city of Haiphong, many registered projects have failed to get started. Some of the zones have yet to provide infrastructure—such as internal roads, water drainage and supply, and electricity.

4.0 Licensing

4.1 Overview. Under pressure from foreign investors, who demanded comprehensive rules before they would import advanced technologies into Vietnam, the Vietnamese government began to make substantial efforts in 1994 to strengthen its legal framework for licensing and protecting industrial property and technology transfers.

The National Assembly passed the Civil Code in early 1995, which superseded previous ordinances and regulations on the subject. The code took effect in July 1996 with the issue of Decree 63/CP, and was followed by implementing regulations on industrial property rights in October and on copyright in November (Circular 3055/TT-SHCN). Two recent decrees, Decree 54/ND-CP of October 2000 and Decree 06/ND-CP of February 2001, updated the rules and toughened the penalties for infringements. In particular, Decree 54 should in theory make it easier for companies to protect trade names and trade secrets. Implementing regulations on technology transfer were released on July 1st 1998 in Decree 45/1998/ND-CP, and penalties for violations were spelled out in Decree 16/2000/ND-CP of May 10th 2000.

A major step forward was made, however, when the United States–Vietnam copyright agreement went into effect in 1998. In July 2000 Vietnam and the US finalised a bilateral trade deal, which both governments are expected to ratify in 2001. The agreement commits Vietnam to meeting WTO standards on intellectual property protection within 18 months of the treaty's ratifica-

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tion. Within a 30-month period, Vietnam will also have to comply with WTO regulations on encrypted program-carrying satellite signals, trademarks, patents, designs of integrated circuits, trade secrets, industrial designs and the enforcement of intellectual property rights. This is further to the US–Vietnam copyright agreement, of December 24th 1998, that allows US companies to take copyright infringers to court.

There are restrictions on the rights of foreign licensers to sublicense technology; tie-in arrangements, for example, are restricted. The restrictions are generally worded in such a way that indicates the foreign licenser may not "unreasonably" restrict the licensee, although the determination of what is reasonable is unclear. The length of permitted licensing contracts ranges from seven to ten years, unless the licensing is part of a foreign-invested joint venture—the term of the arrangement is then subject to negotiation (4.5).

A foreign manufacturer can sell its products into Vietnam by direct importing; by licensing a Vietnamese firm to manufacture the products using proprietary trademarks, methods or industrial designs; or by setting up a venture under the foreign-investment law.

Licensing a local manufacturer generally offers the fastest approach for foreign companies. The licenser can often skirt import restrictions, which can be highly restrictive; may be spared all or part of the cost of market research and marketing; can use the local company's distribution network and expertise, to the extent that the local importer has the latter; and need not commit a substantial investment during the risky initial phase of market penetration. The latter is a particularly big advantage given that many of Vietnam's markets, though promising, are too small to justify large-scale investment in production.

Nevertheless, there are substantial bureaucratic obstacles to establishing a proper licensing operation. The Ministry of Science, Technology and the Environment (MoSTE) must approve licensing arrangements that involve state-operated companies; however, licensing deals with private companies do not have this requirement. All licensing arrangements must be registered with the National Office of Industrial Property (NOIP).

Ministry of Finance Decision 59/1999/QD-BTC, dated May 26th 1999, abolished fees for issuing investment licences. Some foreign investors choose to take a staged approach, beginning with a licensing agreement and moving to direct investment later, as the project develops. The foreign manufacturer will then find a local partner and license the products under the foreign company's trademark. Some licensers may simultaneously enter into a joint-venture contract with a local company to set up a factory for large-scale production, though this is time-consuming. Pending completion of the factory, the foreign manufacturer may export the same products into Vietnam via a local partner under an import licence. Such an import scheme often lasts as long as necessary to complete local production facilities. There have been a number of examples of this licensee-to-joint-venture evolution, for a variety of consumer goods, including 555, Marlboro and Dunhill cigarettes; Coca-Cola, Pepsi-Cola and Schweppes soft drinks; and Heineken, Tiger, Carlsberg and San Miguel beers.

Officials from the General Department of Taxation (GDT) announced in November 1999 that nearly 30% of limited-liability and private companies had "disappeared". Although these companies are still in operation, officials had failed in contacting them. The companies, apparently after obtaining operational licences, closed their registered addresses and relocated without informing the authorities—most likely because of excessive business regulations. Many small businesses simply cannot afford office rentals and move into residential premises once they obtain a licence. Businesses must show land-use documents for their offices in order to be granted operational licences, an impossible demand for small, home-based businesses (since many of these premises are not eligible for land-use certificates).

Rather than amend these regulations, however, the new Enterprise Law (2.8) established a more comprehensive system to keep track of companies.

4.2 Protection of intellectual property rights. Protection of intellectual property rights in Vietnam has been an important concern of foreign investors since the country opened its economy to foreign investment and trade in 1986. With the introduction of the Civil Code (which took effect in July 1996) and accompanying implementing regulations, most intellectual and industrial rights are now legally recognised and protected in Vietnam.

Vietnam took a major step forward when the US–Vietnam copyright agreement went into effect December 24th 1998 (1.6). However, videotapes of American films were still being pirated in Vietnam until a few years ago, and most music CDs and software are still smuggled into Vietnam. The Business Software Alliance estimates that of all business software installed on Vietnamese computers 97% is not authorised.

Guidelines on the implementation of copyright provisions in the Civil Code were issued in government Decree 76/CP on November 29th 1996 and took effect on the same date. The decree supplements the 1995 Civil Code and overrides the 1994 Copyright Ordinance. It elaborates the

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Intellectual property law in Vietnam

Conventions

Paris Convention for the Protection of Industrial Property (1949), Madrid Agreement Concerning the International Registration of Marks (1949), Stockholm Convention (for the establishment of WIPO, 1976), Patent Co-operation Treaty (1993).

Basic laws

Civil Code of the Socialist Republic of Vietnam (July 1st 1996); Government Decree 63/CP Providing Detailed Regulations and Guidelines for Implementing the Civil Code Provisions on Industrial Property (October 24th 1996); Government Decree 76/CP Providing Guidelines for Implementing the Civil Code Provisions on Copyright (November 29th 1996); Circular 3055/TT-SHCN of the Ministry of Science, Technology and the Environment Guiding on the Implementation of Procedure of Establishing Industrial Property Right and other Procedures Stipulated in Decree 63/CP (December 31st 1996); Circular 28/TT-QLKH of the Ministry of Science, Technology and the Environment Guiding the Transfer of Technology into Vietnam (January 22nd 1994); Circular 61/TT-DA61 /TT-DA of the Ministry of Culture and Information Providing Guidelines on a Number of Provisions in Government Decree 48/CP on the Organisation and Activities of the Film Industry (October 1st 1996); Regulations on the Registration of Drugs under the Decision 1203 /BYT-QD of the Ministry of Health (July 11th 1996). Government Decree 12 on Administrative Findings in the Intellectual Property Field (March 6th, 1999); Ministry of Science, Technology and the Environment Circular 825 (May 3rd 2000) implementing Decree 12; Government Decree 54/2000/ND-CP (October 3rd 2000) on industrial property rights and trade secrets; Government Decree 06/2001/ND-CP (February 1st 2001) on industrial property and well-known trademarks.

Patents

Types and duration. The patent system in Vietnam is broadly similar to that of other countries, with some important differences. Computer software is regulated by copyright law rather than patent law. Vietnam also has a very broad compulsory-licensing provision; how this will be interpreted in practice remains to be seen. The use of protected property is defined by the implementing regulations on industrial property as follows.

(1) For an invention or utility solution:
- to manufacture the protected products;
- to introduce the protected process;
- to exploit the protected products;
- to put into circulation, to advertise, offer for sale and store for sale the protected products or products manufactured by the protected process; or
- to import protected products or products manufactured by the protected process.

(2) For an industrial design:
- to manufacture;
- to put into circulation; to advertise, offer and store for sale; or
- to import the product having outer appearance being protected as an appellation of origin of goods.

(3) For a trademark and appellation of origin of goods:
- to fix the protected trademark or appellation of origin of goods in commodities, package of commodities, means of service or documents used for transactions in business activities;
- to put into circulation, to advertise, offer and store for sale the commodities bearing the protected trademark or appellation of origin of goods; or
- to import commodities bearing the protected trademark or appellation of origin of goods.

The author, or his/her inheritor in title, of an invention, utility solution or industrial design may file an application for the protection of these rights. If an enterprise employed the author when he or she created the invention,

meaning of a number of terms used in the Civil Code, such as "author" and "owner of a work", and it contains guidance on issues such as inheritance of copyright and protection periods.

The Ministry of Science, Technology and the Environment (MoSTE) Circular 825 of May 3rd 2000 clarifies when companies may take action against imitation trademarks (see below), and Decree 54/2000/ND-CP of October 3rd 2000 offers new protections to industrial property rights and trade secrets (see below). Decree 06/2001/ND-CP of February 1st 2001 gives the NOIP the power to award the rights to use well-known and widely recognised trademarks, and it sets more-stringent penalties for violating the rules.

The copyright decree reaffirms the principle that copyright arises the moment a work is created, irrespective of whether or not it is made pub-

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Intellectual property law in Vietnam *(continued)*

utility solution or industrial design, the enterprise has the right to file for protection, though the author continues to enjoy certain "moral" rights. The same principle applies for an invention, utility solution or industrial design created under a scientific or technological research-and-development contract, unless otherwise agreed in the contract. A Vietnamese national or legal entity may file a patent application directly with the National Office of Industrial Property (NOIP), as may foreign individuals "permanently residing in Vietnam" or foreign companies with offices in Vietnam. All others must file through a licensed representative service organisation in industrial property.

The NOIP examines patent applications and maintains the patent register. It also has an extensive patent information centre, which provides search materials for patent examinations.

The three types of patents are described in the Civil Code, as follows:

(1) An ***invention*** is a technical solution that is distinguished by having worldwide novelty in terms of the present state of technology, is non-obvious and is applicable to various social and economic fields (Civil Code, Article 782). A patent for an invention is valid for 20 years from the date the application is submitted.

(2) A ***utility solution*** is a technical concept that is distinguished by having a worldwide novelty in terms of the present state of technological development in the world, and is applicable to various economic and social fields (Civil Code, Article 783). Prior legislation required only novelty compared with Vietnam's technical level; the change was made because the government felt this might discourage creativity. A patent for a utility solution is valid for ten years from the date the application is submitted.

(3) An ***industrial design*** is the shape of a product that is formed by lines, three-dimensional forms and colours, or a combination thereof, that has worldwide novelty and is used as an ornamental pattern for industrial or handicraft (Civil Code, Article 784). A patent for an industrial design is valid for five years from the date the application is submitted and may be extended for two successive five-year terms.

Unpatentable. The following may not be protected as inventions or utility solutions: scientific intentions, principles and inventions; methods and systems of education, teaching and training (including training of domestic animals); language systems, information systems, classification and arrangement of data; designs and layouts of construction projects, planning and classification of territorial characteristics; agreed signs, schedules, rules and laws, symbols; computer software, computer chip designs, mathematical models and diagrams used for reference and similar forms; breeds of animals and seeds of plants; methods of disease prevention, diagnostic methods and treatments.

The following may not be protected as an industrial design: outer appearance of products that are easily created by a person of average professional knowledge in the relevant technical field; outer appearance of civil or industrial construction works; appearance of a product that has only aesthetic value.

Compulsory licensing. There are three conditions under which Vietnam may order owners of an industrial right to transfer the right to use inventions, utility solutions or industrial designs. The owner must receive "reasonable" compensation, though what constitutes reasonable is not clear. The Ministry of Science, Technology and Environment (MoSTE) is the enforcing agent in such cases; MoSTE may also ask the parties concerned to negotiate to resolve discrepancies in opinions in order to enter into a "voluntary" licensing.

Fees. The official fees for filing various patents range from $60 for registering a licence contract to $100 for filing a patent application. Patents are also subject to an annual annuity payments of $30–280. Additional charges for claiming convention priority, appeals and other processing may also apply. Charges are subject to revision by the NOIP. Agents' charges are $100–250 for services related to registration.

Trademarks

Types and duration. The Civil Code defines trademarks as the symbols used to distinguish goods or services of the same kind made by different producers. It adds that a trademark can be expressed by words, images or a combination thereof in one or several colours.

lic at that time. Making a work public connotes its presentation in the form of publication, performance, broadcast or other forms. Neither the civil code nor the copyright decree tie ownership to registration. The decree outlines procedures for registration, although these apply solely to domestic authors and owners.

Decree 63/CP, dated October 24th 1996, is the main legal document outlining the licensing of patents, utility solutions and industrial design trademarks. Guidance on its implementation was issued in Dispatch 2375 on October 10th 1997. The dispatch highlights the numerous problems in applying copyright regulation, including a dearth of experts on intellectual property and a general lack of awareness among the Vietnamese people about what copyright is and why it should be protected. It calls on all local People's Commit-

Intellectual property law in Vietnam *(continued)*

The right to file an application to protect a trademark belongs to:

- a person or legal entity engaged in production activities for the product on which the trademark will be used;
- a person or legal entity engaged in service activities for the product on which the mark will be used;
- a person or legal entity engaged in commercial activities for the product on which the mark will be used, as long as the producer does not oppose title application; or
- a person or legal entity representing a collective group using collective trademarks.

A trademark is protected for ten years from the date of application, and it may be extended indefinitely by additional ten-year terms. A registered trademark can be cancelled if the mark has been registered for at least five years and was not used in Vietnam during the five years prior to the filing of a cancellation action. Past law said that a cancellation of a trademark could be pursued only if the mark was not used during the five years following the registration date.

A trademark can also be cancelled if it is ruled that the registered mark was identical or confusingly similar to a mark registered before it, to a well-known mark in accordance with the Paris Convention or to a widely used and recognised mark. Holders of widely recognised marks are able to claim rights over those marks.

Non-registrable. Under Vietnam's intellectual property law, the following signs may not be registered:

- signs that do not possess distinctive characteristics, such as shapes and simple geometrical shapes, numerical figures, alphabetical letters or letters that cannot be pronounced as an expression; foreign languages that are not widely used, except in exceptional cases where the signs have been widely used and recognised for a long time;
- signs, conventional symbols or common figures and denominations of goods in any language that are widely used and a matter of public knowledge;
- signs expressing time, place, manufacturing process, type, quantity, quality, nature, composition, purpose or values that are of a descriptive character in relation to the product, service or appellation of origin of goods or services;
- signs that are liable to mislead, confuse or swindle the customer over the origin, nature or purpose of the product; quality or value of goods or services;
- signs that are identical or similar to official initials indicating control, quality or warranty of Vietnam, foreign countries or international organisations; or
- signs, names (including photographs, names, pseudonyms or pen-names), shapes or symbols that are identical or similar at a level that may cause confusion with the national flag, national emblem, portraits of national leaders or heroes, geographical designations or Vietnamese or foreign organisations, except where permission has been obtained.

Fees. The registration fee for filing a trademark registration starts at $60 per class. An additional $45 is charged for claiming convention priority. The fees for amending a registration range are $15–45. Agency service fees vary; however, there are a number of licensed intellectual property agents in Vietnam whose services and charges are competitive. The agent's service fee for registering a trademark in one class starts as low as $120.

Copyrights

Types and duration. Articles 745 through 779 of the Civil Code address the issue of copyrights. Authors are defined as those who personally create all or part of a literary, artistic or scientific work; persons who translate, modify or transform an existing work; persons who compile works or comment and collect the works of others and form new and creative works.

Copyrights arise at the time a work is created in a definite form, regardless of whether it had been made public at the time. Intellectual property law in Vietnam makes a distinction between "moral rights", "personal

tee officials to organise staff to manage copyright issues, to implement awareness campaigns and to police local compliance with copyright laws.

The understanding of the role of patents, copyrights and utility solutions is increasing rapidly, largely as a result of the introduction of the legislation noted above. Trademarks and industrial designs are well-established concepts in Vietnam, and they have been commonplace for some time. As might have been expected, the lifting of the US trade embargo led to a surge in US registrations.

The Civil Code and its implementing regulations have had first-to-file trademark registration since 1993 (it had been a first-to-use system). The essential principle is that industrial property rights are obtained through registration. To be granted the rights of industrial property ownership, a party must register industrial property rights with

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Intellectual property law in Vietnam *(continued)*

rights" and "economic rights" conveyed in a copyright (4.2). Moral rights are protected indefinitely; other personal and economic rights are protected either for the author's lifetime plus 50 years or for 50 years from the date the work is first publicised.

Works that are covered by copyright protection are as follows:

- works written in characters or in signs such as novels, stories, short stories, notes, travelogues, essays, memoirs, poems, epics, dramas, pieces of music, cultural, literary and artistic studies and other writings;
- lectures and speeches prepared in writing or orally presented but recorded and circulated as written documents;
- theatrical works and other forms of artistic performances presented on stage, such as plays, songs, dances, circus and puppetry;
- cinematographic and video works with or without sound;
- radio and television works created for transmission by radio waves to the public;
- press works, including printed, spoken and visual press in Vietnamese, languages of ethnic minorities in Vietnam or in foreign languages;
- musical works, including vocal and instrumental music;
- architectural works, including designs with creative ideas involving houses, construction or space planning already or not yet materialised;
- plastic art works and applied fine art works;
- photographic works that record images of objects on photosensitive materials;
- scientific works, textbooks, teaching materials in the fields of research, teaching and training;
- graphics, drawings, diagrams and maps for topography, architecture or scientific projects;
- translated, re-created, adapted, transformed works and compiled, annotated, selected and anthological works; and
- computer software, including computer programs, documents describing programs, supportive documents, and databases.

The implementing regulations on copyrights, however, do not extend protections to foreign works. Several foreign countries are attempting to conclude bilateral trade agreements with Vietnam that would cover copyright issues. Vietnam and the United States signed an agreement for protection on copyright in June 1997, which came into effect on December 24th 1998. The accord gives so-called "national treatment" to protect against the illegal copying and distribution of literary, musical and dramatic works, audio-visual works and technology. That means US copyright holders get the same protection in Vietnam as that given to any Vietnamese copyright holders. The agreement makes specific reference to protection against unauthorised copying and sale of films and computer software (pirating of software is almost 97% in Vietnam).

The agreement states that "the contracting parties shall ensure the holder in a work shall have the exclusive right to authorise and prohibit the reproduction of a work, preparation of derivative works based upon the work, and the distribution of copies of works:

"In the case of literary, musical, dramatic and choreographic works, pantomimes, and motion pictures and other audio-visual works, the public performance of work; and

"In the case of literary, musical, dramatic and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audio-visual work, the public display of work".

Fees. The fees for registering copyright are $40–50. If an agent is needed for the process, agent fees begin as low as $100.

the NOIP. This gives the party sole right to use the property, as well as the right to transfer it and the right to petition the government to stop acts of infringement and sue for damages in court. Multinational companies should waste no time in registering their trademarks.

Decree 54 of October 3rd 2000 represents a major step forward for industrial property protection, at least in theory. It covers trade secrets, offering them protection whether or not they have been registered with the NOIP—arguably, a partial return to the first-to-use system. Rights of ownership over these kinds of property can be established automatically if certain conditions are satisfied. Another section of the decree clarifies when companies may take action against unfair competition in industrial property matters.

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The NOIP remains the principal authority for administering the country's laws and regulations on industrial property rights. It is responsible for registering property rights, disseminating the registrations to concerned or interested parties, settling disputes over the rights, and filing licensing contracts and technology-transfer contracts approved by the MoSTE. The NOIP is based in Hanoi but has jurisdiction over all of Vietnam.

To enforce an industrial property right against imitations in the market, the holder of a Trademark Registration can ask the NOIP for an official evaluation, either directly or though an industrial property agent. The request must be in writing and provide proof of the legal trademark, an evaluation certificate and a sample of the imitation goods. Once the company has received an official evaluation, it may then ask MoSTE to enforce the trademark.

In the past, however, the courts and the police were often bypassed altogether: direct negotiations between the foreign company and the infringer were often the most effective way of halting a violation. It is still advisable for foreign companies first to contact the infringer directly; if nothing else, the fact that an attempt was made to resolve the issue amicably can be pointed out if the case goes to court. But foreign investors should go into such meetings with their eyes open. It is not uncommon for infringers to demand payment before stopping production of the item in question.

It was previously considered difficult to establish trademark violations in court, but Circular 825 spells out the three criteria: the same symbol on the same kind of good, a similar symbol on the same kind of good or the same symbol on a similar kind of good.

A high-profile case in 2000 involved motorcycle manufacturer Honda Vietnam, which is battling a wave of imitation bikes, some bearing the brand-name "Hongda". In China, Honda was successful in a court case against the producers of Hongdas; in Vietnam, however, it has instead opted to take out full-page newspaper advertisements in Vietnamese newspapers warning local bike assemblers to stop producing imitation bikes. Although Honda obtained copyright protection from the NOIP for its "Wave" design, local assemblers simply blended components from imitation Wave bikes with those from other bikes in order to circumvent the ruling.

Another recent case involved La Vie, a bottled-water joint venture between Perrier Vittel Group of France and Long An Trading Company of Vietnam. With a 40% market share and a good reputation, La Vie has long been plagued by look-alikes. It came up with its own strategy in March 2001 to beat the copycats: an expensive redesign of its bottle and logo. The company's bet is that the fake bottlers will not have the money to refit their own production lines.

Before implementing regulations for the Civil Code were released, there were high hopes Vietnam would soon be able to accede to the Bern Convention for the Protection of Literary and Artistic Works. But the implementing regulations on copyright, which were released in late November 1996, do not extend copyright protection to foreign works, postponing the issue to "future legislation". In addition to disappointing foreign software manufacturers and the entertainment media, the omission is virtually certain to ensure that Vietnam will not be able to join the Bern Convention for the time being. There has been no clear indication from the Ministry of Culture and Information, which has authority over copyrights, when such legislation might be released. In the meantime, counterfeit software, music CDs and paperback novels are rife in Vietnam, particularly in the south.

4.3 Registering property. For a property to be protected in law by the Vietnamese government, the owner should apply for the granting of a patent certificate, also known as a Trademark Protection Certificate. The law recognises five types of industrial property rights (see the box on page 28).

The National Office of Industrial Property (NOIP) is empowered to consider applications for protection of industrial properties, issue registration certificates and publicise protected objects under official procedures. If a foreign company has an authorised presence in Vietnam—that is, a representative office or a registered investment—it can apply directly at the NOIP for registration; otherwise, registration must be via a licensed industrial property agency, which forwards applications to the NOIP. Such agencies do not advise on the strategic and legal considerations involved.

The right of protection depends on the priority date, which is the date when the certificate of registration is issued by the NOIP or the date dictated by an international treaty to which Vietnam is a party. The term of validity, however, runs only from the date the application is filed. Applicants claiming a right of priority under an international treaty have the burden of proof to establish that right.

Applications for registration of industrial property rights should be filed with the NOIP on forms published by that office. The following documents and information must be submitted in Vietnamese: name of the company, address, nationality, name of the product and/or trademark, and a description of the product and/or trademark if it is a utility solution. If the applicant does not

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have a representative office or licensed investment in Vietnam, a letter from a licensed industrial property agency must also be submitted.

Other required documents include a notarised power of attorney from the applicant (if any); a licence or sub-licence of right to file an application (if any); and, if claiming convention priority, the date, place and number of the first filing, to be followed within three months of filing by a certified copy of the original applications. Additional requirements may apply, depending on the type of property being registered. It is a common requirement that the applicant should include 15 samples of the trademark, a range of other supplementary information and duplicate copies of various documents. Any accompanying foreign-language submissions must include a translation into Vietnamese. Contracts may provide that each language version will be equally binding, but the English version may not control.

The NOIP is supposed to examine an application for a basic form within 15 days of its being received, but it is allowed up to three months to do so. A more detailed examination follows, for which up to nine months is allowed. If the application passes this scrutiny, applications for patents of invention are supposed to take 18 months from the date of application to the issuance of a certificate, according to the NOIP; for utility solution and industrial design patents, it is supposed to take nine months; for the appellation of origin of goods, it is supposed to take six months; applications for trademarks are supposed to take one year. In general, the NOIP is one of the better organised and more efficient Vietnamese government offices—for example, its operations are fully computerised. It is also one of the less corrupt government offices, and it is possible to go through the entire application process without paying any bribes.

Transfer of industrial property rights, except appellations of origin, are possible, but they must be executed by a written contract approved by the MoSTE and filed with the NOIP under the rules on licensing and transfer of technology in Decree 45/1998/ND-CP.

4.4 Negotiating a licence. Potential local partners may be found through a business directory—the most reliable one published by and available through the Vietnam Chamber of Commerce and Industry (VCCI—see the Appendix on page 60) or in local bookshops.

Narrowing a list of prospects to a few candidates is especially difficult in Vietnam, given the lack of public information about the finances of companies. Nevertheless, since the wrong choice can be very expensive, it is advisable to spend the extra time and, if necessary, money on the selection. A professional and knowledgeable local consultant might be very helpful in short-listing candidates and conducting a comprehensive comparative study on the remaining ones. When choosing such a consultant, always try to make sure the person does not have a personal stake or interest of any sort in the decision.

Since many potential partners have limited knowledge about the value of transferred know-how, they are often very reluctant to pay the price required by the licenser. As a result, the foreign partner must sometimes be deeply involved in the business of the local partner in order to guarantee the most effective use of the licence.

Information on licensing agreements may be obtained from the National Office of Industrial Property or industrial property agents (4.3).

4.5 Administrative restrictions. Before it can become effective, a licensing contract between a Vietnamese concern and a foreign company must be approved by the Ministry of Science Technology and the Environment (MoSTE) and filed with the National Office of Industrial Property (NOIP). As noted, implementing regulations on technology transfer have not yet been released; in lieu of them, most foreign investors refer to the implementing regulations on industrial property rights, which do deal to some extent with technology transfers.

Decree 63/CP (October 24th 1996), Circular 3055/1T-SHCN (December 31st 1996) and Decree 06/ND-CP (February 1st 2001) regulate the licensing of patents, utility solutions, industrial-design trademarks and to some extent technology transfers, superseding previous documents. Circular 3055 says that a licence contract may not "unreasonably" limit the rights of the licence transferee by

- limiting the export of products produced under licence to places where the foreign investor does not already have industrial property rights for the product;
- obliging the licence transferee to buy raw materials, parts and equipment from a person chosen by the foreign investor;
- banning the licence transferee from improving the product;
- requiring the licence transferee to transfer free of charge such improvements to the foreign investor;
- banning the licence transferee from making a claim against the validity of the industrial property right; and
- banning the licence transferee from awarding an exclusive subordinate licence.

There are no longer any restrictions on which kinds of Vietnamese organisations may sign licensing contracts with foreign companies. As noted above (4.1), only licensing agreements in-

Recent licensing agreements in Vietnam

Metro, a German supermarket chain, won a 50-year licence in March 2001 to begin a $120m agricultural processing and retail/wholesale operation in Vietnam. It will set up Metro Cash & Carry Vietnam, with registered capital of $30m. Its initial project will be the $55.6m development of two cash & carry centres, one in Hanoi and one in Ho Chi Minh City. Its overall goal is a national network of eight centres.

SOCO Vietnam, a US oil firm, has signed a deal with local oil giant PetroVietnam to prospect in Block 09-2 in the Mekong Sedimentary Basin off the southern coast. Signed in December 2000, it was PetroVietnam's sixth exploration deal for the year, its fourth deal with SOCO, and its 43rd since 1998. Each side has a 50% stake, and a preliminary study suggests plentiful reserves.

Groupama, a French insurance firm, became only the second wholly foreign-owned non-life insurer to get a licence to sell non-life insurance in Vietnam. The prime minister gave an in-principle agreement early in 2001. Groupama already had representative offices; it will focus on selling agricultural insurance.

International Development Programme (IDP) Education Australia, a language-teaching and education promotion organisation with an existing operation in Vietnam, obtained a licence in March 2001 to set up a $300,000 English-language teaching school offering examination tuition and general languages classes. An increasing number of such foreign-invested projects are appearing in Hanoi and Ho Chi Minh City.

Mana Technology Group, based in the US, won a licence in March 2001 to manufacture liquid crystal displays (LCDs) in a $35m joint venture with HTV of Ho Chi Minh City. Mana holds a 96% stake, and the joint venture has leased two hectares of land in Dong Nai Province's Loteco Industrial Park (near Ho Chi Minh City). Because the project was less than $40m, it used the new licensing system that ensures approval within 24 hours. All output will be exported, ensuring that various tax incentives apply, and revenue of $500m a year is anticipated once the factory starts operations in 2002.

City Com Enterprise, based in the British Virgin Islands, licensed a joint venture with local firm Gia Man Construction Co in January 2001 to build a $1m entertainment complex in Ho Chi Minh City. The licence has a 13-year duration.

volving state companies must be approved by the MoSTE; agreements involving private firms may go directly to the NOIP. The terms of licences ranges from seven to ten years, starting from the date of approval.

A compulsory licensing provision permits the government to order or force an owner to transfer the right to use an invention, utility solution or industrial design for "reasonable compensation". The civil code sets the following three conditions under which this may happen:

- The owners have failed to use such industrial property or have used the same in a manner not in accordance with the needs of the economic or social development of the country without reasonable motive;
- The persons needing to use such inventions, utility solutions or industrial designs have negotiated with the owners in different ways and offered a reasonable price, but the latter still refuse to conclude a contract for the transfer of the right; and
- The use of such industrial property is necessary to meet the needs of national defence, national security, health or other needs of society.

Clearly, this is a potentially broad right; as such, it is of concern to foreign investors. So far, however, no cases of compulsory licensing have taken place in Vietnam.

Another potentially worrisome restriction is that inventions, utility solutions, industrial designs, trademarks and appellations of origin may be used without permission or compensation to the owner when the industrial property right is not used for commercial purposes or when the industrial property right is used in connection with products that have been marketed by the owner, prior users or the licensee of the industrial property right.

Any dispute arising in the course of a contract must first be addressed through procedures specified in the contract. If a contract fails to specify how to resolve a particular dispute and the two sides fail to negotiate a solution, the case may be referred to arbitration or the economic courts.

A foreign company transferring industrial property rights as part of a licensing agreement must pay a tax on royalties. But if the transfer of patents, technical know-how, technology processes or technical services is used as part of the capital contribution of a foreign-invested enterprise, there is no tax related to the technology transfer.

The MoSTE issued Circular 28/11-QLKH in January 1994 on the Transfer of Foreign Technology into Vietnam, which sets royalties of 1% to 5%. Most royalties tend to be 3% for patents and other proprietary technology and 1% for trademark licences. If a foreign individual or organisation is the recipient of the transfer of an industrial property right, the MoSTE must approve the contract.

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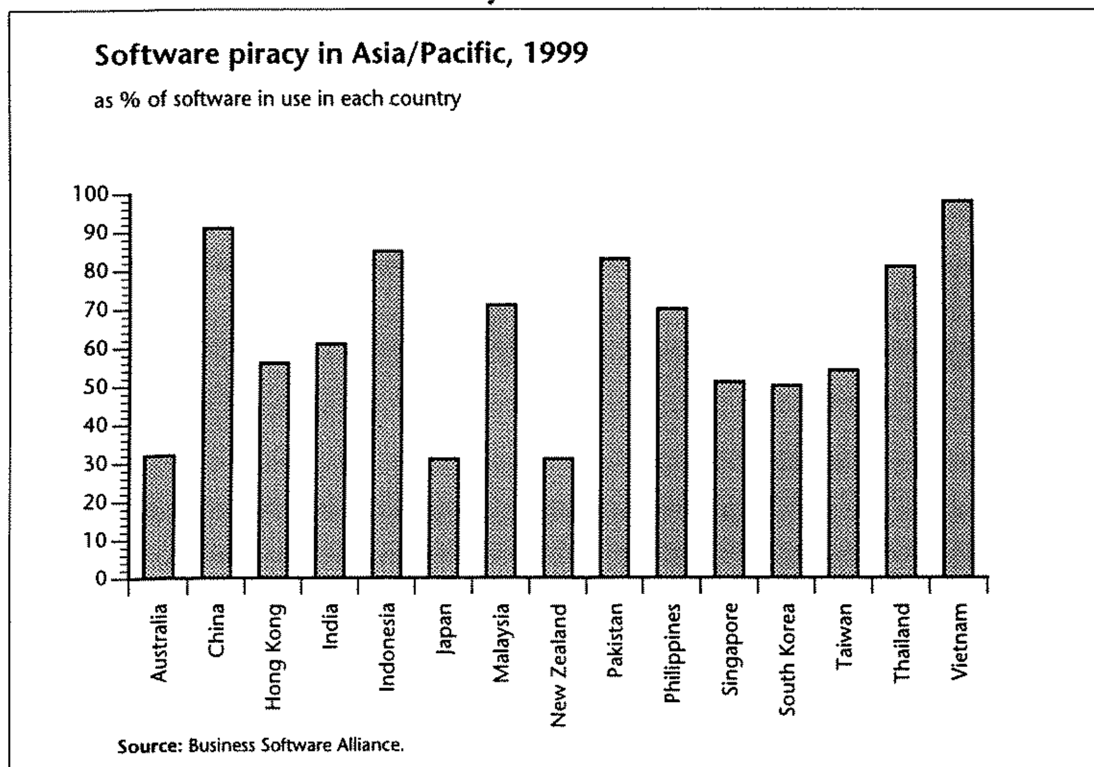

5.0 Competition and price policies

5.1 Overview. Vietnam is only slowly emerging from a centrally planned, socialist economy dominated by state-owned monopolies. The government sees the merits of market competition—in particular, that it makes Vietnamese firms more competitive. But the authorities are still preoccupied with the potential job losses and corporate insolvencies that might follow from giving free rein to competition. Moreover, it is also worried about the fate of consumers: in some industries, public subsidies are the only thing keeping prices from rising, and introducing competition might cause prices actually to increase over time in those industries.

This explains the government's very slow work on a competition and antitrust law. There is a plan on the drawing board, but it is unlikely that legislation would pass the National Assembly before 2003 (5.2).

In some sectors, however, the government is experimenting with limited deregulation or competition. For example, telecommunications was opened to domestic competition in October 2000. VNPT, the state-owned telecoms company, now competes with the army's Vietel and Saigon Postel, another publicly owned firm. A floor price has been set to discourage too much competition, but Vietel has still undercut VNPT on long-distance call charges by 50%. Its service has run into congestion difficulties, however, because Vietel depends on VNPT for access to the network. The two have already conducted a public dispute in which Vietel accused VNPT of restricting the new entrants' ability to lease more lines and expand their services. Interestingly, the industry regulator, the General Department of Post and Telecommuncations—which has long-established links with VNPT—was reluctant to get involved.

The ongoing equitisation process at state-owned enterprises is continuing to enhance the scope for competition in various industries, and only a few sectors—like coal, oil and electricity—are still genuine monopolies. In many industries, however, most competitors remain state owned, which lets the government step in and dictate terms of competition.

Most state firms now charge market prices, although telecoms remains a notable exception. VNPT has announced a 10–25% cut in charges, with effect from July 1st 2001; however, the company will still use its vastly inflated rates for international calls to subsidise the costs of local calls. Other industries have price floors or ceilings set by the government, including gas (5.6), transport, water and electricity.

Competition will continue gradually to seep into the economy, but the government continues to take an active role in decisions that in other countries would be left to the free market.

5.2 Monopolies and market dominance. The government's ambivalent attitude towards com-

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petition (5.1) is reflected in its planned competition and antitrust legislation. Several workshops were held with the business community in late 2000, and the broad outline of the new law was unveiled. Essentially, the new law will not apply to banking, minerals, oil, gas, water, electricity, aviation and post and telecommunications, which will have specific competition laws of their own. Some state monopolies will also be able to apply for an exemption from the law.

The law will contain tough penalties for firms that engage in price collusion, dumping and market manipulation; so far, however, there are no indications how this will be enforced or which agency will be responsible. But in addition to tackling monopolies and oligopolies, the government also wants to prevent "excessive competition"—that is, the government may intervene to set floor prices if it feels competition is getting cut-throat.

5.3 Mergers. Foreign-invested enterprises have received some limited legal guidance on merging with other similar firms from Decree 24/2000/ND-CP of July 31st 2000. Detailed implementing regulations will be required, however, before firms will be able to either use the new procedures or understand their effect.

The government's reduction in the number of state-operated companies from 12,300 to 5,400 was achieved partly by mergers, but foreign participation will probably not be allowed in any additional such mergers, at least not in the immediate future.

5.4 Freedom to sell. Vietnam's first attempt to codify the rights and responsibilities of traders appeared with the Commercial Law of May 10th 1997, which came into force on January 1st 1998. Its general aim is to "regulate commercial acts, define legal status of merchants, and prescribe principles and norms for the conduct of commercial activities". It also, though only by implication, creates the first legal basis for foreign companies to set up company branches (2.9). What previous legislation the commercial law repeals is by no means clear. And with implementing regulations yet to be issued, it is also not clear how the law might be applied.

This law sets ground rules for fair competition and prohibits what it qualifies as unlawful competition. This includes bribery, threats to competitors and their employees, infringing trademark and copyright, and product dumping—an accusation that Vietnamese soft drinks companies have levelled against the makers of Coca-Cola and Pepsi-Cola, which now dominate the market with aggressive marketing and cut-throat pricing.

The commercial law also describes circumstances in which companies may conduct sales promotions. Firms may supply samples of goods free of charge, send gifts of goods free of charge, sell goods at a discount during promotion periods and couple vouchers or other bonuses for advertised prizes. A company must notify the local authorities before any promotions take place, and sometimes obtain written approval.

Decree 32/1999/ND-CP, dated May 5th 1999, stipulates that only Vietnamese business entities, foreign-invested enterprises, and foreign business entities with a representative office or branch in Vietnam may directly, or through an advertising company, advertise their products, business activities and commercial services. Foreign businesses that do not have a local representative must employ a Vietnamese advertising company. Decree 32 also sets out provisions relating to trade fairs and exhibitions.

Decree 32 places restrictions on the content and location of billboard advertising, but no regulations have been issued that clarify the policies and procedures for obtaining permission for outdoor advertising. Municipal authorities in Ho Chi Minh City issued Directive 14 in May 2000 that placed new restrictions on billboard advertising; Hanoi followed suit with Decision 10/2001/QDUB in March 2001. Spending on advertising and promotions is capped at 7% of revenue, and beer companies in particular are calling for these limits to be raised to 13–15%. The government is planning to announce new legislation covering the advertising industry during 2001.

Certain types of sales promotion are expressly banned, including promotions of beer and spirits, and of cigarettes to children under age 16. Promotions are also banned from being staged outside schools, hospitals and other designated places.

Both Decision 178/1999/QD-TTg (August 30th 1999) and Circular 34/1999/TT-BTM (December 15th 1999) came into effect on January 1st 2001. They provide strict regulations on labelling of goods manufactured in Vietnam for domestic use or for export, as well as goods manufactured overseas and imported into Vietnam. It is now compulsory to display the name of the goods and their origin, the name and address of the business responsible for the goods, the quantity, composition, main quality standards, manufacturing date, use-by date, preservation and guidance for use.

The rules also require that the major language on the label should be Vietnamese, unless the goods are made-for-export. If a foreign foodstuff is imported, the supplier must supply a label with the contents listed in Vietnamese or add a supplementary label in Vietnamese.

5.5 Resale-price maintenance. No regulations exist on minimum resale prices or similar con-

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trols, other than government price controls that apply to state-operated enterprises (5.6).

5.6 Price controls. Price setting represents a dilemma for the government. On the one hand, it is trying to promote competition and market mechanisms; on the other, it is concerned about controlling inflation and ensuring that prices for basic goods are within the reach of the majority of the populace. The government continues to set rates for electricity, telecommunications and water and also fares for train and air travel. For all of these, the rates are still higher for foreigners—though some have begun to come down.

In some industries, the government has had to concede that price controls are ineffective. The country's gas retailers, for example, have been labouring under a price cap imposed by the government in a bid to encourage Vietnamese consumers to start using gas. This worked well when the state-run local gas plant, Dinh Co, could meet 100% of market demand. It is now down to 85%, and a spate of malfunctions at the plant often cut this percentage much further. As a result, gas retailers were forced to import gas at much higher prices but still sell it at fixed rates. Heavy losses, which the government was forced to subsidise, finally prompted a change in February 2001. The reform is a compromise: the price is pegged at 5–10% below the imported gas price. This way, gas retailers are still encouraged to source their stock from Dinh Co, but prices are less restrictively fixed than before. The interesting feature of the case is that the government showed itself to be prepared to let the consumer carry a price increase—an unusual first.

It will be impossible to continue trying to maintain price controls if Vietnam sticks by its intent to join the ASEAN Free-Trade Area (AFTA) by 2006 and, later, the World Trade Organisation. Opening markets and freeing trade from quotas is an integral part of both treaties. Vietnam has made progress on a tariff-reduction schedule for AFTA entry, but much work lies ahead. Meanwhile, the government has implemented new taxes on the sale of goods within the country that will recoup the expected losses of import tariff revenues after joining AFTA and the WTO.

6.0 Exchanging and remitting funds

6.1 Exchange controls. Legitimate foreign-currency trading has been allowed on the foreign-currency interbank market since October 1994. The market is intended to allow banks to trade in foreign currency with one another, to regulate the amount of foreign currency in the market and to maintain the value of the dong in line with government monetary policy.

The government sets the official foreign-exchange rate by averaging rates from the previous day's interbank transactions. This crawling-peg system has set up a trading band allowing dong/dollar exchange deals to be executed within 0.1% of the official rate.

The interbank market is weak and subject to intensive government management, in a (thus far successful) attempt to prevent a rapid slide in the currency's value. The State Bank of Vietnam, the central bank, is said to be planning reforms to the operation of the interbank market later in 2001, guided by the principles of flexibility and stability.

The government's other key concern is to prevent the "dollarisation" of the local economy. To this end, any person or organisation changing dong into US dollars must declare the origin of the money, and there are several restrictions on such transactions. Decree 05/2001/ND-CP of January 17th 2001 loosened these rules—to a certain extent. Foreign-invested firms are now allowed to buy foreign currency to meet current payments—a privilege formerly granted only to infrastructure projects; however, they must also change half of their foreign-currency earnings from exports into dong. A circular and implementing regulations for Decree 05 was to be issued in April 2001.

The new decree updates the key legal documents in this area: Circular 01/1999/TT-NHNN7, issued by the central bank on April 16th 1999, and Decree 63/CP/1998/ND-CP, the decree it implements. The circular covers a wide range of foreign-exchange and banking issues, such as the following: establishing and operating bank accounts, purchasing foreign currency, taking cash and gold into and out of Vietnam, and establishing foreign-exchange counters by credit institutions in Vietnam.

It also deals with the foreign-exchange activities of credit institutions generally, the use of gold and principles for determining the dong-to-US dollar exchange rate. Most importantly, it details circumstances in which residents and non-residents may make and receive foreign-currency payments.

In an earlier step to limit access to hard currency, the government issued Decree 31 on February 24th 1998, under which companies could hold only one foreign-currency bank account in Vietnam. Moreover, that account could hold no more money than necessary to cover the firm's needs for the coming month. Companies had to close all but one account and sell to the State Bank of Vietnam (SBV) any foreign currency deemed to exceed their immediate needs for dong. After an outcry from foreign investors, the SBV issued a regulation on March 26th 1998 allowing a company to establish a second foreign-currency bank account after requesting permis-

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sion from a local branch of the bank. In a further move in Decree 24, foreign investors may now maintain an offshore bank account—previously permitted only if its sole and express purpose was to facilitate foreign-loan repayments.

6.2 Capital inflow and repatriation. There are no restrictions on receiving inward remittances. However, all inward remittances of foreign currency must be converted to Vietnamese dong or be deposited into a foreign-currency bank account; in any event, half of all foreign-currency earnings must be converted into dong. Although any enterprise or individual can open a foreign-currency account, outward remittances may be made only to pay for imported goods and services. Foreign investors are allowed to repatriate the following:

- profits made from business operations;
- payments received for provision of services and transfer of technology;
- principal and interest of offshore loans and credits;
- invested capital; and
- other sums of money and assets legally owned by the foreign partner.

All remittances must be made through a local bank account registered with a provincial or municipal branch of the State Bank of Vietnam, the central bank. If an enterprise is terminated or dissolved, foreign investors have the right to transfer abroad the capital invested and reinvested in the enterprise, as long as all tax and other liabilities have been completed. If this amount is greater than the original amount of capital and invested capital, the excess may be repatriated only with the approval of the body that issued the original investment licence.

6.3 Profit remittances are allowed. Profits are defined as the difference between total revenue and expenditure, and the foreign-investment law clearly stipulates the components of each. Export-oriented enterprises have preference in remitting profits.

Profit withholding tax was abolished for foreign company branches in Circular 08/2001/TT-BTC (January 18th 2001), but the change was retrospective for the 1999 fiscal year (January 1st through December 31st) for branches that have not already calculated their tax liabilities. There have been some complaints, however, that provincial and district-level tax officials unaware of the change are still adding the 7% tax to their assessments of enterprises' tax liability.

For other foreign investors, profit withholding tax rates depend on the form of investment. The rates were lowered by Decree 24/2000/ND-CP (July 31st 2000). A 3% rate applies to foreign nationals of Vietnamese origin, foreign investors investing in industrial zones or export-processing zones, and those contributing more than $10m in capital towards a business co-operation contract (BCC). This rate might also apply to investors in disadvantaged parts of the country. A 5% rate applies to foreign investors contributing $5m–10m to a BCC and to investors in health, education and training, or scientific research. The maximum 7% rate applies to all others.

6.4 Loan inflows and repayment. In theory, foreign-invested enterprises should have no difficulty remitting both principal and interest on loans sourced abroad, as long as the State Bank of Vietnam (SBV—the central bank) approved the loan at the outset. Yet SBV restrictions on dong convertibility mean the practice is difficult (6.1). Enterprises cannot make overseas payments if they cannot obtain foreign currency. Financing projects from commercial bank loans in Vietnam remains difficult, largely because of the perception that Vietnam is a high-risk country.

Foreign governments provide financing through official development assistance (ODA) soft loans or outright grants. ODA money is usually targeted at major large-scale infrastructure construction projects. Disbursements of ODA funds are often contingent on contracts being awarded to companies from the donor country. Companies from the United States were denied access to such support from the US government until then-president Bill Clinton announced on March 10th 1998 his waiver of legislation known as the Jackson-Vanick Amendment. The waiver allows US companies in Vietnam access to financial support from the US government-backed Export-Import Bank (Exim Bank) and Overseas Private Investment Corp (OPIC).

Decision 233/1999/QD-TTg, dated December 20th 1999, promulgates regulations on government guarantees for foreign loans by state-owned enterprises and state-owned credit institutions. It applies to such loans for investment and development projects, capital contribution to joint ventures with foreign parties, lending and other projects subject to the prime minister's approval. To obtain a government guarantee, the conditions in the statute must be met. The Ministry of Finance is the competent guarantor for enterprises, whereas the State Bank of Vietnam (SBV) is the guarantor for credit institutions. The decision also specifies procedures for obtaining a guarantee from the government for a foreign loan, the contents of a letter of guarantee, obligations of the Ministry of Finance, the SBV, the Ministry of Justice, and obligations of guaranteed enterprises and credit institutions.

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6.5 Transfer of royalties and fees. Foreign investors in Vietnam may remit royalties received for providing service and transfer of technology, but the amount is strictly regulated (4.5). Any royalties that a branch based in Vietnam pays to the offshore parent company, or to an affiliated branch of the company, are no longer tax deductible (Circular 08/2001/TT-BTC).

6.6 Restrictions on trade-related payments. Following Decree 05/2001/ND-CP of January 17th 2001, foreign-invested firms must convert 50% of their foreign-currency earnings from exports into Vietnamese dong. This requirement exposes the investor to all the risks of local currency devaluation and might complicate repatriation of profits at times of restricted hard-currency access (6.1).

7.0 Corporate taxes

7.1 Overview. Vietnam's corporate tax system has been in flux in recent years. Though few changes have been drastic, their large number and a general lack of clarity in their application has been a constant source of frustration for foreign investors.

The level of taxes is comparable to other countries in the region, but the structure is very complicated, and foreigners are often accused of trying to dodge payment. Investors claim that even if an honest attempt is made to pay, the system makes it difficult to figure out which taxes are applicable.

Vietnamese firms have historically regarded taxes as an obstacle to be creatively avoided. The General Department of Taxation identified around $50m in unpaid taxes by year-end 2000—and suggested that this amount was only the tip of the iceberg. A survey of 500 enterprises in Hanoi in 2000 revealed that every single one of them had made some attempt to reduce their tax bill by unlawful means in the 1999 or 2000 fiscal year. However, collection has been spurred by the government's determination to make up for the habitual shortfalls in tax revenues. An increasingly sophisticated system of tax inspection has left fewer options for investors to make an "arrangement" with local tax officials.

There were two new taxes on businesses beginning January 1st 1999: A value-added tax (VAT—7.14) that replaced the turnover tax and a corporate income tax that replaced the profits tax (7.2).

Other taxes that may affect certain investors include special sales tax, production royalties, property taxes and export duties.

The tax system is regularly used as a means to offer incentives to foreign investors that establish themselves in particular industries or locations (3.3, 3.4). For example, foreign-invested firms in software and information technology enjoy tax holidays and a much-reduced rate (3.3).

A new incentive, in Circular 13/2001/TT-BTC of March 23rd 2001, offers a partial or full reimbursement of corporate tax paid if a foreign-invested firm puts all its legal capital to use or reinvests all profits into domestic projects (7.2).

Circular 13 also requires all foreign firms to pay tax in Vietnamese dong, even if their income is largely in foreign currency. This codifies what is a very common practice but may inconvenience some firms.

7.2 Corporate tax rate. Vietnam's National Assembly passed a Corporate Income Tax Law on May 10th 1997. The new tax—applicable to foreign-invested enterprises, among others—went into effect January 1st 1999 and carries a uniform 32% rate. It applies to organisations and individuals in manufacturing, commerce and services.

Foreign-invested companies, state-owned enterprises, domestic private firms, and many other organisations, households and individuals in private practice are now assessed taxes at this uniform rate. Although the law seeks a certain uniformity, it still specifies a number of situations in which reduced or suspended rates of taxation are applicable:

- Companies involved in production, construction, transport and other preferential projects will enjoy a reduced rate of 25% for up to three years;
- Newly invested companies involved in sectors, industries or areas where investment is encouraged will be taxed at rates of 25%, 20% and 15%;
- Newly established production companies will be exempt from taxes for the first two years and will enjoy a 50% reduction in taxes for two years, starting in their first profit-making year. A further two-year reduction is available to those enterprises in mountainous, island or other remote regions;
- Newly invested production companies whose activities are considered preferential projects will pay no tax during their first two years of operation and will see their taxes reduced 50% for up to four years, beginning in their first profit-making year. In mountainous, island or remote areas, such firms are eligible for four years of tax exemption and another nine years of 50% tax reduction;
- Newly established trading or service companies involved in preferential projects may enjoy a 50% tax reduction for two years from the first profit-making year. If such a firm is in a mountainous, island or remote area, it may receive a tax exemption for two years, followed by another five-year period of 50% tax reduction; and
- Further incentives apply to investments in scientific research, businesses for the disabled and

Corporate taxation in Vietnam, 2001

Below is a simplified example of the approximate tax burden facing a hypothetical 50/50 joint-venture hotel company operating in Vietnam in 2001. Taxable income is assumed to be $1m. It is assumed that no tax treaty applies. A uniform corporate tax of 32%, according to the Law on Corporate Income Tax of January 1999 (7.2), is used. This calculation does not include the new value-added tax of about 10% (7.14).

Foreign capital invested	$5,500,000
Revenue for year	$2,500,000
Expenses	$1,500,000
Profit	$1,000,000
Standard corporate tax of 32%	$320,000
Net profit	$680,000
50% remitted overseas	$340,000
Remittance tax of 5%	$17,000
Net profit remitted	$323,200
Total tax paid	$337,000
Tax paid as a percentage of gross profit	33.7%

Source: EIU calculation based on Ministry of Finance figures.

the production of goods that were previously not made in Vietnam (and had to be imported).

Circular 13 of 2001 (7.1) also offers a partial or full refund of corporate tax to companies that either use all their legal capital or reinvest all their profit into domestic projects and ventures. Profits that are transferred abroad or used for other purposes before being reinvested in Vietnam are not eligible. The Ministry of Finance will decide on reimbursements within 15 working days of receiving a fully documented application.

The new tax system is initially supposed to reduce government revenues by millions of dollars. Nevertheless, the government hopes that the system will improve the business environment over the long term.

7.3 Taxable income defined. The foreign-investment law defines taxable profits as the difference between total revenue and total expenditure plus other additional profits of the enterprise in the tax year, minus any losses allowed to be carried forward to the following year. Joint ventures and wholly foreign-owned ventures may carry forward losses for five years, and this option was extended to foreign parties to business co-operation contracts in Decree 24/2000/ND-CP of July 31st 2000. Carry-back losses are not permitted.

Revenue includes the sales of products, the provision of services and all other revenues. Profit also covers any affiliates and branches. Income subject to taxation also includes that from the leasing or sale of assets, the transfer of shares, joint-venture operations with other economic entities and financial operations—such as the difference between interest on deposits in banks and interest on loans from banks.

Deductible expenditures are defined as follows:

- costs of raw materials and fuel to manufacture principal products and by-products or to provide services;
- salaries, allowances and social insurance paid for employees;
- depreciation of fixed assets under regulations provided by the Ministry of Finance;
- acquisition costs or fees paid for the right to use technical documents, patents, technology and technical services;
- enterprise management expenses;
- taxes, fees and imposts in the nature of taxation paid, excluding profits tax;
- interest payments on loans;
- costs of insuring assets of the enterprise; and
- other expenses not exceeding 5% of total expenditures.

Expenses that are not deductible include any not related to earning taxable income; depreciation in excess of normal rates; loss from theft, natural disasters or unidentified causes; bad debts; fines or compensation for breaches of laws and contracts; and losses from disruption to production, regardless of the cause.

There is no general provision on tax deductibility of a company's expenses. Any application for a tax deduction for expenses must be supported by invoices for all items worth more than D50,000 (about $3.50).

Foreign companies that set up branches had their ability to make deductions tightened considerably under Circular 08/2001/TT-BTC of January 18th 2001, which came into effect on February 2nd. Business management fees charged by the parent company are still deductible, but the deduction is capped (7.10). Moreover, branches may not deduct royalties, fees or payments related to the intellectual property of parent companies, a condition that has irked local law firms. Also not deductible are interest payments on loans from the parent and loans from foreign banks used to help make up the branch's legal or registered capital.

All branch-parent transactions must be at market prices. Branches are also required to pay tax provisionally, but more implementing regulations are expected on this.

7.4 Depreciation. Unless the approval of the Ministry of Finance is obtained, depreciation rates must be in accordance with Circular 31/TC/TCDN, dated July 18th 1992. The circular allows for depreciation of all fixed assets con-

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tributed by foreign-invested enterprises or foreign partners, including non-physical fixed assets such as fees of compensation and the right to use land, patents and know-how.

Ministry of Finance Official Dispatch 3352/ TC/TCDN, of December 5th 1995, says that foreign-invested enterprises must use the straight-line accounting method of depreciating assets for tax purposes.

Normal depreciation rates for assets such as buildings, plants, equipment and vehicles depend on the estimated useful life of the asset. Typical life expectancies are 20 years for a hotel, exchange centre or trade centre; 7–15 years for a plant or mill; 5–10 years for equipment; and 5–7 years for vehicles. Annual depreciation rates are 5–15% for buildings, plants and architectural construction; 10–25% for machinery and equipment; 15% for measuring and laboratory devices; 10–18% for a means of conveyance; 20–25% for office machinery and equipment; 30% for establishment costs, compensation for relocation, expenditures before production and non-physical fixed assets, such as know-how and patents; and 10–15% for other fixed assets.

The Ministry of Finance may award accelerated depreciation or investment allowances on a case-by-case basis if convinced that the asset in question has technological characteristics that require special treatment.

Assets may be re-valued if there is any reason to believe that the residual value is lower or higher than the market price (that is, for inflation or when the asset's utility value has declined comparatively in the market). For inflation, depreciation can be figured from the new asset value, and no tax will apply to the amount of revaluation. The government issued a decision on January 21st 1995 to reinforce this flexible depreciation policy to encourage foreign investors to introduce more advanced machinery and equipment. However, this decision provides that, unless there is a special arrangement, no company may have a depreciation allowance more than 20 percentage points higher than the government-prescribed level.

Depreciation of fixed assets in accordance with finance ministry regulations can be used as a deductible expense (7.3).

7.5 Schedule for paying taxes. Tax on regular income is finalised annually, but it must be deducted and paid provisionally on actual monthly income. Employers must file monthly returns and pay tax on employees' income by the 15th of the following month. Payments are reconciled at year-end, when any outstanding amounts are settled. Any rebates are credited against future tax liabilities. The Vietnamese tax year is the same as the calendar year.

All returns must be filed by February 28th, or within 30 days of terminating a contract. If a foreigner leaves Vietnam permanently, tax calculations are finalised to one month before departure.

Corporate income tax must be paid each quarter on a provisional basis, based on the previous quarter's declaration. It is then adjusted at year-end based on the final numbers. A foreign-invested enterprise is expected to file its quarterly declaration within five days of the end of the quarter. Audited annual accounts are to be filed within three months of the end of the financial year.

For paying the withholding tax on remittance of profits, the foreign investor makes the payment at the time of the transaction. The timing of the payment of the special sales tax depends on the volume of sales.

Under Circular 13/2001/TT-BTC of March 2001, stiff new penalties are imposed for evasion or late payment. The fine for tax evasion is five times the amount due, and late payment attracts a daily 0.1% charge.

7.6 Capital taxes. In February 2001 the government announced its intention to introduce an asset tax for organisations and individuals in 2002. It will apply to high-value assets such as property, vehicles, shares and bonds, according to the General Department of Taxation.

7.7 Treatment of capital gains. Gains made by foreign investors on the transfer of interests in a foreign-invested or Vietnamese enterprise ("capital assignment") are subject to the corporate profits tax rate of 32%. The taxable gain is determined as the excess of the sales proceeds less cost, less transfer expenses. The application of this tax is limited to changes of direct ownership of foreign-invested enterprises.

There are two exceptions: (1) if capital is assigned to a Vietnamese state-owned or state-controlled enterprise, the foreign investor is exempted from capital assignment profits tax altogether; and (2) if a foreign investor assigns capital to a private Vietnamese enterprise, the capital assignment profits tax is 10%.

Although not expressly mentioned in the foreign-investment law or other relevant legislation, if such a tax would apply to offshore transfers of shares, it appears all investors must pay capital gains tax for offshore transfers if these transfers affect the legal capital of the local company in question.

The rules covering tax on capital transfers and capital gains for foreign-invested enterprises and joint ventures were clarified but apparently not altered in Circular 13/2001/TT-BTC of March 2001.

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Withholding-tax rates under Vietnam's tax treaties[1]

Country	Dividends[2]	Interest	Royalties
Australia	10	10	10
Canada	5/10/15	10	10
China	10	0/10	10
Czech Republic	10	0/10	10
Denmark	5/10/15	0/10	5/15
France	7/10/15	—[3]	10
Germany	5/10/15	0/10	10
Hungary	10	10	10
India	10	0/10	10
Japan	10	0/10	10
Malaysia	10	0/10	10
Mongolia	10	0/10	10
Netherlands	5/7/15	0/74	5/10/15[4]
Norway	5/10/15	0/10	10
Poland	10/15	10	10/15
Romania	15	10	15
Singapore	5/7/12.5	0/10[4]	5/15
South Korea	10	0/10	5/15
Sweden	5/10/15	0/10	5/15
Switzerland	7//10/15	0/10	10
Thailand	15	0/10/15	15
UK	7/10/15	0/10	10[4]
Uzbekistan	15	0/10	15

(1) Rate information was not available for seven countries with relevant treaties: Belarus, Belgium, Indonesia, Laos, Luxembourg, Russia and Ukraine. (2) Where more than one rate appears, the actual tax is determined by the category of the company receiving the payment—except for Australian dividends, where 10% applies to companies receiving dividends in Australia and 15% to firms in Vietnam. (3) Withholding tax rate under French law applies. (4) Most-favoured-nation provisions require a re-negotiation of withholding rates in specified circumstances.

Source: International Bureau of Fiscal Documentation.

7.8 Taxes on dividends. Profits earned by foreign investors in Vietnam and transferred abroad or retained outside Vietnam are subject to withholding tax. The withholding tax is 3% of profits transferred for investors contributing at least $10m to the legal capital of an enterprise; 5% of profits transferred for investors contributing $5m–10m to the legal capital of an enterprise; and 7% of profits transferred for investors contributing less than $5m to the legal capital of an enterprise.

7.9 Taxes on interest. Under Circular 169, from January 1st 1999, a 10% withholding tax on interest payments on offshore loans took effect. This applies only to loans taken out after January 1st. Still, it can be exempt where bilateral treaties apply.

7.10 Taxes on royalties and fees. Under Circular 169, from January 1st 1999, a new withholding tax of 10% went into effect. It will apply to a wide definition of "transfers of technology".

Circular 08/2001/TT-BTC of January 18th 2000, which came into effect on February 2nd, allows a Vietnamese branch to claim business-management fees paid to its parent company as a tax-deductible expense. The deduction is capped according to a formula: the ratio of the foreign branch's income to the parent company's total income, expressed as a fraction, is multiplied by the total business management fees charged by the parent company worldwide. This sets the maximum amount of fees that can be deductible, aiming to prevent the Vietnamese branch from claiming that it pays fees that are out of proportion with the parent's practice worldwide.

Branches may not deduct royalties, fees or payments related to the intellectual property of parent companies, which has particularly irked local law firms. These new rules will not have wide effect, however, since only banks, law firms and tobacco companies now use branch structures (2.9).

7.11 Double-tax treaties. Vietnam has concluded double-taxation agreements with 31 countries: Australia, Belarus, Belgium, Canada, China, Czech Republic, Denmark, France, Germany, Hungary, India, Indonesia, Italy, Japan, Laos, Luxembourg, Malaysia, Mongolia, the Netherlands, Norway, Poland, Romania, Russia, Singapore, South Korea, Sweden, Switzerland, Thailand, Ukraine, the UK and Uzbekistan.

Agreements have been signed but not ratified with Bulgaria and Mauritius. Vietnam is also negotiating tax treaties with Finland, New Zealand, the Philippines, Slovakia and Taiwan. Negotiations with the United States have not yet begun.

The General Department of Taxation issued guidelines on the application of agreements on avoiding double taxation in December 1994. The guidelines address direct taxes levied on income and revenues of foreign individuals and business enterprises derived in Vietnam. The taxes involved are profit taxes, income tax, withholding tax and the revenue tax on copyrights.

The primary difficulty in applying these guidelines is determining the taxpayer's residency. According to these regulations, the length of stay, the main focus of business interest and the country of citizenship determine the residence of the taxpayer. For a corporation, where the business actually operates is important. Double taxation applies where an individual is considered to be living or operating in two countries. A foreign company that has a permanent office in Vietnam should pay tax on the income it earns in Vietnam. Companies earning income from sea transport or aviation services pay taxes only in the home country. Revenues from the transfer of assets are subject to

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double taxation. However, certain revenues are subject to tax payment in the country where the transaction actually takes place.

The Ministry of Finance Circular 37/2000/TT-BTC of March 5th 2000 provided some further clarity on the application of double-tax treaties. The thrust of the document is that foreign enterprises will be subject to Vietnamese tax law if the income is derived via its resident office or through business activities conducted on the basis of a contract signed between the foreign enterprise and a Vietnamese organisation or individual.

7.12 Intercompany charges. There is no withholding tax on management fees to a parent company. Such arrangements should be included under licence payments. As indicated in 7.3, however, the tax deductibility of such fees has been restricted.

7.13 Regional management companies. Income from all auxiliary companies under the head office is included in the latter's total income for tax purposes.

7.14 Turnover, sales and excise taxes. The turnover tax in Vietnam was replaced from January 1st 1999 by a new value-added tax (VAT). Although the turnover tax was applied through 11 separate tax rates, the VAT is simpler and has only four levels. There is a standard rate of 10%, reduced rates of 0% and 5%, and a higher rate of 20%.

The system is still relatively new, so the government has been regularly tinkering with the rules since the tax came into effect. A steady stream of circulars and official letters either changes the rules or clarifies particular aspects of the tax.

Most of the changes to date have been relatively minor; however, in late 2000 the government flagged its intention to simplify the VAT further over five years. By 2005 there will be a single flat rate of 10% and also the 0% rate. The authorities are considering two options to phase in the change: (1) dropping the 20% rate in 2003 and the 5% rate in 2005, or (2) setting two rates—10% and either 5% or 8%—for the entire 2001–05 period. A final decision had not been announced by late March 2001.

Foreign investors should note that importers must pay the 10% VAT immediately, although it is refunded once the goods are sold. But this ties up importers' capital for a period of time.

If foreign contractors use the Vietnamese accounting system, they may use the VAT-deduction method. If not they will be subject to the regular business income tax and VAT at specified rates on their taxable turnover. Various rates are specified, depending on the nature of the service. Under the changes proposed in late December 2000, however, all business will eventually move to the VAT-deduction method.

Assets that cannot be produced in Vietnam and that are imported as fixed assets of a project are exempted from VAT on import. The original VAT law required the appropriate ministry to confirm in writing that the asset could not be produced in Vietnam. This was relaxed in January 1999 when the General Department of Customs issued Letter 19, under which the importing company need only submit a letter stating that the goods cannot be manufactured locally. To simplify the process further, the Ministry of Planning and Investment released Decision 214 on April 26th 1999, listing the specialised equipment currently produced in Vietnam. This was further clarified in Official Letter 507/TCHQ-KTTT of February 1st 2000.

The Ministry of Finance (MoF) issued VAT Circular 49/1999/TT-BTC on May 6th 1999. It details the VAT treatment of financial leases and is applicable to lease contracts signed on or after January 1st 1999.

Under the new rules, lease payments, commitment fees and the sale of assets at the end of the lease term are not subject to VAT. Consequently, a finance leasing company has no revenue subject to VAT and therefore may not claim any input credits on costs incurred. Importantly, this includes the VAT paid on the import, or local purchase, of the leased asset.

The lessee must repay the VAT paid on import or purchase to the leasing company in six monthly instalments over the term of the lease. The leasing company invoices for this notional VAT; moreover, if the lessee is a taxable business, it can claim an input credit for the VAT repaid. The effect of this is to increase the cost of leasing compared with outright purchase. (Under financial leases, the recovery of the input credit for the leased asset must effectively be spread over the life of the lease, whereas in an outright purchase, the buyer can claim the full input credit up front.) For lessees that cannot claim full input credits, leasing will be disadvantageous if they could otherwise have claimed the VAT exemption on the import of the asset.

On August 30th 1999 the MoF amended the earlier-issued VAT Decree. The more significant changes include the following:

- a general 3% deemed-input credit for taxpayers purchasing goods from direct-method taxpayers, where they obtain an MoF sales invoice (non-VAT) for the purchase;
- an increase in the rate of the deemed input credit from 3% to 4% for purchases by traders of special sales tax products from manufacturers;
- an expanded deemed-input credit for purchases of agricultural, forestry and marine products and for scrap products; and

• a broadened list of items subject to the 50% reduction in the VAT rate. The new list includes computers, construction and installation activities, basic chemical products, transport and stevedoring services, and certain mechanical products and metallurgical products.

The MoF issued Decree 79/2000/ND-CP on December 29th 2000, making a new set of changes to the system. This extended the zero-rating to the following: exported goods that attract the special consumption tax (due to be phased out in the next few years); processed goods for export, machinery and equipment repairs for offshore customers; and exports of labour and computer software. These rules classify "export" as either export offshore or sales to firms operating in export-processing zones (EPZs—see below). The new decree also scraps the 50% reduction in VAT for some goods and expands the number of goods and services attracting 5% VAT.

A controversial regulation imposing VAT on official development assistance (ODA) was revoked in December 1999. VAT may sometimes be levied, but the projects affected will be able to get a 100% VAT deduction.

For enterprises in EPZs, the MoF issued VAT Circular 34/1999/TT-BTC on April 1st 1999, providing further guidance on implementing the VAT applicable to export-processing enterprises (EPEs) and local businesses having transactions with EPEs.

EPEs are specially designated export-oriented firms in industrial zones (IZs), EPZs and high-tech zones (HTZs). In effect, the VAT circular substantially treats EPZs as if they are in a foreign country. This treatment includes the following:

• EPZ companies do not register for VAT;

• There is no VAT on imports;

• There is no withholding tax on services from foreign companies;

• Sales of goods from local companies are zero-rated; and

• Domestic services provided to EPEs are exempt from VAT.

This seems to be an ideal situation for EPZ companies, since they appear to be insulated from the VAT and need not bear the cost of any administrative compliance. However, domestic service suppliers to the EPEs will not be entitled to claim input credits for the VAT they incur on their related costs. This raises their costs, which they may try to recover by raising the prices they charge to EPEs. Furthermore, whereas the exemption for services may be straightforward for items such as rent payment or electricity charges, it is not clear in practice whether the vendors of goods or services provided outside areas such as hotels and restaurants will be willing not to charge VAT on their sales.

The likelihood is that some goods and services purchased by EPE companies will in practice be taxed regardless of Circular 34. This will raise the cost of their production, whereas other non-EPE exporters will be able to claim input credits for all their costs incurred.

Other excise taxes include the so-called special consumption tax—which might be phased out over the next few years. This is levied on goods such as cigarettes, alcohol, spirits and beer, vehicles with fewer than 24 seats, petrol, playing cards, joss paper and some air conditioners. There is also an excise on some services, including dancing, massage, karaoke, casino, jackpot machine games, certain betting activities and golf. The tax also applies to imports of these goods and services, at rates of 15–100%, based on the cif price (the actual purchase price at the destination port, plus insurance and freight costs).

There is also a luxury tax on passenger vehicles produced in Vietnam. The three rates are 100% for a vehicle with five seats or fewer, 60% for a vehicle with 6–15 seats and 30% for vehicles with 16–24 seats. Cars subject to the luxury tax do not attract VAT. Commercial vehicles—lorries, coaches and vans—are not subject to the luxury tax but do attract VAT.

7.15 Other taxes are imposed on imports and exports of a range of goods (11.2). New rules have been laid out for taxing foreign airlines operating from Vietnam (Circular 169, December 22nd 1998).

Employers must contribute 15% of their employees' total salary to the Social Insurance Fund.

8.0 Personal taxes

8.1 Overview. The tax scale for long-term residents used to be relatively steep, allowing high marginal tax rates to kick in at low income levels. Foreigners now enjoy a somewhat less punitive scale, thanks to an amended Personal Income Tax Ordinance, effective July 1st 1999. This raised the initial tax-free threshold to D8m per month from D5m. The tax rate thresholds were also lifted, so that the top rate of 50% now applies only to monthly income greater than D120m, up from D70m previously.

Circular 27/TC/TCT says that if the average monthly income derived outside Vietnam is declared to be smaller than that in Vietnam without "sufficient supporting evidences", the average monthly income earned inside Vietnam will be used to calculate the average monthly income outside Vietnam. It is not clear what supporting evidence is required.

Vietnamese employees have a lower tax-free threshold of just D2m per month, rising sharply

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Personal taxation in Vietnam

According to the amended Personal Income Tax Ordinance dated June 30th 1999, foreigners with regular income in Vietnam are taxed at the following rates:

Montly receipts (D millions)	Base rate (payable annually)	Plus rate on bracket (%)
0–8	0	0
Over 8–20	0	10
Over 20–50	1.2m	20
Over 50–80	7.2m	30
Over 80–120	16.2m	40
Over 120	32.2m	50

Thus, the personal income tax burden of an individual with an annual earned income equivalent to $45,000 (D652.5m at an exchange rate of D14,500:$1, equivalent to a monthly income of D54.38m) would be D102m, or $7,046. There are to date no allowable deductions, although employer-provided housing is taxed only up to an amount equal to 15% of the employee's salary.

Vietnamese employed by foreign firms are taxed as follows:

Montly receipts (D millions)	Base rate (payable annually)	Plus rate on bracket (%)
0–2	0	0
Over 2–3	0	10
Over 3–4	100,000	20
Over 4–6	300,000	30
Over 6–8	900,000	40
Over 8–10	1.7m	50
Over 10	2.7m	60

Source: EIU calculations based on Ministry of Finance information.

to a 60% rate above D10m, plus an additional 30% charge on after-tax income above D8m. Essentially, anyone earning more than $8,000 a year can expect to take home less than half of that—a fairly hefty burden that, unsurprisingly, encourages widespread and creative attempts at tax evasion.

The government recognises the distortions of the present system. It plans to replace the personal income tax law, which is based on the 1991 Ordinance on Income Tax for High-Income Earners, during 2001–02. The changes will probably affect Vietnamese wage and salary-earners more than foreigners, but they may widen the definition of taxable income.

The main thrust of the reform is to avoid penalising Vietnamese workers in foreign companies and higher-paid jobs. But another aim is to remove the incentive to shift personal income into some kind of business vehicle, a common practice that seeks to take advantage of the fact that corporate tax rates are much lower than personal income tax rates.

8.2 Residence. Foreigners residing in Vietnam for 183 days or more per year are liable for Vietnamese tax on both their local and foreign earnings, using a progressive tax system. Foreigners living in Vietnam for 30–182 days over a 12-month period are responsible for paying tax only on income derived inside Vietnam. These foreign non-residents are subject to a flat rate of 10% on taxable income earned in Vietnam.

If a non-resident income earner is in Vietnam fewer than 30 days in a year, no tax is due.

8.3 Determination of taxable income. Tax rates for Vietnamese and expatriates residents in Vietnam are based on what is defined in the tax decree as regular income. Regular income includes the following:

- wages and fees, including overtime salaries, third-shift salaries, 13th-month salaries or salaries received from the Social Insurance Fund, lunch allowances or meal allowances for a mid-shift break;
- yearly, quarterly and monthly bonuses, special bonuses for official and Tet holidays;
- income from participations in business associations, a board of directors or board of management;
- businesses or services not subject to profit tax and income earned by individuals from activities such as construction design, consulting services under long-term contracts, training, teaching, examination coaching and cultural-artistic performances;
- house rents, electricity and water paid on the taxpayer's behalf, though house rents are taxable only up to 15% of an employee's salary.

There is a temporary exemption from personal income tax on bank deposits, savings accounts, interest from debentures, and bonds and shares. Non-taxable income includes night-shift allowances (not night shift wages); hardship allowances for working in dangerous and remote areas; business travel expenses; fixed meal allowances; allowances on relocation expenses; and insurance compensation. Strictly speaking, fringe benefits such as accommodation, utilities, use of a private car, schooling and transport while on leave are considered part of the salary package and are therefore taxable.

Personal income tax paid for by an employer is also taxable and should be added into salary for tax purposes. Other benefits such as a company car and schooling are generally not taxed. The Ministry of Finance issued Circular 15/2000/TT-BTC on February 23rd 2000, confirming two previous

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internal rulings from the General Department of Taxation, namely Decision 1551/TCT/NV2 dated March 24th 1999 and Decision 1061 of April 10th 1998.

Circular 15 and Decision 1551 offer the possibility of achieving substantial reductions in tax liabilities. Where an employee is on a "net" package (whereby the employer bears any taxes), with the total package comprising a basic salary portion and an allowance, the allowance need not be grossed up when calculating the taxable income. However, the allowance in question must not comprise more than 30% of the total net income. With a top marginal tax rate of 50% for expatriates and 60% for Vietnamese, the grossing up of net incomes can generate very high tax liabilities. The non-grossing-up of up to 30% of net income can therefore achieve a substantial tax reduction.

Taxable income does not include benefits in kind or other fringe benefits (for example, accommodation renovation and interior fixtures) except housing, and electricity and water expenses.

Allowances paid upon leaving employment, which are not payable from the state social-security fund, are taxed as irregular income. The tax rates applicable to irregular income are lower than that for regular income and hence can create some tax savings.

Decision 1551 also confirms that the taxable value of employer-provided accommodation should be calculated as 15% of regular income. Prior to Decision 1061, certain tax authorities had insisted on taxing housing on the basis of the full rental costs borne. The decision applies to both Vietnamese and foreign employees.

8.4 **Personal tax rates.** The personal income tax rate for foreigners employed in Vietnam starts at zero for an income of less than $550 a month and rises to 50% for monthly salaries of more than D120m ($8,275). For Vietnamese, the rate also starts at zero for incomes of less than $138 and rises to 60% for monthly salaries of more than D10m ($690).

8.5 **Capital taxes.** In February 2001 the government announced its intention to introduce an asset tax for organisations and individuals in 2002. It will apply to high-value assets such as property, vehicles, shares and bonds, according to the General Department of Taxation.

9.0 Capital sources

9.1 **Overview.** Foreign-invested enterprises (FIEs) in Vietnam face a fairly restrictive financing environment. A pilot proposal in 2001 will allow around 14 foreign firms to raise share capital for the first time; even if the scheme is expanded, however, only companies meeting fairly stringent criteria will be eligible. (The final number of firms has not yet been settled; they might all get the chance or this shortlist may be further culled.) In the mean time, companies not using offshore finance must use the heavily controlled Vietnamese banking system.

There are 27 foreign bank branches and four foreign joint-venture banks operating in Vietnam, but their ability to lend money in Vietnamese dong is restricted: their total loan book in dong must not exceed 25% of the value of their balance sheet. Given that foreign banks hold only a 17.6% share of the market by deposits, their presence in the lending market is heavily curtailed. They have a 15% share of outstanding debt.

Foreign banks can use dollars to buy dong on the swap market, but they may not retrieve those dollars later on.

They are also banned from holding a ready cash reserve of hard currency equal to more than 15% of their original in-country capitalisation—which, for most banks, is about $2m. The limit makes it difficult for banks to accumulate sufficient funds to cover repayment on credits or to issue new loans. Customers in need of credit must wait for the bank to be able to handle their request.

Domestic banks, meanwhile, are often quite small, and their lending practices frequently favour state-owned firms over private companies. In a 2000 survey by *Asiaweek* naming Asia's 500 largest banks, Vietnam's "big four" state banks (the Vietnam Bank for Agriculture and Rural Development, Vietcombank, Incombank and the Bank for Investment and Development of Vietnam) ranked in the mid-300s.

Recently, however, the bigger banks have been able to finance larger developments by offering syndicated loans. Towards the end of 2000, the foreign-backed Nam Son Con gas project successfully arranged two syndicated deals with a consortium of four domestic Vietnamese banks, one for $80m and the other for $70m. Another gas project, Lan Tay, secured a $30m syndicated deal.

Bank lending rose 29% in 2000 over 1999, double the growth rate for the previous year. Official forecasts suggest lending growth will average 20% a year over the next five years.

This growth has to be set in the context of the Vietnamese banking system's mounting bad-debt problems. System-wide debt stood at 11.7% at end-2000, an improvement on levels during the Asian financial crisis of 1997–98. The problem is worst among the shaky semi-private banks, known as joint-stock commercial banks, which the central bank believes are sitting on bad debts of up to 22%. The Ministry of Finance has plans to

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close or merge most of these banks, halving their number by 2002. The state-owned banks, which are the major players, had bad debts of 11.8% at the end of 2000.

One problem is that bank lending is often treated as an arm of government policy. Banks are regularly directed to offer preferential interest rates and debt relief to farmers, and many banks enjoy a cosy relationship with large state-owned enterprises (SOEs).

Despite the fact that many SOEs are barely solvent, many enjoy lending discounts of up to 0.4% a month on the general interest rate for dong lending. The banks know that SOE borrowing is backed by a government guarantee, and so will often lend to shaky SOEs ahead of promising private-sector firms. Many private firms report difficulties in accessing dong loans.

Interest rates on dong and US dollar lending were formerly set by the central bank, the State Bank of Vietnam (SBV), which created a regular pattern of credit squeezes and lending gluts. Some relief came on August 1st 2000, when the SBV issued Decision 241/2000/QD-NHNN1.

The decision (and two accompanying decisions, 242 and 243) set the primary interest rate for dong lending at 0.75% a month, and it allowed banks to offer interest rates within a 0.1-point trading band above or below that rate. This rate was cut twice in March 2001, each time by 2.5 basis points, and it stood at 0.7% in early April. But the SBV sets slightly different rates for very short-term lending (now 1% a month) and very long-term loans (1.2% a month). The primary rates and the trading band can be varied by future SBV decisions. Already, there is pressure to broaden the band to at least 0.15 point, if not 0.25, since there are still frequent mismatches between supply and demand.

The interest rate on short-term US dollar loans is pegged to the three-month Singapore interbank offer rate (SIBOR), with a trading band of 1 percentage point. The peg for medium- and long-term dollar loans is the six-month SIBOR, with a 2.5-point trading band. Given Vietnam's risk profile, these caps are well below the market rate assessed by foreign bankers and are particularly restrictive for long-term lending.

Another obstacle to developing commercial lending in Vietnam is the lack of collateral. Although there is no private ownership of land, Vietnamese citizens and companies are able to obtain land-use rights.

Previously, these could be mortgaged only to Vietnamese banks, although Decree 24/2000/ND-CP of July 31st 2000 has extended this to foreign banks. The proviso is that a foreign-invested enterprise using land rights as collateral must have paid land rent for several years already and have at least five years of already-paid rent still ahead of it. If the foreign enterprise is a joint venture, there must be at least five years remaining in the period in which the land-use rights are still to be considered as the Vietnamese side's capital contribution.

Foreign banks are unlikely to begin offering loans with land-use rights as collateral, however, because the banks' hold on the collateral is difficult to enforce. Moreover, under Circular 06/2000/TT-NHNN1 of April 4th 2000, in a syndicated loan between a foreign and Vietnamese bank, only the Vietnamese partner is entitled to manage the collateral.

The government tried to tackle continuing uncertainty over lenders' collateral with Decree 165/1999/ND-CP of November 19th 1999. Decree 165 provides more-precise legal requirements for executing and implementing pledges and mortgages of property, and it guarantees the use of property for securing the performance of civil and commercial obligations.

A new issue, however, is emerging as more and more Vietnamese companies take on a limited-liability structure. Some contributors to such companies' capital offer fixed assets and property instead of liquid capital, but the ownership papers for these goods remain in the private stakeholders' names. When the company wants to use the assets as mortgage collateral, it finds that it does not technically own the assets. Clear rules have not yet been issued that cover the transfer of ownership of assets and property from an individual to the capital base of a newly formed limited-liability company.

9.2 Short-term capital. SBV Circular 03/1999/TT-NHNN7 dated August 12th 1999 specified that short-term foreign loans are no longer subject to approval or registration, provided they meet conditions on foreign loans issued by the bank. For borrowings by foreign-invested enterprises, short-term loans must not cause an increase in the total invested capital of the borrower. An exception is made in circumstances when construction is completed, a project is in operation, legal capital has been fully contributed and all investment capital is used. A foreign-invested enterprise may then obtain short-term foreign loans to supplement working capital. This kind of short-term loan is not deemed an increase in total investment capital.

Most lending by foreign banks in Vietnam has been for short-term trade financing, often for commodities and agricultural products. There are 27 foreign banks with full branches and about 50 banks with representative offices. These offices are not allowed to conduct business in Vietnam, but they set up deals with clients that are then executed offshore. The foreign banks with operations

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in Vietnam include the following: ANZ Bank (Australia and New Zealand); Citigroup and Bank of America (both based in the United States); Hongkong & Shanghai Banking Corp (HSBC) and Standard Chartered (both UK); United Overseas Bank (Singapore); Crédit Lyonnais and BNP-Paribas (both France); ABN Amro (the Netherlands); and Bangkok Bank (Thailand). ANZ and Citigroup have full branches in both Hanoi and Ho Chi Minh City, whereas banks such as United Overseas and HSBC concentrate their activities in Ho Chi Minh City, where their Chinese customers have traditionally held stronger business ties.

There are four state-run Vietnamese banks. The largest, the Bank for Foreign Trade of Vietnam, known as Vietcombank, has overseas representative offices in Paris and Moscow. There are also 52 semi-private Vietnamese banks (the joint-stock commercial banks) and four joint-venture banks. Among them are the following: Vietnam Bank for Investment and Development Public Bank, a 50-50 joint venture between Malaysia's Public Bank and the state-owned Bank for Investment and Development of Vietnam (BIDV); Indovina Bank, a joint venture between Indonesia's Bank Dagang Nasional Indonesia and the state-owned Industrial and Commercial Bank of Vietnam (Incombank); and Chohung Vina (formerly First Vina), a joint venture between South Korea's Chohung Bank (which bought out Korea First Bank's stake in 2000) and the state-owned Vietcombank.

SBV Decision 424/1999/QD-NHNN5, dated November 30th 1999, amended the scope of activities of joint-venture banks. Under this decision, which became effective December 1st 1999, joint-venture banks may receive demand deposits and time deposits in Vietnamese dong from Vietnamese individuals or organisations that do not have credit relations with them.

Lack of transparency in the majority of Vietnamese banks still fuels many doubts about the stability of the Vietnamese banking industry. Bad-debt ratios are highest at joint-stock commercial banks—SBV figures suggest that some institutions' overdue and frozen debts are running at 22% or more. The state banks had cut back their bad-debt ratios at end-2000 to an average of 11.8%, and at foreign banks the average is just 0.47%. The figure at the four joint-venture banks is just 0.18% overall.

A new banking law, which went into effect October 1st 1998, may do little to solve the problems of indebtedness. Rather than set new legal standards, the law largely restated the old rules. Its focus is on the operation of a bank, including such things as explanations of foreign currency and the suggestion that banks check company statements before issuing a loan.

In an attempt to accelerate banking reform, the central bank in January 2000 ordered branch offices across the country to draw up recapitalisation plans for local joint-stock banks. It suggested that the total chartered capital of a joint-stock bank needs to be increased to at least D70bn ($5m). After the process of merging and restructuring joint-stock banks is complete, their number will be reduced to around 25.

9.3 Medium- and long-term capital. Medium and long-term loans in dollars meeting conditions specified by the SBV are subject to registration with the bank, prior to drawing up a loan. All medium- and long-term loan agreements in other foreign currencies are still subject to approval by the SBV before execution.

Vietnam's stockmarket, the Securities Trading Centre based in Ho Chi Minh City, opened its doors on July 20th 2000. Five companies had listed on the exchange by the end of March 2001: Sacom, a telecommunications cable manufacturer; REE, a refrigeration engineering firm; Transimex, a transport company; Hapaco, a paper manufacturer; and Lafooco, a food-processing firm.

Another ten or so companies—including a bank, insurer and software maker—are said to be planning to list, but the government has indicated that it does not want more than ten firms to list each year. Many other potential candidates for listing are unwilling, either lacking a need for capital or else wary of the relatively strict reporting requirements.

It was anticipated that bond trading would be a major feature of the market, but two government bonds seldom trade at all and trade is thin for the sole corporate bond, issued by the Bank for Investment and Development of Vietnam.

Given the dearth of securities, it is no surprise that demand greatly outstrips supply—indeed, orders often outstrip offers by a magnitude of 1,000 (or even more) to one. As a result, the prices of the shares tend to rise relentlessly, held in check only by a 2% cap on price movements in a single trading session. Most of the shares have doubled or tripled in value.

Around 2,500 people trade on the exchange, 98% of whom are individual investors. The market is open for three one-hour sessions each week, and bids or offers must be listed in person at the exchange's headquarters.

Foreigners are restricted from participating in the market both as investors and as fund-raisers. A foreign individual shareholder can own no more than 3% of a company's shares, and a foreign institution 7%; moreover, the total foreign shareholding in a company may not exceed 20%. Moreover, foreigners must hold their shares for at least one year if they do not participate in management,

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three years if they do. This acts as a major disincentive to foreign participation.

The maximum total percentage of bonds that can be purchased by foreign organisations and individuals from a company is 40% of issued bonds. An organisation may not purchase more than 10% or an individual more than 5% of bonds.

Foreign-owned companies may not list on the bourse, although if a pilot equitisation scheme for foreign-invested firms is successful (9.1), it is widely anticipated that those companies will be given the go-ahead to list.

To be eligible to list, a company must have existing equity of D10bn and have been profitable in the past two years. Founding shareholders must hold at least 20% of the capital for the first three years of listing. The company must issue a detailed prospectus.

The government is keen to see the market develop and plans to open a second exchange in Hanoi during 2001. But the desire to see the market grow is tempered by over-riding fears that it could become unstable or prone to speculation.

The key legal documents covering the operations of the stock exchange are Decisions 04/1999/QD-UBCK1 and 05/1999/QD-UBCK3, dated March 27th 1999 of the state Securities Commission; Decision 139/1999/QD-TTg, dated June 10th 1999, on Foreign Participants in Securities Market; Prime Ministerial Decision 145/1999/QD-TTg, dated June 29th 1999, on Selling Shares to Foreign Investors; Official Letter 140/CP-KTTH, dated February 16th 2000; and Circular 11/2000/TT-BTC, dated February 1st 2000.

Decision 145 also regulates the sale of unlisted shares to foreign investors, setting a maximum stake of 30% of the company's charter capital. New rules were drafted in late 2000; if enacted, they will prevent foreigners from taking such stakes at all in private companies operating in banking, finance, insurance, telecommunications, retail, travel, property and law firms.

Mounting bad debts (9.1) make capital availability a problem. And with deposits in the banking system amounting to only 18% of GDP, there will be little new funds for the banks to lend.

To encourage more people to take more money out from under their mattresses, the country's 3,000 post offices started accepting deposits in 1999. The government is keen to develop more measures to increase saving and shift cash into bank accounts.

Foreign banks will probably continue to focus on trade finance, given the collateral problem. Vietnam received its first sovereign credit rating in April 1997 from US-based Moody's Investor Service. It was still rated B1 in March 2001.

10.0 Human resources

10.1 Overview. Unemployment remains a problem since Vietnam's working-age population is increasing faster than the size of the labour market. Nevertheless, figures from the Ministry of Labour, Invalids and Social Affairs (MoLISA) put the unemployment rate in 2000 at around 6.4% nationwide, a small decline from 1999—although the measurement techniques appear to have been adjusted. The figure was higher in most cities since rural people continued to migrate to urban centres in search of work.

One of Vietnam's great attractions for foreign investors has been its inexpensive and relatively high-quality labour force. The Vietnamese have a high literacy rate and are generally tenacious and hard working, with a heritage that emphasises the importance of education. The low monthly minimum wage for unskilled labour, though on the rise, is appealing to investors in labour-intensive industries.

The labour force is growing at a very rapid rate. The population as a whole is growing at around 1.1% a year, and it reached 78m at the end of 2000. Government figures state that the country's labour force numbered 38.6m in October 2000, or 49% of the population.

This proportion will probably continue to increase since the working-age population is rising at 2.5% a year. Around 60% of the population (46.2m people) is of working age, and government forecasts say this will rise to 70% by 2010. The recent wars, and the post-1975 baby boom, mean that exactly half the population is aged 15–34, resulting in a dynamic and highly motivated workforce but also a highly oversupplied job market.

Although the pool of workers is large and literate, there remains a mismatch between supply and demand for skilled workers. MoLISA data for 2000 suggested that only 15.5% of the workforce could be classified as "skilled" (meaning they had received vocational training or a tertiary education). Just 3.9% of the workforce has university qualification. These figures are higher in the big cities, where around one-third of workers are classified as skilled. Despite the shortage, 2.3% of skilled workers reported being out of work—evidence that they are sometimes receiving poor or inappropriate training.

This explains the government's enthusiasm for foreign participation in the vocational education and training sector—which will probably be buttressed with more tax and investment incentives in 2001. The government has also set an ambitious target of getting 50,000 information-technology graduates into the workforce within five years. The authorities are also hoping to attract back to Vietnam some of the 300,000 Vietnamese

Fundamental indicators: labour

Labour market	1999 *actual*	2000 *estimate*	2001 *forecast*
Labour force (m)	39.3	40.4	41.7
Labour force (% change)	3.0	3.0	3.1

Source: EIU Vietnam *Country Forecast*, March 2001.

expatriates working in Silicon Valley in the United States.

10.2 Labour law. Once a foreign-invested enterprise has cleared its two biggest hurdles—getting licensed and getting a factory up and running—labour relations are usually the next item of concern. Investors are advised to scrutinise as much of the relevant legislation as possible, especially the 1994 Labour Code. Workers are hardly the only element in the labour equation. In a country that remains officially a proletarian paradise, foreign employers can find themselves subject to pressure from trade unions, state labour agencies and even the local media.

The 1994 law, which took effect in 1995, supersedes all previous labour legislation and addresses employment requirements affecting foreign-invested enterprises. Workers generally must be at least 15 years old—though exceptions are allowed, which must be approved by parents or sponsors. A worker may be employed in any place not prohibited by law, clarifying previous regulations that tried to control the movement of labourers inside the country. A worker may be hired directly by an enterprise or may register at an employment service organisation. Foreign employers must attempt to recruit employees first through these organisations. The Labour Code states that if an employment service agency introduces or recruits a worker who does not satisfy the job's requirements, the foreign-invested company may recruit workers directly, as long as the provincial labour office is notified. In reality, most joint ventures and 100%-foreign-owned enterprises recruit their workers directly. Decree 24/ND-CP of July 31st 2000 gives an employment agency just 15 days to find a suitable candidate, after which the foreign firm is allowed to act on its own behalf.

10.3 Industrial labour. Trade unions are a powerful political and economic force in Vietnam. The country's system of government was founded on the working class and the notion of workers as both employer and employee in factories. The unions' role in protecting workers' rights is considered even more important now that foreign companies are operating in Vietnam, according to Phillips Fox, an Australian law firm.

Vietnamese unions are headed by the Vietnam General Confederation of Labour, which monitors conditions and walkouts. The confederation does not attempt to hide its sympathies; indeed, a confederation leader was quoted in 1996 as saying that 90% of labour difficulties in Vietnam were the fault of employers. Although trade unions in Vietnam have a long history, in the past they were not very vocal in articulating their complaints; that too is changing.

Vietnam's nascent legal system has also sided with workers in many recent labour disputes.

Each enterprise should work out a set of labour byelaws that conform to the Labour Code. Employers must sign labour contracts individually with each worker; they must also ensure that an employee has a labour permit from either the Labour Department or the provincial People's Committee. An employer and a representative of the employees must also enter into a collective labour agreement, which contains provisions relating to matters like terms of employment, working hours, rest breaks, salaries, occupational safety and insurance. The worker's contract, which is signed at the time of employment, should be consistent with this collective agreement and with the Labour Code; otherwise labour inspectors can disqualify the contract to the detriment of the employer. A member of the executive committee of the trade union must sign the collective agreement. It should comply with the Labour Code and all related trade union regulations.

The Labour Code guarantees the right to strike. Specifically, Article 172 says, "where the labour collective is not satisfied with the decision of the labour arbitration council, it shall have the right to request the People's Court to resolve the matter, or to strike". Most interpret this to mean that workers are expected to strike only after negotiations or arbitration efforts have failed.

The Labour Code also establishes a hierarchy of arbitration councils to assist in labour disputes. The first level is either a company's labour conciliatory council, which consists of an equal number of representatives of the employees and the employer, or the labour conciliator of the district labour office. The second level is a provincial labour-arbitration council. The third and final level is a People's Court. The decision to strike must be made by the executive committee of the

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trade union in a company, and it must be approved by more than half of the employees in a labour collective, either by secret vote or by signatures. The People's Court has the power to decide if a strike is legal or not. The prime minister has the power to suspend or end a strike if it is "considered to be detrimental to the national economy". The Labour Code also says that strikes at enterprises serving the public or important to national security or defence are prohibited. A directive issued by the government in September 1996 defined the key sectors in which strikes were prohibited: electricity, water, post and telecommunications, public transport, banking, sea- and air-navigation, oil exploration, fuel distribution, defence and security. The MoLISA said in 1994 that workers should give 15 days notice before striking. This requirement was widely ignored, so the government issued new regulations in 1996 reducing the requirement to three days.

10.4 Wages and fringe benefits. The minimum monthly wage for workers at foreign-invested enterprises (FIEs) is $45 in Ho Chi Minh City and Hanoi; $40 in Haiphong, Ba Ria-Vung Tau, Can Tho, Danang, Binh Duong and Hue; and $35 elsewhere. Workers may be paid 70% of the minimum wage during a trial period—which may not exceed 60 days for specialised or highly technical jobs and 30 days for other jobs.

Decision 1037/2000/QD-BLDTBXH of October 6th 2000 sets the minimum monthly salaries for certain categories of Vietnamese employees working for foreign contractors. These include monthly rates of $1,000 for a senior engineer, $500 for an ordinary engineer, $400 for an interpreter, $350 for a technician and $200 for administrative staff. These rates do not include social insurance or medical insurance.

The salary levels of most skilled workers in Vietnam are much higher than the minimum wage. Moreover, the personal income tax assessed on Vietnamese citizens earning high incomes also drives up employment costs considerably for skilled workers.

Although Vietnamese workers are supposed to be paid in dong, most skilled workers will want to negotiate a salary in dollars. Most non-skilled workers are paid in dong, although the government's regulations on minimum wages are written in dollar terms. Since July 1st 1999, however, the minimum wage and salary of Vietnamese workers at FIEs has been calculated and paid in dong, by converting the dollar-denominated minimum wage and salary into dong using the average official interbank rate.

Besides the agreed salary, there are a number of other charges that FIEs must pay for their Vietnamese employees. The number of additional charges, taken together with the fact that foreign companies also often pay the taxes for their skilled workers, means that costs rise exponentially for more highly paid Vietnamese employees. Foreign companies may wind up paying as much as four times a secretary's take-home pay, for example, making it almost as economical to hire an expatriate at a certain point. The government is aware of this, and reforms to personal income tax in 2001 are expected to include attempts to remedy this problem.

Among potential additional charges: employees of foreign-invested companies who have worked in the enterprise at least one year are entitled to a Tet (Vietnamese Lunar New Year) bonus of at least one month salary. All employees are also eligible for social insurance, generally 15% of total salary. Employees must also contribute 5% of their salary for social insurance, which an employer is expected to deduct and remit to a state- run fund. Some companies are expected to pay a transport charge for the cost of their workers getting to and from their place of employment.

Employees are entitled to at least one day off per week. The following are fully paid public holidays: Western New Year's holiday (January 1st); Tet holiday (four days, usually in late January or early February); Victory Day (April 30th); International Labour Day (May 1st); National Day (September 2nd); and the national day of the country of a foreign employee. Employees who have worked for a business for at least one year are also entitled to 12 days of fully paid annual leave for normal jobs, or 14–16 days for employees in dangerous jobs or for those under the age of 18. Employees are also entitled to take three days off for marriage and one day off for the marriage of children.

10.5 Working hours. The Labour Code fixes the normal workday at eight hours, with a break of at least 30 minutes, and a normal working week of 48 hours. Most office workers take an hour and a half for lunch, and work from 8 am to 5.30 pm.

The Labour Code restricts overtime to 200 hours per year—fewer than four hours per week. But given that this figure is very low and that many Vietnamese employees want to work overtime, many foreign-backed enterprises come to informal arrangements with their employees to work more overtime than is officially allowed. The domestic garment industry also began a campaign in early 2001 to have the rules made more flexible.

Overtime pay is at least 150% of regular wages on normal working days, at least 200% on holidays and either 130% or 135% for night work. In special circumstance, such as for women workers in certain industries and for difficult or high-risk work, the Labour Code details more complex payment and workday restrictions.

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Compensation in Vietnam

The following are the minimum monthly wage levels, in US dollars, for Vietnamese employees working for foreign representative offices, organisations or individuals, according to a circular released in October 2000 by the Ministry of Labour, War Invalids and Social Welfare. Grades are determined by various factors, including training and experience levels.

Function/position	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
Maid	80	100	120	150	180
Room maid	100	120	150	180	210
Gardener	100	120	150	180	210
Guard	120	140	170	200	240
Cook	150	180	210	250	290
Driver (four-seater)	150	180	210	250	290
Clerk, office staff	180	210	240	270	300
Secretary, accountant	200	230	270	310	350
Interpreter, marketing staff	250	280	310	350	400
Assistant to chief representative, manager	300	340	380	430	480
Chief representative	500	550	600	650	n/a

Source: Service Company to Foreign Missions (FOSCO).

10.6 Part-time and temporary help. Although both Vietnamese and foreign companies frequently use part-time or temporary help, the Labour Code makes no provisions for this practice. Normally, there is a written understanding between an employer and part-time or temporary workers that specifies the working conditions and wages.

Trading companies that want to launch a sales-promotion campaign and manufacturing enterprises in need of additional workers to fulfil a contract often use part-time and temporary help without any binding obligation on long-term employment for these employees.

10.7 Termination of employment. The Labour Code says that an employer may unilaterally terminate a labour contract if:

(1) the employee repeatedly fails to perform the work under the terms of the contract;

(2) an employee commits an act of theft, bribery, disclosure of business or technology secrets, or other conduct detrimental to the assets or well-being of the enterprise;

(3) an employee has taken seven days off in one month or 20 days off in one year without proper reason;

(4) an employee suffers illness or injury and is unable to work after having received treatment for one year in an indefinite-term labour contract, six consecutive months for a definite-term labour contract or more than half the length of the contract for a specific or seasonal job;

(5) the employer is forced to reduce production and employment while trying to recover from a natural disaster, fire or in the event of force majeure; or

(6) the enterprise ceases operation.

Before terminating a labour contract, an employer must discuss and reach an agreement with the executive committee of an enterprise's trade union. In a disagreement, both parties must submit a report to the "competent body or organisation", and the disagreement must be resolved "in accordance with a procedure stipulated by the law".

Furthermore, employers must usually give 30–45 days termination notice to employees. An exception is granted, however, for specific or seasonal jobs lasting less than one year—only three days notice is then required.

Until early 2001 employers were required to make severance payments if an employee resigned because of maltreatment, or was dismissed for reasons 1, 3, 4 or 6 in the list above. But Circular 02/2001/BLDT-BXH-TT dated January 9th 2001 rescinded these rules (which were laid out in Circular 21/LDTBXH-TT of October 12th 1996). It was unclear in late March 2001 whether new guidelines on severance payments would be issued in future or whether severance payments are no longer payable in these situations.

10.8 Employment of foreigners. Although foreign-invested enterprises must give Vietnamese priority in recruitment over foreign personnel, they may hire foreign workers if local workers do not have the skills or competence required for a job. Over the past few years, many foreigners—particularly those just out of college—have arrived in Vietnam and found work. Many of the jobs these people take would not be easily filled by Vietnamese.

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Legislation passed in 1999 simplified procedures for granting work permits to foreign employees. Decree 169/1999/ND-CP, dated December 3rd 1999, amended Decree 58/C of October 3rd 1996 on granting work permits for foreign workers in enterprises and organisations in Vietnam. It became effective December 18th 1999, and the rules were further clarified in Circular 08/2000/TT-BLDTB and XH of March 29th 2000.

The new regime has added certain types of foreign employees to the list of those who must obtain a work permit. It has also added several types of employees not required to obtain work permits. According to the changed rules, the employment duration of a foreign worker is no longer limited to three years; instead, the maximum duration of employment in Vietnam may be set out in the employment agreement between the employer and employee.

Authorities that issue work permits must now respond to completed applications within 15 days, instead of 45, from the date of receipt. In practice, the time taken to issue a work permit will exceed the legally stipulated limit. Fees for work permits and Ministry of Interior (previously the Ministry of Public Security) certification of eligibility for a work permit were also abolished with this decree.

An application for a work permit must include a copy of the licence or business registration certificate of the employer; the written approval of the licensing authority of that firm; a copy of the labour contract; the foreigner's curriculum vitae, educational qualifications, a health certificate and three colour photographs. A Vietnamese translation of foreign-language documentation is also required.

Work permits are supposed to be obtained by all foreign employees, though companies have been skirting this regulation. The need for a permit does not apply to foreigners working as a company representative in a representative office, or as chief of a branch, or the director or deputy director of a foreign firm. Other exemptions include foreigners who are sent to Vietnam on specific trouble-shooting missions or who are members of a foreign firm's board of management.

11.0 Foreign trade

11.1 Overview. The country's chief exports are crude oil, garments and textiles, seafood, footwear and rice. The leading imports are petroleum, agricultural and industrial machinery and raw materials and equipment for the garment and textile sector. The main export markets are Japan, China, Singapore, Australia and Taiwan, and the chief sources of imports are Singapore, Taiwan, Japan, South Korea and China.

Surging world oil prices drove strong growth in Vietnam's exports last year. Preliminary government estimates suggest the value of the country's exports was $14.3bn in 2000, 24% higher than 1999. Export turnover reached $3.55bn in the first three months of 2001. This represents a healthy 14.3% year-on-year increase—though the comparable rate of growth was 33.8% in the first quarter of 2000.

There are two main threats to Vietnam's exports in 2001. One is the continuing fluctuations of world commodity prices, which will probably affect earnings from rice, coffee and oil exports. The other is the increasing competitive threat to Vietnamese industry from China in sectors such as garments, textiles and footwear. This will be further accentuated if China joins the World Trade Organisation, as expected.

Foreign-invested exporters outperformed the domestic sector. In 2000, foreign-invested enterprises (FIEs) exported $6.9bn and the locals $7.4bn, but the foreign-invested sector's export revenue grew 50%, whereas Vietnamese exporters' turnover rose just 6.9%. As a result, foreign-invested firms now earn nearly half of Vietnam's export revenue. But much of last year's increase can be attributed to Russia's share of a very large oil joint venture.

Imports will probably continue growing strongly, having posted 30.8% growth in 2000, reaching $15.2bn. Increasing foreign investment and domestic corporate expansion will fuel further growth in capital equipment and machinery imports, which rose 23.8% in 2000. Likewise, the demand for petroleum will continue rising in line with greater economic activity; it will be mitigated only after Vietnam's first domestic refinery starts operating in 2004.

Foreign-invested firms imported $4.3bn in 2000, and local firms $10.9bn. In the previous year, the foreign firms had imported $3.4bn and the domestic firms $8.2bn. Overall, therefore, Vietnam's $892m trade deficit is being fuelled by local enterprises.

The government's export target for 2001 is $16.6bn, a 16% increase. The government is relying on the ratification of the United State–Vietnam bilateral trade agreement to provide a major export fillip. However, depressed commodity prices and economic difficulties in key export markets—such as Japan and Taiwan—will probably make this figure very difficult to reach.

Vietnam has committed itself to freeing up trade, with the first step being the US–Vietnam bilateral trade agreement, due to be ratified in 2001 (1.6). Over the next 5–8 years, this should see the US become a much more significant export market than it now is. Perhaps more importantly, Vietnam is preparing to join the Association of

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Fundamental indicators: foreign trade

Foreign trade (% growth)	1999 *actual*	2000 *estimate*	2001 *forecast*
Exports of goods and services	9.8	13.5	5.4
Imports of goods and services	1.9	20.9	6.4
Foreign trade (% of GDP)			
Exports of goods and services	47.7	48.9	49.6
Imports of goods and services	49.9	51.8	54.7
Trade figures ($ bn)			
Current-account balance	0.1	-0.5	-0.5
as % of GDP	0.2	-1.5	-1.7
Goods: exports fob	11.5	14.4	15.2
Goods: imports fob	11.6	15.2	16.2
Trade balance	-0.1	-0.8	-1.0
Services: credit	2.7	3	3.3
Services: debit	3.3	3.9	4.1
Services balance	-0.6	-0.8	-0.8

Source: EIU Vietnam *Country Forecast*, March 2001.

South-East Asian Nations (ASEAN) Free-Trade Agreement, known as AFTA, in 2006. This requires a wholesale overhaul of tariffs and non-tariff barriers (11.2). Vietnam is also planning to join the World Trade Organisation, but no deadline has been set; moreover, the reforms required will take considerable time to put in place.

The importance of exports to the Vietnamese economy has prompted several attempts to liberalise the export-import regime, including an overhaul of customs procedures and a removal of red tape from the export process. One change, still awaiting Trade Ministry approval in March 2001, would allow firms to import and export goods that are not listed on their licences, rather than having to go through the cumbersome process of adding to the licence every time a new need arises. Other changes will diminish the role of state middlemen in many export transactions, allowing exporters to deal directly with foreign buyers.

In the mean time, the heavy hand of officialdom tends to encourage smuggling. Some estimates put the value of smuggled goods at one-third of official imports. If this is true, the customs service is detecting very little of it—it prosecuted cases totalling just $15.5m last year. If the government is successful in its ongoing campaign to force smugglers to use legitimate channels, figures on the value of trade with China will rise sharply.

On one hand, the red tape and confusing import-export tax system detract from Vietnam's value as a base for exporting to the region; on the other hand, labour is cheap, and the system of export-processing zones has greatly facilitated exports, particularly to nearby countries.

11.2 Tariffs and import taxes. Import and export duties change constantly in Vietnam, adding considerable investment risk. Vietnam's tariff policy uniformly discourages the import of consumer goods and encourages the import of intermediate and investment goods. At the same time, it provides significant protection for certain locally made products and industries.

Tariffs are based on the declared invoice price of the imported goods, and fines are imposed for false declarations.

The values of all imports are based on cif prices—that is, the actual purchase price at the destination port, plus insurance and freight costs. Where there is no invoice available, the item will be assumed to be worth the minimum value for such things as it appears on the government's own goods pricing list.

The customs system includes a wide range of tariffs. Some goods face very high rates, others very low levels or even none at all. Very few items draw an import duty of more than 50%, though certain products—like alcohol, cigarettes and cars—can be as high as 60%.

There are many tariff categories—now about 35. Many possible purposes means the same good can draw a different rate depending on how it will be used. The import of components for the manufacture of a motorcycle shock absorber, for instance, would be subject to a 50% tariff if classified under the heading "motorcycle parts". If duty on each component is assessed individually, lower duties could be applied.

Vietnam applies the Harmonised Commodity Description and Coding System nomenclature for merchandise trade, as developed by the World Customs Organisation. Exemptions from duties

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are generally granted on equipment and machinery used in production—an important incentive for foreign investors. Exemptions may also apply to some construction materials. Imports of cement, certain types of steel and, from time to time, cars have been banned in order to give a boost to those industries in Vietnam. Certain imported raw materials are also not charged customs duties, such as cotton used in local factories to make goods for export and machinery needed to make spare parts. Enterprises do not have to pay import duties on raw materials if the finished items are destined for export.

A duty-free holiday of up to five years may apply to raw materials for certain enterprises the government wants to encourage. This list is produced each year by the Ministry of Planning and Investment, the main authority for licensing foreign businesses. There is also a one-off exemption on machinery and specialised vehicles that form part of the fixed assets of hotels, offices, apartments, business centres, supermarkets, golf clubs, and finance and consulting offices.

Vietnam's accession to the Association of South-East Asian Nations (ASEAN) commits the country to make comprehensive tariff reductions by 2006, at which time it will join the ASEAN Free-Trade Area (AFTA). Other ASEAN countries should have common tariffs by 2003. Since joining ASEAN in 1995, Vietnam has lowered tariffs, in accordance with the Common Effective Preferential Tariffs (CEPT) programme, to 0–5%, for 1,600 goods. Certain imports from the European Union will also be subject to reduced rates.

In early 2001 the government approved a list of 6,130 items scheduled for tariff reductions and exemptions in the 2001–06 period. Tariffs on some consumer goods, fruit and machinery, now at 25–50% will move below 20% in 2001 and into the 0–5% band thereafter.

Vietnam's new value-added tax (VAT—7.14) of 10% applies to imported goods, though it is refunded once the goods are sold. Revenue from the VAT should help offset lost revenue from lower tariffs as Vietnam seeks to comply with ASEAN's CEPT programme.

Petroleum and fuel taxes are subject to particularly frequent changes, usually downwards. Kerosene and mazut (a fuel oil) enjoy a 0% tariff, imposed last year when international oil prices reached their peak. Aviation fuels attract a 10% tariff, down from 15% in 2000, except for TC1 and ZA1, which are taxed at 25%. Naphtha, reformate and other materials for petrol blending are taxed at 20%, whereas diesel and condensate attract a 5% tariff. Slovene petrol and other varieties in the preferential import tariff group are taxed at 10%.

If a good is subject to the special consumption tax (7.14), imports of that good also attract the tax.

Under Circular 13/2001/TT-BTC, effective from March 23rd 2001, companies that manufacture goods for export can defer import tax payments for up to nine months on imports of raw materials used in production.

11.3 Import restrictions. Besides applying tariffs (11.2), the government tries to control trade by licensing companies for import-export trade in particular items. Foreign companies must trade with Vietnam through licensed local trading companies, most of which are state-owned. Since many private enterprises are now authorised to engage in direct trade, foreign-invested companies are turning to these more often to act as their import agents. Foreign companies should check with the Vietnam Chamber of Commerce and Industry (VCCI—see the Appendix for contact details) to make sure a particular trader is licensed to deal in a specific commodity or item. However, these rules will probably be loosened during 2001 under changes proposed by the Trade Ministry, which will allow more direct trade transactions and make the system more flexible (11.1).

In general, Vietnam's import trade remains highly regulated. A few goods are banned altogether, but it is primarily via high import duties and other import controls that Vietnam regulates the inflow of goods. Other restrictive measures include excise taxes, import licences, quotas and reference prices. Formal import quotas exist for cement, construction materials, fertilisers and petroleum products.

Items that are wholly forbidden from being imported include most second-hand consumer goods, except cars with fewer than 16 seats and motorbikes. Personal property belonging to diplomats or other workers in international organisations is exempt from import restrictions.

The government ratified a comprehensive resolution on December 30th 1999, with effect from April 1st 2000, that specifies government oversight on import and export activities. Goods that are prohibited from import include weapons, munitions, military equipment, addictive drugs, toxic chemicals, "depraved and hostile cultural products", firecrackers (except those used for maritime traffic safety or other reasons subject to a decision by the premier), "toys that badly influence personality development of children", cigarettes (except permitted quantities in personal baggage), second-hand consumption goods, cars with left-hand steering wheels except for special-purpose vehicles such as cranes, certain kinds of second-hand goods such as combustion engines, motorcycles and motor tricycles, ambulances, buses, amphibole-derived products and materials containing amiant.

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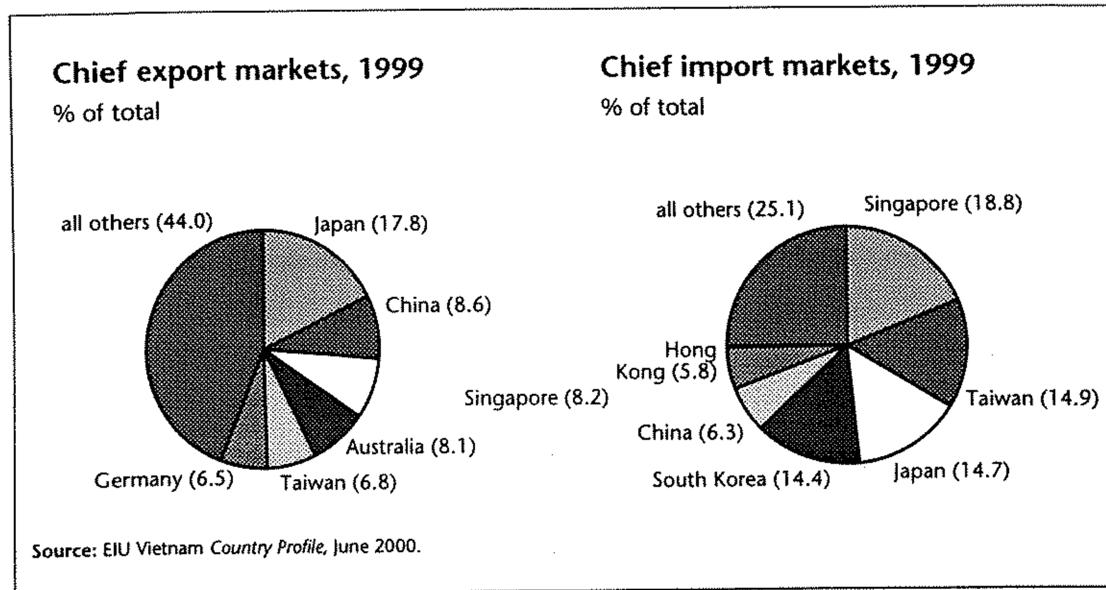

Source: EIU Vietnam *Country Profile*, June 2000.

Goods for which import licences are required include ceramic and granite floor tiles less than 40 cm x 40 cm in dimension; portland cement; clinker; coloured and transparent glass equal to or thicker than 1.5–2 mm (excluding ribbed, multi-layered, safety or reinforced glass); newsprint; printing and writing paper; several kinds of construction steel; refined liquid vegetable oil; refined and unrefined sugar; completed motorcycles and motor tricycles; cars with 16 or fewer seats; petrol; and fertiliser. Nine types of goods have been dropped from import management for 2000—including electric fans, bicycles, fulfilled plastic packages, consumption goods made of porcelain, glass and ceramic.

The import quota for oil and petroleum is 8m tonnes and is provided at the beginning of each year to licensed importers. The technical criteria controlling imports, based on quality, hygiene, food security and environmental concerns, remain the same as in 1999. The government hopes to abolish import licences by 2007.

The Trade Ministry has indicated that only ten import commodities will remain on the restricted list after 2001, and the only goods for which licensed "import co-ordinators" will be required are radio transmission facilities, pharmaceuticals, dynamite, fertiliser, books and films. The ministry has also promised to scrap import restrictions on fertiliser, embryo steel and alcohol by 2002.

In other areas, AFTA status may be extended to non-ASEAN countries for imports of cement, fertiliser, paper and other key manufacturing commodities. But the Trade Ministry says it will reserve the right to raise import taxes on these goods again if domestic demand is already fully satisfied. No timetable has been given to implement these changes.

11.4 Taxes on exports. Export rates are specified in the Export and Import Tariff for Commercial Goods (issued July 1st 1994 and amended several times). Export duties are levied on a relatively small number of items compared with import duties, mostly on natural resources and commodities such as coffee, fish, metals, nuts, seeds and wood products. The maximum rate is 45% of the fob price (the price of goods as they leave port excluding the cost of insurance and shipping), but the rate can be as low as 1%.

The government is eager to reshape the structure of its trade, which will probably entail changes to export taxes in the near term. Export taxes are generally seen as discouraging export growth, but the government is keen to develop more value-added processing in Vietnam, so it may continue increasing export taxes on raw materials as a way of doing so.

11.5 Free ports, zones. Industrial zones (IZs) and export-processing zones (EPZs) were first organised by the government in October 1991 to be legal bases for investors seeking to avoid Vietnam's bureaucracy and restrictive investment rules. The administration of an IZ takes care of applications for investment licences—a significant advantage in a country where bureaucratic delays from miscommunication and misunderstandings during the licensing stage can delay a project for months.

Moreover, all tenants in IZs automatically receive 50-year investment licences, the maximum permitted by the foreign investment law. And since IZs by definition already offer land—usually the main attraction for choosing a local joint-venture partner (2.1)—it is much simpler to set up a 100%-foreign-invested enterprise there.

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Vietnam was over-ambitious in its creation of industrial zones when foreign investment was pouring into the country in the early 1990s. Many IZs have not attracted any investors, although the increasing pace of foreign direct investment is gradually filling the gaps. Even so, most IZs have only a handful of tenants at this stage.

11.6 Export restrictions. Goods still prohibited from free export include explosives, books and newspapers, pearls, gems and precious metals, and works of art and antiques. Exports of coal, coffee and rice are still subject to close control, but the rice export quota is to be cancelled in 2001, allowing any organisation or individual to export rice.

Enterprises not involved in production require a licence to trade. The licence lists the categories of goods they are allowed to trade. Under changes the Trade Ministry says it will introduce in 2001, this list will no longer be definitive, and firms will be free to export or import goods outside the terms of their licence.

Guidelines have been issued to interpret what commodities are covered under general trade categories, yet detailed interpretation varies from one official to another. To be eligible to be an export company, enterprises must show they have working capital of at least $200,000 and have "properly trained" staff. Non-state-owned enterprises that want to work in the import-export business must have support from the People's Committee, a kind of town council run by members of the local Communist Party.

Export restrictions apply to precious stones, which until recently, were smuggled out of the country at a frantic pace. Vietnam has finally issued its new mining law and accompanying implementing regulations; it is hoping to get this problem under control by bringing in international mining companies, although there has been little movement so far.

11.7 Export insurance and credit. Bao Viet, the dominant state-operated insurance company, offers export insurance. Foreign insurers or joint ventures such as Chinfon Manulife, CMG Bao Minh, Prudential and AIA have now entered the non-life insurance market and can offer insurance to foreigners.

Export credits may be revived through aid programmes recently established by Australia, European Union members and Japan.

US companies can obtain export finance from the Export-Import Bank (Exim Bank), which opened a full operation in Vietnam in December 1999. It offers loans, loan guarantees, working capital guarantees and export credit insurance. Another option for US firms is the Overseas Private Investment Corporation (OPIC), which offers project finance and political-risk insurance.

Many of the foreign banks in Vietnam will provide export financing, though only cautiously (9.2).

12.0 E-commerce

12.1 Forms of e-commerce. E-commerce in Vietnam is still at a decidedly fledgling stage. In a country where few people have bank accounts or credit cards and only four in every 100 people have access to a telephone line, only a small slice of the urban middle class uses the Internet, and then only for recreational, communication and advertising purposes. Given that Internet access is out of reach for most of the population, it is likely the development of e-commerce will centre on business-to-business (B2B) rather than business-to-customer (B2C) transactions.

There is great enthusiasm for e-commerce, however, and pilot projects are underway in government and banking. The government is preparing to move its customs declaration service online, which may lift efficiency and help harmonise the customs service across the country.

State-owned Vietcombank is to introduce an Internet-based information-technology platform to support its entire operation during 2001; it hopes this will eventually form the basis for online banking. Another bank, Asia Commercial Bank, launched an online banking service in early 2001, but it can only be used to check account balances; transaction capability is supposed to be introduced later in the year. In October 2001 Vietcombank will also commence trials of an online credit-card payments system, in collaboration with Vietnam Datacommunications Company (VDC), the state-owned Internet access provider, and Cybercash, based in the US. However, it will only accept transactions for commodities that are delivered within Vietnam, and transactions will be limited to purchases of books, software, telecommunications services, tourist bookings and luxury items. Thirty or 40 businesses will take part.

Around 600 of the 40,000 small and medium-sized enterprises in Vietnam have their own websites. The Ministry of Culture must approve all content, so businesses tend to update their sites only infrequently. Most of the sites are simply online advertisements, although several Vietnamese book and magazine sellers allow customers to place online orders.

Around 200 Vietnamese firms have joined the B2B website alibaba.com, including food and garment exporters. The Mekong Project Development Facility is attempting to drum up support for a similar trading portal in Vietnam, meetvietnam.com.

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12.2 Growth of e-commerce. The potential growth of e-commerce is limited by Vietnam's undeveloped telecoms infrastructure, though Vietnam Post and Telecommunications Corp (VNPT—the state-owned telecommunications carrier) is racing to extend and develop the network. The March 2001 figure of 4.2 telephones per 100 persons represents a 20-fold increase over the past ten years. VNPT wants to lift this to eight telephones per 100 persons by 2005, which the World Bank estimates will require additional investment of around $1bn per year. Some of this would have to come from official development assistance, given that the sector is largely off-limits to foreign investment (12.3).

Consumer demand for personal computers (PCs) is increasing rapidly, and the price of domestically assembled computers has fallen. The International Data Group reported that 152,000 PCs were sold during 2000, an increase on the 132,000 PCs sold during 1999. Growth is expected to be 36% during 2001, translating into sales of 180,000 units. But a study by Harvard University in early 2001 estimated that there were only nine PCs per 1,000 persons in Vietnam in 2000.

The number of Internet subscribers is growing fast—albeit from a very small base. There were just 15,000 registered users in 1998, rising to 33,000 in 1999 and 100,000 in 2000. There were 115,000 in March 2001, and this figure should reach 250,000 by the end of 2001; it should reach 1m some time in 2004. Despite the strong growth, this 2004 forecast will still amount to less than 2% of the projected population.

One major obstacle to the growth of online activity is the high cost of local, long-distance and regional telephone calls. Vietnam's telecoms fees and Internet access charges are said to be among the highest in South-east Asia. Steps are being taken, however, to remedy this: in March 2001 VNPT announced that from July 1st local calls will fall 10%, international calls 15% and mobile phone charges 20–25%. VNPT has also announced cuts to Internet fees and the cost of hiring Internet portals later in 2001. Annual charges for leasing a 64-kilobyte line in March 2001 could reach $2,500—which is 5–6 times higher than in Singapore, Malaysia or Thailand.

For individual Internet subscriptions, however, the picture is somewhat more promising—the cost of signing up with a local Internet service provider (ISP) has dropped dramatically, although it is still higher than the regional average. It was possible to pay as little as $2 a month in March 2001 for an individual subscription and less than D100 a minute in access charges.

The drop in fees would appear to indicate a healthy degree of competition among the local ISPs. There are now five (all state owned), with the government planning to issue licences to another ten providers this year. But there is only one Internet access provider (IAP), the Vietnam Datacommunications Company (VDC), which controls the ISPs' access to the Internet. The catch is that VDC also runs one of the ISPs.

The VDC plans to increase the bandwidth to 100 MB by the end of 2001. Internet access charges are to be pegged to regional rates from next year and scrapped by 2005, when bandwidth is intended to reach 1,000 MB.

VDC linked itself to KDD MediaNet of Japan in March 1999. Two international gateways were set up for Internet services—one in Hanoi and the other in Ho Chi Minh City—linking Vietnam with Australia, the United States, Japan and Hong Kong through five channels.

Mobile phones could potentially become a source of Internet transactions, since the number of users has shot up from 15,000 in 1995 to 572,282 in 2000. Both government and industry forecast growth in subscriptions to exceed 75% in 2001. However, the arrival of wireless application protocol (WAP)-enabled phones may yet be a ways off.

The number of businesses with websites reached 600 by end-2000, but costs are relatively high for many smaller businesses: designing and registering a website costs $800, plus $20 for monthly maintenance.

12.3 Foreign investment. Foreign investors in Vietnam's telecoms sector are limited to business co-operation contracts (BCCs—2.1), where the foreign party provides the equipment, training, supervision and finance and where VNPT, the local monopoly, retains ownership and management. There were eight BCCs in the telecoms sector in March 2001, worth $1.3bn; the largest investor is Telstra, an Australian telecommunications company, which has a $237m BCC with the state-owned VNPT.

There are some complaints that operating via BCCs pushes up operating costs to unacceptable levels, to the detriment of investors and customers. Moreover, the BCC structure cannot provide the rewards to investors for the level of risk they bear. Foreign investors may soon be able to enter the sector via joint ventures (JVs), however, following the signing of the US–Vietnam bilateral trade pact (1.6).

In the agreement, Vietnam has undertaken to adopt the World Trade Organisation's Basic Telecom Reference Paper, meaning that regulatory controls will be loosened and cost-based interconnection fees introduced.

Foreign JVs will be permitted in "value added" telecom ventures two years after the agreement is ratified by the US Congress (which should occur

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in 2001), and JVs can participate in Internet ventures a year after that. In the fourth year, foreign JVs will be permitted to offer mobile phone and satellite services, and in the sixth year the voice telephone services market will be opened.

Already, JVs are permitted in telecom ventures outside the services arena. Siemens (Germany) was in a 50-50 JV with VNPT to manufacture fibre-optic cable until 2001, when it sold its stake to Corning (US). VNPT also has JV operations with Alcatel of France, Fujitsu and NEC of Japan, and LG of South Korea.

Vietnamese ISP/IAP Vietnam Datacommunications Company (VDC) signed an Internet roaming agreement in 1999 with Japan's Asahi-net. Through this agreement, VDC's subscribers will not need to use another ISP when they leave Vietnam, and subscribers to foreign ISPs will be able to use VDC when visiting Vietnam.

A new foreign-invested BCC is seeking to establish a third national mobile phone network. The deal will mark the first time a foreign company has signed a telecoms BCC not involving VNPT—the local party is Saigon Post and Telecoms Corp (Saigon Postel), a former VNPT subsidiary that has since equitised (but is still largely state-owned). The $230m deal partners Saigon Postel with South Korea's SLD Telecom. The new network will compete with Vinaphone, wholly owned by VNPT, and Mobiphone, a BCC venture between VNPT and Comvik, a Swedish firm.

Foreign investment in other areas of information technology—such as software development and hardware supplies—is encouraged. Most of the major international players have at least a small operation or representative office in Vietnam. Software companies enjoy very generous tax incentives (3.3), and a high-tech "Silicon Valley"-style industrial park (IP), Quang Trung Software IP, has opened near Ho Chi Minh City (3.5). Eight of its 68 tenants are foreign-invested firms.

The software industry is still very small, and it earned less than $7m in 1999. The entire information-technology industry earned just $220m in 2000;; of this, $180m came from sales of hardware and only $40m from services and software revenue. Of this $40m, around 60% is earned by foreign-invested firms. There are widespread expectations of strong growth—forecasts of industry-wide turnover from software sales in 2005 range from $200m to $500m—but a crucial factor will be the government's ability to rein in software piracy.

12.4. Intellectual property. There are no specific laws on e-commerce written into the intellectual property code (4.2). Computer software—including computer programs, documents describing programs and databases—are protected by copyright law, but incidents of piracy are very high.

The issue may be tackled in more detail when a legal framework for e-commerce is released later in 2001. The draft decree will be a joint production by the Trade Ministry, Justice Ministry, the Science, Technology and Environment Ministry and the General Department of Post and Telecommunications. Work is reportedly proceeding very slowly, but there is an impetus to finalise the decree: it is a necessary condition for joining the e-ASEAN initiative of November 2000, which will eventually set up high-speed Internet links throughout South-east Asia.

12.5 Consumer protection. Legal systems do not cover e-commerce transactions, and the risk of fraud is very high. Issues of consumer protection, privacy and electronic-signatures are to be tackled in the new decree on e-commerce (12.4).

Privacy is a somewhat novel concept in Vietnam. At present, the government uses its control of the five ISPs to monitor e-mail communication. Given the absence of privacy laws, it is not yet clear what steps the government will take to protect the privacy of online financial transactions.

It is also unclear how Vietnamese consumers themselves will view the security and privacy of transacting in an online environment. Given that they are used to being scrutinised by the authorities, it is possible that they will be less concerned with privacy issues than their Western counterparts.

Besides its monitoring and surveillance activities, the Vietnamese government tries to exercise a close degree of control over information. A firewall restricts access not only to pornography, but apparently also to a range of websites that may be construed as critical of the Vietnamese authorities.

12.6 Contract law and dispute resolution. Present law does not cover electronic contracts. The present judicial system is not capable of solving disputes related to e-commerce transactions. No method of determining the jurisdiction of e-commerce transactions has yet been discussed.

12.7 Basis of taxation. No rules have been established governing how taxation of e-commerce should take place and how electronic "residence" should be determined in Vietnam.

12.8 Classification of e-commerce transactions. No classification of e-commerce transactions has been undertaken to assign different tax rates, or for any other purpose.

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Appendix: key contacts for Vietnam

Government committees and chambers include the following.

Ministry of Planning and Investment (MPI), Head Office, 56 Quoc Tu Giam, Hanoi; Tel: (84.4) 845-8146; Tel/Fax: (84.4) 845-9271; 2 Hoang Van Thu, Hanoi; Tel: (84.4) 845-5298 or 846-1586; Fax: (84.4) 823-2494; 178 Nguyen Dinh Chieu, District 3, Ho Chi Minh City; Tel: (84.8) 8294674; Fax: (84.8) 829-1534.

Market Management Bureau, 59 Ly Tu Truong, District 1, Ho Chi Minh City; Tel: (84.8) 829-0677; Fax: (84.8) 829-0674); 91 Dinh Tien Hoang, Hanoi; Tel: (84.4) 825-5502 or 825-5834.

State Bank of Vietnam (SBV), 49 Ly Thai To, Hanoi; Tel: (84.4) 825-2831; Fax: (84.4) 826-8765.

Vietnam Insurance Company (Bao Viet), 26 Ton That Dam, District 1, Ho Chi Minh City; Tel: (84.8) 829-4180; Fax: (84.8) 821-1636); 7 Ly Thuong Kiet, Hanoi; Tel: (84.4) 826-2632; Fax: (84.4) 824-5157).

Vietnam Chamber of Commerce and Industry (VCCI) provides information about particular market sectors and Vietnamese companies. It has offices in a number of cities, including the following:

29 Cach Mang Thang Tam, Can Tho City; Tel: (84.71) 824-918; Fax: (84.71) 824-169.

256 Tran Phu, Da Nang City; Tel: (84.51) 821-719; Fax: (84.51) 822-930.

10 Dinh Tien Hoang, Haiphong City; Tel: (84.31) 842-243/894; Fax: (84.31) 842-243.

33 Ba Trieu, Hanoi; Tel: (84.4) 825-2962 or 253-3023; Fax: (84.4) 825-6446.

171 Vo Thi Sau, District 3, Ho Chi Minh City; Tel: (84.8) 823-0301 or 823-0339; Fax: (84.8) 829-4472.

36/6 Vo Thi Sau, Vung Tau City; Tel: (84.64) 852-710; Fax: (84.64) 859-651.

155 Tran Phu, Vinh, Tel: (84.38) 844-012; Fax: (84.38) 842-026.

Two offices are key to virtually any foreign investment in Vietnam:

Office of the Government, 1 Bach Thao, Hanoi; Tel: (84.4) 080-940; Fax: (84.4) 0804-4130. It is fast becoming the centralised authority for priority sectors such as the oil industry and tourism.

Industrial Property Department (IDP), 1 bis Yet Kieu, Hoan Kiem District, Hanoi; Tel: (84.4) 826-4707 or 826-8737; Fax: (84.4) 826-6185. IDP is an important stop for investors considering licensing, technology transfers, or the local sale or production of copyrighted or trademarked goods.

Ministries with particular sectoral responsibilities include the following:

Ministry of Agriculture and Rural Development, 2 Ngoe Ha, Hanoi; Tel: (84.4) 846-8160; Fax: (84.4) 845-4319. This ministry is responsible for all food industries except marine products, which come under the Ministry of Fisheries.

Ministry of Trade, 31 Trang Tien, Hanoi; Tel: (84.4) 826-2528; Fax: (84.4) 8264696; is involved in import-export rules and enforcement and licensing representative offices.

Ministry of Construction, 37 Le Dai Hanh, Hanoi; Tel: (84.4) 976-0271 is responsible for urban housing and land, construction finance, urban infrastructure, and the cement and building-materials industries. It is now preparing competitive bidding regulations, an urban code and a building code.

Ministry of Electricity, 18 Tran Nguyen Han, Hanoi; Tel: (84.4) 825-3894; Fax: (84.4) 824-8003 is concerned with electricity generation and supply, along with the coal industry.

Ministry of Finance, 8 Phan Huy Chu, Hanoi; Tel: (84.4) 826-2789 or 825-3983; Fax: (84.4) 826-2266 includes the General Department of Taxation, the Industrial Financial Management Department, and the Department of External Finance and Foreign Currency.

Ministry of Science, Technology and Environment (MoSTE), 39 Tran Hung Dao, Hanoi; Tel: (84.4) 825-2731; Fax: (84.4) 825-2733. MoSTE is responsible for all high-tech projects and environmental regulations.

Ministry of Industry, 7 Trang Thi, Hanoi; Tel: (84.4) 825-3831; Fax: (84.4) 826-5303 is concerned with heavy industry and the mining industry (except for coal).

Ministry of Transport and Communications, 80 Tran Hung Dao, Hanoi; Tel: (84.4) 825-4015 or 254-012; Fax: (84.4) 826-7366. It is responsible for roads, railways, ports and most areas of communications. Investors interested in infrastructure can find details of plans here.

National Office of Industrial Property (NOIP), 96–98 Nguyen Trai, Hanoi; Tel: (84.4) 858-3425; Fax: (84.4) 858-4002. NOIP is responsible for intellectual property rights, copyright violations and trademark registrations.

Embassy of the Socialist Republic of Vietnam in the United States, 1233 20th St NW, Suite 400, Washington DC 20036; Tel: (1.202) 861-0737; Fax: (1.202) 861-0917; Internet: http://www.vietnamembassy-usa.org.

12.9 **Compliance and enforcement issues.** It is well accepted that identification of parties in an e-commerce transaction is very difficult. Given the amount of effort associated with identifying and confirming the location of e-commerce customers and given the minimal level of Internet development, no work in this area has been done in Vietnam.

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