



VIETNAM BUSINESS FORUM

Mid-term Consultative Group Meeting 2011

Hanoi, May 27th 2011

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VIETNAM BUSINESS FORUM

BEYOND 2011 – VIETNAM’S LONGTERM AMBITIONS

Time: 7:30 - 13:30/ Friday, May 27th 2011

Venue: Sheraton Hotel, Nghi Tam, Xuan Dieu, Tay Ho, Hanoi

TENTATIVE AGENDA

7:30 – 8:00	Registration
8:00 – 8:20	Introduction Opening Remarks <ul style="list-style-type: none">▪ H. E. Mr. Vo Hong Phuc, MPI Minister▪ Ms. Victoria Kwakwa, WB Country Director▪ Mr. Simon Andrews, IFC Regional Manager
Session 1:	Review of Investment Climate
8:20 – 09:00	<ul style="list-style-type: none">▪ Investment Climate Perception presented by Local & Foreign Business Associations<ol style="list-style-type: none">1. <i>Vietnam Chamber of Commerce and Industry</i>2. <i>EuroCham</i>3. <i>AmCham</i>4. <i>AusCham</i>5. <i>Singapore Business Group</i>
Session 2:	Topics to be Discussed with the Government
9:00 – 9:45	<ol style="list-style-type: none">1. Banking and Capital Markets: <i>Vietnam’s Primary Allocators of Capital: Challenges in the Current Environment and Responses</i><ul style="list-style-type: none">▪ Banking▪ Capital Markets
9:45 – 10:15	<ol style="list-style-type: none">2. Infrastructure: <i>Building Efficient and Effective Infrastructure to Drive Vietnam’s Growth</i>
10:15 – 10:30	Coffee Break
10:30 – 11:00	<ol style="list-style-type: none">3. Education: <i>Unlocking Vietnam Long-Term Potential</i>
Session 3:	Reports from Other Working Groups
11:00 – 11:45	<ul style="list-style-type: none">▪ Manufacturing & Distribution▪ Tourism
11:45 – 12:00	Closing
12:00 – 13:30	Lunch

Section I

REVIEW OF INVESTMENT CLIMATE



EUROCHAM POSITION PAPER
Speech at Mid-term Vietnam Business Forum
Hanoi, May 27th 2011

Presented by
Alain Cany
Chairman

Honorable Ministers, Ambassadors, Your Excellencies, Ladies and Gentlemen: On behalf of EuroCham and its partner European Business Groups, I would like to thank the Ministry of Planning and Investment and all the authorities represented here today for facilitating this ongoing constructive dialogue with the private sector through the Vietnam Business Forum.

I. Overview

According to our recently published 3rd EuroCham Business Climate Index, our members' business sentiment and outlook for Vietnam still remains positive, although the mood has shifted noticeably downward since our last survey: Our members' responses have gotten much more cautious, and there is a lot of uncertainty of what will be the future economic policies and actions. This uncertain mood seems to be largely affected by the high inflation rate and concerns about the outlook for the Vietnamese Dong. Our members are particularly concerned that despite a weak US dollar, the Vietnamese Dong is the only currency in ASEAN that is continuously depreciating in value, and action needs to be taken to regain both foreign and domestic trust in the local currency.

We believe that whilst some short-term action such as Resolution 11 may be justified, the Government will only be able to tackle these problems by issuing reliable and consistent long-term policies. We further believe that the Vietnamese Government has to prioritize high-quality investment in the added-value industries, rather than allowing each and every short-term speculative investment project. It is well acceptable to grow at a slower pace for one or two years, if eventually the growth is focused on the sustainable, added-value industries. We therefore welcome the Government's adjustment of the annual growth target to 6,2% - 6,5%. In this context, structural changes to improve Vietnam's competitiveness have to be high on the government's agenda. This is particularly true for equitizing the state-owned enterprises.

Overall, EuroCham believes that Vietnam's ability to remain competitive and maintain sustainable economic growth over the long term depends on whether the Vietnamese government takes action now in several key areas: First, improving the enforcement of investors' rights, in particular in the areas of licensing and contract enforcement. Second, the protection of intellectual property rights (IPR) and enforcement in case of IPR violations. Third, reliable energy supply remains an area of concern for FIEs that have experienced severe power cuts throughout the last months. Fourth, improving the quality of Vietnam's labor force by promoting higher education and vocational training. Finally, tackling red-tape and corruption by continuing to reduce and simplify administrative burdens.

II. Investment Licensing

We acknowledge that between 2005 and 2009, average licensing periods have been significantly cut. However, this reform progress has stagnated in 2010 with the number of days required for

licensing remaining unchanged as compared to 2009. EuroCham member companies continue experiencing long approval times and numerous delays for business registration and investment licensing. Authorities requiring additional documentation from our member companies have increased, and consequently the percentage of firms waiting more than three months to complete all steps necessary to start a business or license a project has also gone up significantly. Additionally, we note that the time required for investment licensing differs greatly amongst cities and provinces in Vietnam, with the two large cities HCMC and Hanoi often requiring significantly longer times to grant approvals.

The current Investment Law and Enterprise Law and implementing legislation for both laws do generally treat foreign and domestic investors the same. However, different treatment still exists with respect to some licensing procedures: On the one hand, foreign investors investing in Vietnam for the first time to set up enterprises whether in the form of wholly foreign-owned enterprises or joint venture enterprises (regardless of foreign equity ownership) will require the issuance of an "investment certificate" which concurrently serves as both the licensing of its investment project and its "business registration certificate." On the other hand, except for large scale or conditional investment projects, domestic investors will only require the issuance of a "business registration certificate." In other words, there still exist both foreign investment and domestic investment licensing procedures.

We welcome that the Government has issued Decree 102, clarifying that companies established in Vietnam with foreign ownership of up to 49% can now enjoy the same investment rules and conditions as those applicable to local companies. Concurrently, those companies with foreign ownership of more than 49% will be subject to the same conditions as foreign owned enterprises. Due to this distinction, we understand that in an acquisition of up to 49% of a domestic-invested enterprise, this will now only require amending of the "business registration certificate" and complying with domestic licensing procedures. However, this interpretation may not be applicable to conditional investment sectors, such as those under the WTO Schedule. EuroCham recommends that those conditional investments should not require the issuance of an "investment certificate" to replace the "business registration certificate".

Aligning the licensing requirements in such manner will better level the playing field between foreign and domestic companies operating in Vietnam. Ministry-level authorities may need to take a greater role in clarifying regulations and ensuring that local authorities under their supervision exercise their authority in a fair and consistent manner. Various interpretations should not exist between different local authorities. On a broader scale, we recommend that Vietnam moves to a comprehensive "one-stop shop" approval for business registration and investment licensing. It would then be the responsibility of the relevant ministry to coordinate with other government bodies where necessary. In many ASEAN countries, such as Thailand, Indonesia, Singapore and Malaysia, this mechanism has proved extremely useful and effective.

III. Intellectual Property Rights (IPR) Protection

EuroCham recommends that the Vietnamese Government continues on all levels its efforts to raise awareness about the value of IPR protection, and consistently protect and enforce investor's IPR. It is crucial to realize that IPR serve as an incentive for many European and foreign companies to research and develop their products further. We note that lacking IPR protection is currently one of the main reasons why high-technology investors are reluctant to invest in Vietnam or transfer technology knowledge to Vietnam. IPR encourage the development of new products and protect innovation that is so crucial for Vietnam's shift towards more high-end value-added products. We welcome the government's modifications of the Intellectual Property Law and Criminal Code regarding criminal sanctions connected to IP infringements that have come into effect in 2010.

These new rules and their strict application are of paramount importance for foreign investors in Vietnam.

However, the registration, protection and enforcement of IPR remain burdensome and time-consuming in practice. In particular, protecting IPR in Vietnamese courts remains an option in theory: Under current laws, a formal court action must be “accepted” by a Vietnamese court before such remedies as seizure of counterfeit goods and evidence of infringement can even be sought from the court. In practice, meeting these onerous formal requirements can often take months, making it virtually impossible for IPR owners to act quickly to protect themselves against counterfeiters who are often capable of “suspending” or “hiding” their illegal activities at the slightest hint action is being taken against them. At the same time, Vietnamese courts and judges often have very little experience in dealing with IPR disputes so that court enforcement remain relatively inefficient for the time being.

IV. Infrastructure and Energy Supply

Until 2020, Vietnam will need \$160 billion to develop its economic and technical infrastructure, including transport systems, bridges, power plants, water supply networks and waste treatment plants. Meanwhile, traditional capital sources such as the State budget, government bonds and development assistance from foreign governments only help satisfy roughly half of the demand. This means that more than 50 percent of investment must be mobilized from domestic and foreign enterprises. However, many foreign enterprises are still hesitating in investing in the infrastructure projects due to concerns over investment efficiency, interest return ratios and capital guarantees. Main reasons for investor reluctance are inefficient risk-allocation, complicated administrative requirements, lacking transparency in bidding procedures and costly and time-consuming land clearance in many infrastructure projects.

Like in other countries, the Government has recently released new rules on Public-Private Partnership (PPP) priority projects. Under prime ministerial Decision No 71/2010/QĐ-TTg on regulations to govern pilot investment under PPP model, the rules will be applied in two or three pilot projects so that Government and agencies can draw lessons and complete the legal framework with the experience drawn from the pilot projects. Under the new rules for priority projects, the Government will encourage private investment for selected priority projects and open bids to select competent and experienced contractors. The state budget will contribute 30 percent of capital, while the rest will come from private enterprises, which can get loans of up to 49 percent of the capital. EuroCham believes that in the long-term, it will be crucial to have both bankable projects and a consistent legal framework to ensure PPP projects.

The consumption of electricity is projected rapidly at a rate of at least double of GDP at 12% per annum minimum. The construction of new power plant capacity in the Vietnam is not keeping pace with demand and this is resulting in a shortfall in power supply, especially at times of peak demand. The situation is particularly serious during the dry season, due to lower availability of the hydro-electric power plants, which make up around 40% of the country’s installed capacity. In 2010, this has led to severe power shortages and cuts: On average, the electricity outage hours of each firm almost doubled from 50 hours in 2009 to 89 hours in 2010. To tackle this problem, Vietnam has to adjust energy prices to regional levels: Only higher but realistic prices will enable businesses to generate operating surpluses to finance capital expenditure, and thus allow these to operate on a commercially viable and sustainable level. On a broader level, Vietnam should reduce the dominance of Electricity of Vietnam (EVN) by allowing other players in the market, and building up a fully competitive electricity market by 2015 (instead of 2024).

V. Human Resources Development

According to experts, more than 65% of Vietnam's workforce is still unskilled and 78% of the 20 to 24 years olds are either unskilled or skill-strapped. At the same time, around 60% of all employment in Vietnam still is estimated to be in the informal sector, with no official labor contracts, payment below minimum wages and no social and health security provided. Within ASEAN, Vietnam ranks in the lower half of human resources development. Therefore, improving and upgrading the skills of its workforce is one of Vietnam's key tasks to meet the needs of rapidly changing labor markets at home and abroad. At the same time, moving people from the informal to the formal sector must remain high on the agenda. EuroCham's member companies continue to employ several thousands of Vietnamese nationals, thereby contributing to Vietnam's move into the high value-added industries and social development.

EuroCham believes that developing modern vocational training facilities and curricula will be essential to improve Vietnam's labor quality, meet the requirements of fast-changing labor markets and to attract higher value-added FDI. Currently, vocational education and training often does not take into account the real needs of the companies operating in Vietnam. EuroCham's member companies are already spending large amounts to send Vietnamese staff to their overseas headquarters to train them appropriately at modern facilities and equipment. These companies are taking the financial risk that the employee will not return or leave the company shortly after receiving the valuable training. EuroCham acknowledges that Vietnam has realized the urgency of improving its labour force. However we note that despite ongoing reform efforts, many Vietnamese keep on seeking for better education outside Vietnam.

We finally see with concern that the cost of social insurance, and thereby the cost of employing staff is rising in Vietnam: For social insurance alone (excluding health- and unemployment insurance), the burdens will rise from 22% to 26% in 2014. The total burden of social insurance (i.e. social-, health- and unemployment insurance) will rise to 32.5% in 2014, thereby making Vietnam much less labour competitive in the region. Moreover, this cost increase has not yet brought significant improvement of the benefits provided. EuroCham therefore strongly recommends not implementing the increase in social security-, health- and unemployment burdens by 2014 for both foreign and Vietnamese employees.

VI. Transparency and Administrative Procedures Reform (Project 30)

It is alarming that transparency is declining dramatically in Vietnam: The recent Provincial Competitiveness Index (PCI) Report 2010 findings show declines in nearly every transparency indicator compared with 2009. Accessibility of planning documents related to business enterprises and of legal documents both decreased noticeably. On a 1–5 scale (in which 1 is impossible to access and 5 is very easy to access), accessibility of planning documents averaged 2.31 points, falling from 2.44 in 2009 and hitting the lowest level in over five years. More than 75% of FIEs say that a “relationship is important to get access to provincial information.” This is a worrisome trend that needs to be reversed. One of the key strategies to reverse this trend is to continue Administrative Reform efforts. This has been successfully started with Project 30 that has now officially been completed.

EuroCham believes that the real impact of Project 30 remains to be seen. It is now key that no unnecessary new APs are created, whilst implementation of Project 30 is still ongoing. We note that to-date, ministries and agencies in charge are still in the process of implementing the resolutions made in Project 30: Whilst 25 resolutions have been made; they still have to be implemented. In practice, this means abolishing more than 480 APs, replacing almost 200 APs and revising and supplementing more than 4000 APs. To this end, the central level has to amend, supplement or abolish 1016 legal documents, including 42 laws, 12 ordinances, 183 decrees, 37 Prime Minister Decisions, 313 Minister Decisions, 336 Circulars and 93 other legal documents. This is a major

task: Now that the official part of Project 30 is completed, all support should be given to the committed staff in the ministries and agencies that is in charge of this important work.

VII. The new draft Price Law

Whilst EuroCham fully understands the need to keep inflation under control, it is unfortunate that the recently published Draft Price Law has not taken into account many of the recommendations that were made with regards to Circular 122 on Price Stabilizations. The new Price Law is again drafted in a way that will create uncertainty in the business community: For example, the circumstances of “abnormal fluctuations” of prices in Articles 9 and 10 of the new Price Law are very vaguely defined (and including “cases of abnormality”), leaving a very broad discretion for state authorities. Further, the term “socio-economic development policies of the State” is used in various places in the draft Price Law (e.g. in Article 6), but it is unclear what are these policies?

Also, the Draft Price Law does not provide for any explicit obligation of state authorities to keep information supplied by businesses for the purposes of price control confidential. Further, there is no requirement on how long in advance businesses must register their price (changes) and there is no time limit for state authorities to respond to the businesses on their registration files. The lack of a deadline to respond to registration files leaves the businesses in great uncertainty. Finally, even though the new Draft Price Law applies to both domestic and foreign-invested companies, the real issue for investors is that passing the new Draft Price Law will result in heavy additional administrative burdens for companies and their staff, as is the case for Circular 122 already.

VIII. Import Restrictions

The Ministry of Industry and Trade has recently imposed restrictions on 100 different imported commodities to manage Vietnam’s trade deficit. The Ministry of Finance has subsequently responded with document number 4629/BTC-TCHQ outlining those restrictions, in particular for mobile phones, cosmetics and alcoholic beverages. Amongst the restrictions are port of entry restrictions (restricting the importation of certain products to only Hai Phong, Da Nang and Ho Chi Minh City seaports); re-instating maximum customs duty rates to the maximum Most Favored Nation (MFN) rate permitted under Vietnam’s WTO commitments; pre-export labeling (requirement for certain products to be labeled at production sites in exporting countries, as opposed to the current system of labeling at customs ports upon arrival into Vietnam).

EuroCham believes that the above restrictions will severely impact Vietnamese consumers’ supply with these products and may also be in breach of Vietnam’s international trade law obligations. Increases to applied customs duty rates and additional excise tax will result in an increased tax burden for consumers in Vietnam. Additional delays in customs clearance process for imports and the restriction on the flow of goods will increase costs and dramatically slow the distribution of products into the market and to consumers in Vietnam. Particularly, the pre-labeling requirements will be impractical and cause significant burdens on product movement and logistics and further disagreement with Customs regarding the import price of goods entering port in Vietnam.

IX. Summary

To sum up, EuroCham believes that five core issues matter for 2011: Improving the regulatory framework for investment, in particular with regards to predictable and timely licensing on investment projects; protecting and enforcing more efficiently IPR; upgrading the skills and productivity of Vietnam’s labour force, in particular by improving both vocational training and higher education in Vietnam; improving the country’s infrastructure and energy supply, in particular by better encouraging viable long-term Public-Private Partnership (PPP) projects; and continuing administrative reforms on national and provincial levels. Generally, structural changes to increase the efficiency of its economy in the long term must remain high on Vietnam’s agenda, in particular with regards to further equitizing the state-owned enterprises.

In this context, EuroCham believes that once a Vietnam - EU Free Trade Agreement (FTA) is in place, EU FDI will further increase both in quantity and in quality: EU enterprises will increasingly perceive Vietnam as their ASEAN hub or even headquarters, from which they can service efficiently both ASEAN markets and neighboring countries, like Japan, China and India. A Vietnam – EU FTA Vietnam will enable Vietnam to benefit from high-quality imports and increased technology transfer. Increased high-quality imports will - in return - help upgrading the quality of Vietnam's exports so that Vietnamese enterprises will be able to improve their competitiveness in the long term. EuroCham therefore believes that now is the time to officially kick off negotiations to conclude a Vietnam – EU FTA.

Let me close by saying that at EuroCham we work hard to promote Vietnam as a trade and investment destination for both European and Vietnamese enterprises: The steadily increasing relations over the past years, especially since WTO accession in 2007, prove that the EU will be a more important trade- and investment partner for Vietnam than ever. In our view, Vietnam, whose exports represent over 70% of its GDP, fully understands the importance of trade and of keeping markets open and exports moving. We look forward to working with the Government of Vietnam and all our members and partners, both Vietnamese and European, to maximize their success in an ever more vibrant Vietnam! I thank you for your attention!



AMCHAM STATEMENT
Speech at Mid-term Vietnam Business Forum
Hanoi, May 27th 2011

Presented by
Christopher Twomey
National Chairman

I am pleased to speak to you today about AmCham's perception of the business environment in Vietnam and I thank the Ministry of Planning and Investment, supported by the World Bank and the International Finance Corporation, for their role in bringing together business and government leaders to discuss how to improve business conditions so as to promote economic and social development in Vietnam.

The Vietnam Business Forum has benefitted both the Government and the private sector for many years, and we hope that its usefulness will continue after the VBF transitions to a new operational structure later this year.

Foreign investment brings jobs and income; tax revenues; exports and foreign exchange and technology transfer; and contributes to Vietnam's strategic drive for economic and social development to industrialize, modernize and globalize. Foreign-invested manufacturing facilities contributed 42% of Vietnam's industrial production last year -- far greater than the domestic local private sector or the State-Owned sector. FDI factories also produce significantly more than half of Vietnamese exports.

Given the importance of foreign investment in the economy here, it's important to work in partnership with AmCham and other groups to help resolve challenges, and to ensure that the business climate in Vietnam effectively competes with neighboring countries.

Vietnam hosts the next round of Trans-Pacific Partnership (TPP) negotiations next month in Ho Chi Minh City. Participation in the TPP can be a great competitive edge for Vietnam in attracting foreign investment because high-quality investments flow to countries with the most favorable economic conditions. The TPP agreement should lead to greater regional harmonization and ease of doing business here.

There are, of course, many areas of the business climate that require improvements in order to elevate Vietnam's competitiveness. Given the brief time we have today, I will focus on a few subjects that deserve special mention that are on our membership's priority list.

Macroeconomic Stability

Vietnam's success in attracting foreign investment has largely been built on the expectation of economic and political stability. The country has faced challenges regarding macroeconomic stability since 2008 when there was the first Vietnam financial crisis in the Spring followed by an inflationary high point in August, and then the onset of the global financial crisis in the Fall.

After recovery in 2009, the economy again began overheating in 2010, with economic policies that continued to focus on high growth rather than long-term stability. Continued trade deficits, shrinking foreign currency reserves, downgrades by credit rating institutions, negative comments from global financial institutions and a chronically weak local currency highlighted the need for policymakers to change course.

Three months ago, the Prime Minister announced that the Government would focus on stability rather than growth. AmCham supports this new focus and looks forward to a future climate of macroeconomic stability once again, and urges that very serious efforts continue to ensure long-term stability.

Physical Infrastructure

The critical issue of improving Vietnam's physical infrastructure has been raised by AmCham and other business associations in every VBF meeting for at least the past six years. Today, we note that there are still crippling deficiencies and delays in the development of key infrastructure projects, especially inter-provincial roads and bridges, including approach roads, electric power, strategically located seaports and their related land-side infrastructure and intra-city public transportation such as light rail.

All of us in this room know that infrastructural constraints in Vietnam threaten current and future investment in the export and manufacturing sectors. Many prospective US investors point to infrastructure deficiencies and inadequate logistics as a major deterrent to doing business (or more business) here – and, as a major deterrent to building-up the integrated, vertical supply chain base that Vietnam desperately needs in order to compete.

Human Infrastructure & Industrial Relations

Vietnam will not win the globalization game on cheap labor alone. The Government must take further action to improve and upgrade the skills of its workforce through the modernization of Vietnam's education and vocational training system. AmCham and our member companies are committed to assisting Vietnam in providing better education for its children. We urge the Government to take further actions to improve and upgrade the skills of its workforce and we look forward to cooperating with them to establish the right programs to produce the high-quality workers and managers that a modern manufacturing industry requires.

Our members have also been carefully monitoring progress on the proposed amendments to the Labor Code which we understand will be submitted to the National Assembly later this year. The new Labor Code will have a significant impact on FDI manufacturing investment in Vietnam, and may also impact Vietnam's participation in the TPP and eligibility for bilateral trade benefits with the United States, such as the Generalized System of Preferences (or GSP) status. We are hopeful that the government will continue to consult with and seriously consider the recommendations from foreign business associations and other stakeholders as the Labor Code is refined and finalized.

Trade Barriers and Price Controls

AmCham is concerned about the recent wave of import restrictions that are clearly intended to reduce imports. We understand the Government's desire to have balanced trade and a crackdown on illegal smuggling. However ... policies and laws need to be consistent with Vietnam's WTO commitments. The import licensing regime of Vietnam fails to meet both substantive and procedural requirements of the WTO Import Licensing Agreement. Most recently, measures restricting imports of alcohol, cosmetics and mobile phones to only using sea transport to three ports are thinly-disguised measures to restrict trade, rather than a crackdown of illegal trade. A balance of trade issue is not a valid reason for import controls, and the artificial restriction of imports will not solve the underlying structural causes behind Vietnam's balance of trade issue.

Last October, Vietnam imposed price controls despite the WTO rules in GATT Article III (9) requiring Vietnam to avoid to the fullest extent the prejudicial effects of such measures on imports. AmCham again notes that these price controls undermine Vietnam's ability to achieve "Market Economy Status".

Following on the heels of other price control measures, a new law on pricing is now being drafted. This draft law further raises concern that a shift backward towards state management of the economy is being pursued by the Government. The draft outlaws a number of common commercially valid pricing practices, but oddly, the draft law also makes certain pricing practices illegal, even though the same practices are lawful under Vietnam's Competition Law. The new draft law is inconsistent with Vietnam's Competition Law, and there does not seem to be any good reason why new rules are needed when the Competition Law already addresses unfair trade practices. We very much hope to be part of the review and comment process for this new law as it has the potential to greatly affect our businesses and the economy as a whole.

AmCham feels that rather than price controls, consideration should be given to liberalizing the supply chain for distribution to make it a more efficient and effective means of increasing product affordability.

Transparency, Good Governance, and SOE Reform

Transparency, governance and corruption continue to be major problems in Vietnam. This year's Provincial Competitiveness Index (PCI) showed that 70 percent of companies that regularly ship goods feel they must pay bribes to expedite customs procedures. While this evidence might be anecdotal, there is no doubt that corruption continues to be a problem for many investors.

Existing control systems are inadequate to prevent certain corrupt officials from misappropriating funds intended for public use, especially infrastructure projects. We encourage the Government to take additional steps towards international best practices on accounting standards and tax collection to help tackle growing corruption concerns that remain one of the biggest challenges to progress in Vietnam.

One of the root causes of macroeconomic instability has been the continued inefficiency of the State-Owned Enterprise (SOE) system and the lack of transparency, fairness and market principles guiding their businesses. Investors wonder which over-extended State-Owned conglomerate will be the next to fail, adding bad assets and defaulting debts onto the Government's already strapped revenues. This misallocation of resources continues at a time when Vietnam needs to be making wiser decisions about capital outlays and business strategies.

Administrative Reform

Administrative reform, including simplifying the approvals process, giving adequate time for comment and review of laws, and reducing and bringing greater fairness to the tax burden for business and investors is essential to improving Vietnam's competitiveness. AmCham members have put considerable effort into "Project 30", the Prime Minister's Advisory Council on Administrative Procedures Reform, and we have recently renewed our commitment to participate in this important activity. We hope to see these reforms benefit the foreign-invested sector as much as the domestic private sector.

Conclusion

AmCham members continue to believe in Vietnam's growth potential. However, while Vietnam continues to draw interest from potential foreign investors, the country needs to make tangible progress on the issues addressed above, as well as other problems that are detracting from Vietnam's image as an attractive destination for foreign investment.

AmCham believes that the business climate can best be helped by actions that increase productivity and reduce the costs and risks of doing business in Vietnam. Corrective actions by the Government must maintain a balance between prudent short-term economic responses and support of long-term growth by maintaining an attractive and positive environment for businesses.

I wish good health to the leaders and distinguished guests here today, and I thank you for this opportunity to address the Vietnam Business Forum.



AUSCHAM SUBMISSION TO VIETNAM BUSINESS FORUM

Speech at Mid-term Vietnam Business Forum

Hanoi, May 27th 2011

Presented by

Brian O'Reilly

Vice Chairman, Auscham HCMC

Introduction

Honourable Ministers, Ambassadors, Consuls, Ladies and Gentlemen, on behalf of the members of the Australian Chamber of Commerce in Vietnam (**AusCham**) we would like to thank the Vietnamese Government and donor community for facilitating this integral and ongoing dialogue with the business community. We, as in the past, welcome the opportunity to contribute to the VBF.

The Australian business community is proud of its contribution to Vietnam's economic development and through this forum would like to encourage new initiatives to further increase growth in the Vietnamese economy.

The areas that we are discussing today are as follows:

- Education and Training;
- Taxation; and
- Mining

Education and Training

Australia is a leading study destination for Vietnamese students and Australia collaborates on many education and training initiatives with Vietnam, including policy dialogue in areas such as quality assurance, qualification recognition and vocational education; facilitating institution-to-institution partnerships; and supporting vibrant Australian alumni associations.

AusCham believes that education is fundamental to the development of a productive, competitive, innovative and sustainable economy. A robust education system will not only provide Vietnam with the human capital necessary to foster innovation and encourage economic growth but also increase the capacity of its citizens to obtain a better quality of life and contribute more effectively to general community wellbeing.

There is a growing number of Australian education institutions offering courses in Vietnam, most of which work in partnership with local institutions. Given Australia's international reputation for high quality, affordable education we hope that this trend will continue well into the future.

Research: There are limited opportunities for foreign university campuses in Vietnam to contribute to developing research programs sponsored in whole or part by Vietnam government funds. The consequence of this is that the Government does not utilise foreign university capabilities to contribute to the national research effort and to leverage their capability in building local research capacity.

It is not clear how foreign university campuses in Vietnam can contribute to research training in Vietnam either by way of masters or doctorates. In view of the government's ambitious objectives to train more doctorates, it would be cost effective for whole or part of the program to be completed in Vietnam. By studying in a foreign campus in Vietnam there will still be exposure to an international education experience and this could be augmented by an overseas study component.

Quality: There is a shortage of qualified academic staff with practical experience in the private enterprise work place. Many students are coming out of the Vietnamese system with basically no knowledge, skills or understanding of how private enterprise functions, or the necessary competencies and skills for them to become productive in it. The lapse time between commencing employment and becoming a productive member of the workforce is probably 1 one to two years, which is far too long.

In many cases this is due to the fact that the curriculum is not relevant, or properly focused on meeting the needs of industry and business in general. In addition, there are structural and learning capability issues. For instance many of the doctors who have completed medical studies here, never become practicing doctors despite the need for these, but become sales persons and managers for foreign pharmaceutical companies because they can earn much more money as such.

These are only a few and very simple examples of the major issues in respect to higher level education in this country. Despite this MOET's overall approach appears to be a desire to extend what is not working, and what is definitely not meeting the needs of the country and its workforce, by imposing impractical requirements on foreign educators who want to invest in the country to modernise and improve the situation.

The vocational education and training areas also needs to be improved.

Other areas that still need to be followed up on include:

- The Law on foreign-invested educational institutions
- Work permits
- Licensing of international schools; and
- Skills development

In addition, the concerns of the "Education and Training" Working Group are also relevant to a number of AusCham members. These are the control of student enrolment, licensing for each program, conditions and procedures for opening training programs, and strengthening dialogue between universities, training institutions and the MOET.

Taxation

Certainty, efficiency and business-friendliness are three characteristics of a healthy regulation system, particularly in the area of tax. As Vietnam continues to open opportunities for foreign investments, it is imperative for Vietnam to set out reforms that highlight these characteristics.

Certainty: Certainty in the application of tax laws contributes to business confidence and general stability of the tax system.

- Different interpretation on tax regulations among local tax departments may be minimized if Vietnam develops a more systematic means of relying on jurisprudence/precedents. This can be achieved by:
 - a. Setting up a formal tax appeals structure

The discrepancies in interpretation among city or provincial tax authorities lead to inconsistent application of tax laws and regulations. The Vietnamese government should consider setting up a national tax appeals structure or committee to review cases elevated by the taxpayers who may disagree with the findings of the local tax authority.

This provides the taxpayer with a formal recourse to their tax cases (and eventually, discouraging corruption in the local level). Decisions of this appeals structure should be considered binding specifically to the matter at bar, and should be treated as a general precedent to future cases. If this is done, Vietnam will be able to develop a richer source of case law.

b. Reform how Official Letters and decisions of the tax appeals structure are issued.

Under the current system, OLs are characterized by vagueness in terms of factual and legal basis in terms of current law and jurisprudence. Official letters issued by tax authorities should be required to clearly state the facts, the specific rule relied upon and applied to the facts, to support the conclusion.

▪ The government should clarify the statute of limitations

Under Circular 61 which took effect beginning 2007, there is technically no statute of limitations for re-assessment of tax in Vietnam. Under Circular 61, “in the case the statute of limitation for sanctioning tax-law violations has passed, a violator is not sanctioned (i.e. does not pay for penalties) but shall still pay the insufficient, evaded or fraudulent tax amount into the state budget.”

In the case of imposition of penalties for violation of tax procedures, the statute of limitations is two years from the date of violation. In the case of tax evasion, tax fraud, late payment and under-declaration, the statute of limitations for imposition of penalties is five years from the date of violation.

Clarifying the statute of limitations will ease concerns of the taxpayers against tax audits occurring after all documents may have been lost or after the facts have become obscure through the passage of time. This also minimizes uncertainty and possibly, corruption.

▪ The regulations should clearly state the source rules for income.

The tax laws should, for instance, specifically define what is considered income from Vietnam sources for services, sale of shares, among others. This avoids situations in which Vietnam seeks to tax items of income that are actually outside of its jurisdiction.

Efficiency: Identification and removal of inefficiencies in the system must be accelerated.

▪ Acceleration of implementation of reforms for issuance of invoices.

In Vietnam, red invoices are rarely issued unless the buyer specifically asks for the said invoice. Even then, the system of manual signing and chopping of red invoices remains highly inefficient.

In other jurisdictions, tape printouts from cashier machines are considered official receipts and are therefore, considered supporting documents for deductions, VAT credits, among others. This would not only ease the burden for taxpayers requiring invoices/receipts, but also help the government to monitor income and VAT payments.

Business Friendliness:

▪ Reform on tax incentives

- Vietnam should reconsider the removal of incentives for entities located within industrial zones and incentives for expansion of businesses
- Removal of the A&P cap
- Reconsider the use of tax loss carry forward

One of concerns that the foreign investors may face when investing into Vietnam is offsetting tax loss incurred during the previous years with that of the current year.

Pursuant to Circular 18/2011/TT-BTC dated 10 February 2011 which amends and supplements Circular 130, for loss incurred from 2009 onwards, enterprises must carry forward totally and continuously the losses into taxable income of the subsequent years subject to the five-year cap. Under this requirement, enterprises which are enjoying tax incentives will be at a disadvantage as they cannot at their discretion decide the amount of loss and the year to carry forward the loss in the manner allowed under regulations applicable prior to 2009.

The carry forward of losses incurred before 2009 is implemented in accordance with the regulations prevailing at the time the losses arise. Enterprises must account separately the loss of each operating activity and carry forward the loss against income of the corresponding operating activity in the subsequent years. In case the enterprise cannot account the loss separately, they must determine the loss of each operating activity by way of allocating the loss using the ratio of each activity's revenue to the total enterprise's revenue in the year the loss arises and conduct the loss carry forward in the manner as described above.

Mining

Australia is one of the most important countries globally in mining and Australian mining companies have always been keen to invest in mining in Vietnam, as they do in other regional countries. Australia has been the dominant foreign participant in the Indonesian mining industry, and Australian mining companies are active in The Philippines, Laos, Cambodia, and China.

Australian mining companies have regarded the regulatory system in Vietnam as being uncondutive to the major investments that are needed to establish major mines. Australia is the largest exporter of coal, iron ore, lead, diamonds, rutile, and zinc, and the second largest exporter of gold and uranium. It has world-leading expertise that would be of major benefit to Vietnam if the regulations for investment were to provide openings for such investment. In order to achieve this the regulations must provide for very long-term leases and for efficient investment decisions. This would lead to significant direct employment as well as major flow-on effects for Vietnamese suppliers.

The introduction of a quality regulatory environment will ensure sustainable development of the sector and a dramatic increase in FDI. The new mineral law comes into force on the 1st July 2011. Hopefully the Ministry of Natural Resources and the Environment (MoNRE) will make the new master plan available to the public soon after that.

Australian interest in Vietnam's mining sector is small but growing. AusCham's members seek increased dialogue between Government and enterprise in this sector to propose solutions to issues and make informed policy decisions.

Conclusion

Vietnam continues to grow strongly and the standard of living continues to rise. In order to continue this forward momentum the issues raised by AusCham, the other Chambers, and the VBF business groups need to addressed. By overcoming these issues the Vietnamese economy will become even stronger thus raising the standard of living of Vietnamese citizens. The Australian business

community, through AusCham, will continue with its commitment to assist Vietnam in achieving its economic potential.

We look forward to seeing progress in the above areas and again would like to thank the VBF for inviting us to present at this forum.



INVESTOR FEEDBACK
Speech at Mid-term Vietnam Business Forum
Hanoi, May 27th 2011

Presented by
Seck Yee Chung
Vice-President

Honoured Co-Chairs, Guests, Ladies and Gentlemen,

The Singapore Business Group appreciates this opportunity to share its views on the business climate of Vietnam.

Overall, Singapore investors are generally confident in the mid and long term prospects of Vietnam's economy and development. However, our members are also highly concerned about a number of matters. In the spirit of sharing, and so as to continue Vietnam's growth and regulatory reform, we would like to provide the following feedback:

1. Corporate Income Tax and Personal Income Tax

Tax regulations are complicated, and in our members experience, have created uncertainty and disputes over applicable corporate income tax rates and availability of tax incentives. This impacts investors' confidence as to whether the corporate tax rates (if preferential) granted in their Investment Certificate would be adhered to by the tax authorities.

Loss now has to be carried forward continuously (as opposed to letting the investor choose when to carry forward the loss within a 5-year time frame). This can negate the benefit of a tax holiday year if the loss is carried forward to such a year.

With regard to personal income tax, we understand that the Government is considering adjustments to the benchmarks for personal income tax rates so as to reflect the current macroeconomic situation and enhance purchasing power in an inflationary environment. We urge the Government to implement these plans to allow for more disposable income.

Our members also urge the Government to continue to provide tax incentives, even for general manufacturing and low-medium tech industries, in view of the fierce competition from neighbouring countries like Indonesia, Thailand, China, and India.

2. Customs Clearance and Approvals

Customs clearance remains a challenging experience, with unofficial payments being extracted from applicants in order to compel customs officers to perform their duties – or otherwise risk delay in having the formalities cleared and goods released. This issue affects both foreign and domestic businesses.

We urge the Government to continue to implement e-customs procedures (with the objective of minimising human interface and opportunities for abuse) and also to consider if legitimised fees would compel more efficient service and transparent treatment by customs officers.

Beyond customs procedures, opportunities for corruption continues to remain an issue where licenses, permits or approvals are required by investors from Government authorities – and we urge the Government to continue its efforts in dealing with this issue.

Specifically, we are also concerned that the recent measure to limit the ports of entry for mobile phones, cosmetics and liquor, may create further opportunities for customs to extract unofficial payments from importers of these products.

3. Crime and Safety

We urge the Government to continue with efforts to combat crime at the street level, such as drive-by snatch theft. We are aware of numerous instances where foreign visitors or expatriates (usually female) have been dragged along the street and physically hurt in such incidents.

Perceived threat to personal safety damages Vietnam's image as a place to visit, whether for business or tourism.

4. M&A and Investment

M&A activities create a more dynamic and robust economy as investors can channel resources to worthwhile businesses, allowing influx of capital to domestic companies and creating opportunities for entrepreneurs to realise their investments.

While we commend diligent efforts of the Government in developing a more modern and comprehensive investment and corporate regulatory framework these past several years, we find that inconsistency and uncertainty in implementation of these rules have hampered M&A activities.

For example, Decree 01/ 2010/ND-CP, issued by the Government on 4 January 2010, allows for and regulates private placement procedures for joint stock companies (“JSCs”) – meaning that the JSC can raise new capital by issuing new shares to a new or selected group of shareholders (as opposed to having to issue new shares to all existing shareholders, who actually do not have the interest or capacity to further invest).

The Ministry of Planning and Investment's (“MPI”) Official Letter No. 608 issued in January 2011 attempted to provide guidance in implementing private placement procedures.

However, to-date, we understand that city and provincial level Departments of Planning and Investment (“DPI”) are refusing to process and approve the registration of the increase of JSCs' charter capital for the purpose of issuing shares for private placement.

As recent as March 2011, the Ho Chi Minh City DPI issued a notice stating that it will be temporarily suspending the registration of the increase of the charter capital of private JSCs in the case of issuance of shares to new shareholders for private placement. In effect, all (non-listed) JSCs are apparently unable to issue new shares to a new third party investor.

We understand that the reason given for such suspension is that there is no guidance from relevant Ministries – such as the Ministry of Planning and Investment and Ministry of Finance – regarding the implementation of the private placement procedure.

On a broader note, with regard to foreign direct investment, licensing procedures remain cumbersome and time consuming. This delays influx of new capital and the creation of business and employment opportunities. The knock-on effect can also be felt by property and IZ developers, as well as other service providers (whether domestic or foreign owned), which basically have to wait

longer for new tenants or new business counterparties (whether as suppliers or customers) to enter the market.

5. Drug Import

A first-class healthcare sector, providing access to high-quality treatment and drugs, is in the interest of the people and the nation. As such, we understand the need for a well-regulated healthcare sector in Vietnam.

According to Vietnam's WTO Commitments, as of 1 January 2009, certain ranges of drugs should have been allowed for import into Vietnam by foreign invested companies.

In addition to obtaining an Investment Certificate (which in itself is a difficult, time consuming requirement to satisfy), foreign invested drug import companies also need to have a GSP warehouse and to obtain a Certificate of Satisfaction of Conditions ("CSC") for a drug business from the Ministry of Health before it is allowed to import drugs.

Unfortunately, the draft circular (on import of drugs by foreign invested companies) does not seem to provide the long-awaited implementation of Vietnam's WTO Commitments. Instead, it refers to Decree No. 79 from 2006 which basically stipulates that only companies engaging in manufacturing or wholesale distribution of drugs may import drugs.

If this draft Circular is passed, it will make it impossible for foreign pharma companies to obtain the CSC (for a drug import company) because such company is neither a manufacturer nor a wholesale distributor.

We urge the Government to issue the regulation that clarifies that foreign drug import companies are able to qualify for a CSC (for drug import).

6. Projects, Real Estate and Currency Devaluation

For foreign investors of long term major projects (e.g., infrastructure and real estate, and whose market are predominantly domestic), a high component of their costs are in foreign currency, but their sales and operating revenue are denominated in local currency. Accordingly, our members are highly concerned about the devaluation of the Vietnam Dong. This is having a significant impact on current and prospective investors in Vietnam.

The investment holding company structure framework should be made clearer and where appropriate, even encouraged as it can be a mechanism that serves the Government's purpose of encouraging the recycling of investment within Vietnam. For foreign investors, such a structure can also serve as a mechanism for them to better manage their business portfolio and forex risks.

It remains challenging for foreign developers in residential and hotel/resort projects, to find sites and develop projects in Vietnam. Problems range from the status of site clearance and compensation, to the nature of land ownership and the pricing structure for land. The so-called "golden sites" have generally not been made available by auction due mainly to lack of transparency. On a broader scale, foreign investors also generally find that any promising land site is almost invariable already occupied by local organizations.

7. Administrative Reform

We commend the Government's efforts to reduce and streamline administrative procedures ("APs"). However, we are also concerned as to whether old APs would simply be replaced by new APs.

In particular, we appreciate that the Government is putting in measures to address inflation, currency devaluation and trade imbalances – however, some of these measures seem to be fighting the symptom, as opposed to finding the cure. For example, price control measures, automatic import license, goods that are discouraged from import – all of which have the counter-effect of making the economy and business environment less transparent and inefficient.

Reduction of APs is supposed to bring about a more efficient and dynamic economy (in the way goods and services are delivered), which we believe will ultimately lead to more investments, cost reduction, competitive pricing and creation of jobs.

Therefore, we urge the Government on staying the course on its agenda of reducing APs (and not to introduce counter-productive measures).

* * *

On behalf of the Singapore Business Group, I would like to express our thanks to the organizers of the Vietnam Business Forum for letting us take this opportunity to reflect and assess the progress made over the past six months, and to set some priorities for the next six months. We look forward to working with you to tackle these issues and take Vietnam to the next level of its social-economic development.



COMMENTS FROM HANOI YOUNG BUSINESS ASSOCIATION

Contribution to Mid-term Vietnam Business Forum

Hanoi, May 27th 2011

*Prepared by
Hanoi Young Business Association*

The Hanoi Young Business Association, a business association with nearly 1,000 members, has just successfully convened its 5th congress. We are proud to have worked with VBF for a long time and have made contributions and comments to most of forum meeting. We have received financial and technical assistance and support from donors and seen our inputs taken seriously by the Government, legislators and policy-makers. This has contributed to positive changes in Vietnam's business environment during the past decade.

However, we are very concerned about the current macroeconomic situation, with persistent high inflation resulting in a contradictory monetary policy amid on-going budget and trade deficits. More importantly, workers, consumers and companies are losing confidence in the home currency and existing monetary, foreign exchange, fiscal and banking policies.

Economic growth, at more than 6%, is still backed by booming demand, but medium and long-term investment for production, technology and human resources development has clearly slowed. Workers' quality of life has diminished with poor public security and high crime rates. Productivity and output cannot be improved without macroeconomic support. These factors are contributing to the economy's waning competitiveness. Despite devaluing the local currency against the USD, export growth remains minimal as multiple input costs such as gas, diesel, electricity, labor and food continue climbing steeply.

Other pressing issues raised by our member businesses include:

1. When money is tight, many local businesses want to incorporate with external partners to leverage funding. However, procedures for foreign investors to make capital contributions and equity acquisitions in domestic companies cannot be strictly followed due to the uncertainty and overlapping regulations offering little substance. One of the existing legislative documents, possibly Decree 102 or the new Decree 108, needs to be updated to ensure enforceability.
2. The Government is too deeply involved in economic activities and is sometimes even competing against the private sector. The public sector's expenditure including recurrent expenses and investment in the last few years was constantly at 35-40% of GDP, while the Government's investment was at 20% of GDP (half of the country's total investment). These are overly high levels, while the ICOR index indicates high inefficiency. This massive level of public spending offers great potential for corruption and preferential treatment for some people, including both state-owned conglomerates and private companies.
3. State-owned enterprises and some major private companies which are well connected to the government are receiving preferential treatment in the allocation of funds. A major proportion of these entities only focus on the speculative trading of assets (including real estate, and securities) as their main business lines or on extracting national resources, and not on production to add value to the economy. As a result, small- and medium-sized enterprises

(SMEs), the main source of employment and driver of economic growth in Vietnam during the past few years, will continue to be overshadowed. Their difficulties in accessing financial resources will cause them to either shut down business operations or struggle to make ends meet.

4. Wastage, bureaucracy and corruption in public spending and the biased allocation of funds to inefficient state-owned conglomerates have also resulted in the undesired effect of a few rich individuals spending great sums of money on imported luxury goods. These supercars and expensive houses may be worth the entire production facilities of an SME.
5. Pursuit of exchange rate stabilization policies amid times of high inflation deteriorates local businesses' competitiveness. As a consequence, fewer goods are produced within the economy and local companies' competitiveness weakens, both domestically and in international markets. Many companies have chosen the OEM approach where most of their products are produced by other countries before being labeled, branded and returned to Vietnam, putting fledgling local businesses and industries at risk of becoming puppets in the hands of large economies.
6. The Government's Resolution 11 is highly regarded by international financial institutions in respect of decision-making. However, its effectiveness is questionable as capital flows for production and SMEs are still deviating from targets. The non-productive sector continues to dominate, high inflation and interest rates are placing burdens on SMEs already starved of financial resources during the past two years, while interest rates failed to decline to Government targets during the past year. Is something wrong with the policies? The tightly connected stock and real estate markets are devouring a large share of resources that should have gone to the production sector.
7. Resolution 11 was soon followed by the Prime Minister's Decision 12 on assisting SMEs in supporting industries. Unfortunately, the decision only traces back to former legislation and it will be very difficult for Decision 12 to materialize in an SME setting despite the private sector showing great interest in this decision. A large number of companies are working hard to upgrade the capacity of supporting industries for energy, automobile and electronics production without receiving any support and incentives. The quantitative aspect and sustainability of this vital economic component will, therefore, be at stake.
8. With nearly 90 million people, Vietnam has successfully developed its agriculture sector. Nevertheless, urban sprawl and disordered industrial park development are eating up valuable farming land, whereas poverty reduction achievements are yet to be sustainable. The Government needs to display greater effort in implementing the Politburo's resolution on "3-fold agriculture". Climate change, rising sea levels and droughts as a consequence of hydropower developments in neighboring countries are putting many lowland and coastal areas at increasing risk of poorer harvests. The use of technologies needs to be increased to counter the threats and preserve the achievements of 20 years of reform.
9. Vietnam has never been in a better position to increase cross-border investment in neighboring countries as it is now. Cambodia, Laos and Myanmar still have plenty of untapped land for agricultural production and may want to cooperate with Vietnam, a country with technologies and quality human resources, to develop productive areas for paddy rice, corn, bean farming, rubber, coffee plantations and aquaculture. This may help Vietnam solve its own food security question and give it the ability to export to a third market that already has trade ties with Vietnam.

10. Vietnamese are spending great amounts on studying and healthcare abroad. Is it time for the Government to address this situation as investment in quality education and healthcare in Vietnam has not received adequate attention? Vietnam has a sufficient workforce, with advanced technical and management training in developed countries, which is able to develop high-quality domestic services to cut the trade deficit.

We want to join hands with the Government in the fight against corruption, help develop businesses, provide stable employment, protect workers and get involved in social responsibility activities. However, the Government should also reduce public expenditure, stop unfairly favoring state-owned enterprises, create opportunities for the private sector to access development and ODA funds, and improve productivity and accountability within the Government administrative and economic management systems.

Finally, we wish VBF success in working towards further long-term achievements.



The Nordic Business Association in Ho Chi Minh City

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HCMC 23rd May 2011

INVESTORS FEEDBACK 2011

Government leaders, business representatives, ladies and gentlemen, The Nordic Chamber of Commerce – NordCham, appreciate this opportunity to share its views on the business climate in Viet Nam.

As a small Nordic business community with a long history in Viet Nam we would like to share our view on a few specific areas where Nordic investors focus on.

Environment and Water

Water plays an important role in the Nordic Countries as well in Viet Nam. A rising sea level, more rainfall, increased water run off and a reduction of soil levels played havoc in HCMC in 2010 and the first heavy rains in 2011. Nordic countries working with Viet Nam have delivered a positive contribution to the solution of water-related problems for many years. We recommended that you continue your vigilance on Environment issues and be selective, and choose only investors that want to accept to work within Viet Nam using the highest environmental standards especially in the protection of water resources.

A clean and healthy environment is also very important in order to stimulate a growing tourist industry.

Energy Efficiency

In 2010 many of our companies have faced problems with lack of energy resources from power cuts and shortages which has slowed economic output, especially Vung Tau. Energy is the source of prosperity in our societies. That is why energy plays a major role in all our businesses as well as public building, housing and horticulture. There is a need for increased investments and Decision 71 is an improved start to reach that goal, but tariff structures must also be in place to increase investment, but protect low incomes and rural areas.



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Distribution license / WTO Agreement

According to the WTO agreement distribution license should now be obtainable for foreign companies importing a number of goods to Viet Nam. However many of our members have experienced difficulties and long delay in obtaining such licenses, in particular in the field of fertilizer, although they in principal should have been granted according to the WTO agreements.

We look forward to an improvement in the issuance of such licenses, which would enable a more cost efficient distribution of many important products.

Aquaculture

Both Vietnam and Nordic countries are big in fisheries, and have strong development in the aquaculture sector. Vietnam exports an important volume of its seafood products to Nordic countries. Vietnamese companies are exposed to requirements for standardization from these export markets. Nordic countries are the leading world producers in industrialized aquaculture, as well as in vaccines and feed for aquaculture. Several companies are now establishing in Vietnam to supply and develop more safe and environmental updated products for the Vietnamese aquaculture industry. The Nordic companies will contribute with technologies that will support the standardization process and make the industry more sustainable and environmental friendly.

However the Nordic companies have met many delays and difficulties in their registration in Vietnam. We would like to see a quicker and more fair treatment with regard to business and licensing procedures.

Logistic/Transport/Port situation

Many of our member companies are still experiencing great problems due to increased transport and logistic cost as a result of port congestion and lack of handling capacity in the major Vietnamese ports. In order for Vietnam to remain competitive compared with its neighboring countries it is important to improve the cargo handling capacity and cost.



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Present ports need to be improved and new ports need to be built, this applies both for container terminals and bulk-steel cargoes. However as the current cap on foreign shareholding is often limited to 49%, this does not make such investment attractive for large professional foreign investment in this sector. In order to accelerate investment in this important sector we would recommend that the policy is eased to allow at least 70% or 100% foreign shareholding in larger transport and port investment projects.

We are pleased to see that new and efficient ports have now been opened in the Baria Vung Tau Province. However the construction of road access is far behind schedule and cannot meet the current need. This is now preventing the utilization of the real potential of these port. We recommend that high priority is given to complete these road constructions, so that both time and cost can be reduced to a normal competitive level.

From Nordcham's perspective, our members are confident about their investment in Vietnam which are based on a long term view. Several new Nordic companies have increased their present investments and new companies have been established during the past year.

We appreciate this opportunity to participate in the Vietnam Business Forum and thank for this opportunity to exchange views and enhance understanding between the Government of Vietnam and the business community.

We wish good health to the Minister, representatives of business associations, and the diplomatic corps, and all the representatives here today.

Thank you.

Sigmund Strømme

Chairman

Nordcham Ho Chi Minh City

Section II

BANKING & CAPITAL MARKETS

Banking

BANKING ISSUES

*Presented by
Brett Krause
Head of Banking Working Group*

Introduction

The first half of 2011 has seen a volatile domestic macroeconomic environment marked by initial continued downward pressure on the currency and more recently by inflation that has reached alarming levels in the high teens. The Vietnamese government has rightly announced that it has prioritized macro stability over economic growth targets for 2011.

In recent months, a series of assertive measures have been taken to address macro imbalances, including a substantial devaluation and change to the trading band of the USD/VND exchange rate, tightening of the monetary supply, setting caps on deposit rates for both VND and USD, instituting successive interest rate hikes and imposing limits on credit growth across the financial services industry.

The government's focus on macro stability is welcomed and the Bank Working Group would like to highlight the importance of bringing inflation under control, stabilizing the FX markets and building foreign currency reserves as critical items necessary to rebuild credibility with global investors and continue the necessary flow of investment into the country.

We would like to further emphasize the importance of maintaining a sustained and consistent implementation of these tightening measures and insure that inflationary pressures are fully brought under control before considering a return to a more pro-growth stance. In addition, the BWG would like to encourage the government to use the current economic environment as a stimulus to move ahead with some of the tough structural reforms that have been discussed by the government that aim to make the Vietnamese economy more competitive, market-oriented and efficient.

The Bank Working Group would like today to discuss key issues for focus in the second half of 2011 that fall under the three pillars of reform that we have previously identified as key for the development of the banking and finance sector in Vietnam, namely:

Pillar 1: Banking Sector Roadmap: A forward looking roadmap for the banking industry, harnessing market forces rather than administrative restrictions to continue the drive for growth;

Pillar 2: Market Efficiency: Efficiency, consistency and clarity in the way the market and the regulations should work so as to ultimately reduce the "cost of delivery" of banking products and services to businesses and consumers;

Pillar 3: Consumer Banking: Clear guiding principles and removal of major impediments for the Consumer Banking and Consumer Finance industries.

We would note that we have had a constructive and active dialog with the State Bank of Vietnam in the first half of 2011, and in the run up the Vietnam Business Forum in particular. A number of items discussed in previous VBF have been removed from our discussion due to satisfactory resolution.

Pillar 1: Banking Sector Roadmap

1. Implementation Guidelines on the Law on the State Bank of Vietnam and the Law on Credit Institutions

The Law on the State Bank of Vietnam and the Law on Credit Institutions both come into force as of January 1, 2011 and will require numerous new and amending regulations to be drafted and issued to ensure a clear and consistent implementation of the two Laws.

The BWG has noted the SBV's plan to issue approximately 46 Circulars and Decisions by the end of Quarter 2, 2012. This process will create a tremendous challenge not only to the SBV but also to the banking sector as a whole and close cooperation will be necessary to insure success. The BWG would like to reiterate its strong desire to be involved early in the drafting process and commits to bring in necessary expertise and experience to assist the SBV to achieve this important task.

Recommendation: We recommend the final implementing guidelines on numerous banking areas should be robust, transparent, in line with international best practices and open to innovation. The guidelines should aim to reduce bureaucracy and remove administrative constraints, particularly for the areas of licensing, corporate governance and regulatory returns.

2. Lending limit for a single borrower

As per Article 128 of the Law on Credit Institutions, a lending limit to a single client obligor by a foreign bank branch shall be calculated based on the Vietnam branch's capital rather than that of the foreign bank's head office's capital, which will have a significant impact on the current operations of foreign bank branches in Vietnam. To minimize unintended negative impacts on foreign direct investors and others, and to ensure the smooth transition of the current credit exposures of foreign bank branches to meet with the new requirement, the BWG has proposed five recommendations and mechanisms. Of these, the SBV has confirmed the grandfathering arrangements for existing loans that ensures the continuity of the funding to enterprises in Vietnam.

We understand that the SBV is currently drafting a regulation to replace Circulars 13 and 19 on prudential ratios and will also consider the remaining four mechanisms, namely 1) the use of offshore guarantees/SBLCs for foreign bank branches and for foreign owned banks, 2) treatment for government guarantees and development and export agency guarantees, 3) permitting for the consolidation of the capital of branches, and 4) issuing guidelines for seeking Prime Minister exceptional approval as is noted in the law.

3. ATM network of foreign bank branches

The draft regulation on the network expansion of commercial banks has omitted mention of the establishment and expansion of ATM networks by foreign bank branches leaving uncertainty as to how foreign banks will be permitted to continue to expand and operate their ATM network in Vietnam. ATM networks are necessary for banks to provide low-cost, efficient service to customers, and critical to the viability of foreign banks' business models.

The right to conduct ATM business by foreign bank branches is recognized in various bilateral treaties as well as being a WTO commitment. Although this is likely simply a technical omission, it is important for this to be rectified in the final regulation.

4. Foreign shareholdings in local banks

Decree 69 states that the total foreign shareholding in a local Vietnamese bank should not exceed 30% and that, within this limit, the maximum shareholding permitted to an international bank as a "strategic partner" is 15% (which can be increased to 20% with the Prime Minister's approval). The increase in maximum shareholdings is welcome progress on Vietnam's WTO commitments.

A roadmap for further deregulation of foreign shareholdings should be developed.

Recommendation: There is need for clarity on scope and timing of further increases in shareholding as this would enable both the strategic partner and the local banks to devise more definitive plans. Such clarity will eventually lead to a much more constructive and planned approach for the banking sector in Vietnam.

5. Clearing System

Establishing a highly reliable and efficient settlement and clearing system is a key component of the financial infrastructure required to ensure further development in the banking sector. While clearing systems have been improved over the past several years, further progress is required in order to ensure the foundation is in place to support further economic growth.

Recommendation: The SBV should work with industry participants to create an efficient and reliable clearing system that:

- Satisfies business continuity requirements;
- Facilitates automated/electronic transfers across the entire country;
- Clears major transactional currencies (VND and USD);
- Guarantees liquidity requirements (appointing a lender of last resort); and
- Ensures security requirements;
- Promotes the adoption of mobile phone banking services as a means of reducing infrastructure cost, enhancing service offerings, and increasing banking penetration to the rural poor and unbanked populations.

Pillar 2: Market Efficiency

1. FX regulations and FX Policy

Decree 160, issued since December 2006, clearly lays out the framework for dealings between participants and FX products in Vietnam. However, the key implementing circulars have not been issued to provide guidance for participants in conducting their FX activities in line with the new law and environment. This has slowed down the development and the depth of the FX market – factors especially relevant in the current environment of high volatility where exporters/importers need to use more sophisticated hedging techniques so as not to be disadvantaged vis-à-vis their competitors operating in other countries.

Recommendation: We recommend urgency in issuing clear implementing circulars for Decree 160 thereby participants can operate their FX activities smoothly under the same ground rules and can cope with the current market environment. The State Bank of Vietnam should consider adopting further measures to improve the confidence in the Vietnamese Dong and increase the liquidity in the FX Market.

2. Forward Market Development

The establishment of a viable functioning forward market is important to promote stability in the FX markets. Vietnam's economy is dominated by trade with imports and exports accounting for approximately 150% of GDP. As a result of these normal trade flows, FDI disbursements and institutional investments, USD flows in and out of the country are large, but most often mis-timed. Without a forward market to allow flows of USD liquidity to move through time, there is a high probability that pressure on the spot FX market will continue to be a systemic problem that undermines overall investor confidence.

During the latter part of Q2, 2011, due to various government measures taken to address inflation

and other macro instabilities, the FX market has been mostly trading within the band. This period of relative market stability is a great opportunity to introduce the long-planned measures that would promote the development of a functioning forward FX market.

Recommendation: We recommend that the SBV swiftly introduce measures that will create a liquid and market-driven forward market following the Prime Minister's direction in March 2011. We are eager to work closely with the SBV and have offered to bring global specialists to Vietnam to share experience in this area.

A new forward market will help to increase investor confidence to continue to invest in Vietnam because they could then better hedge their risk and increase certainty of their ability to obtain hard currency associated with their working capital cycle and investment planning process.

3. New Base Interest Rate Mechanism and Interbank Placement Cap

The current regulation still technically requires interbank placements to comply with a cap linked to the SBV base interest rate while the linkage no longer applies for customer rates. This has created market issues and leads to inefficient allocation of liquidity and capital across the bank market.

We understand that the SBV is working on a new base interest rate mechanism which would allow the market to operate freely. We fully support the SBV in this initiative as this will help the banks to be able to address their liquidity and capital needs without needing to employ indirect or off-balance sheet mechanisms.

Recommendation: We recommend the SBV move to formally remove the interbank placement cap as soon as possible while awaiting for the Government's endorsement on the new base interest rate mechanism.

4. Swap Market

Official Letter 2554/NHNN-CSTT sets new thresholds for notional swap amounts and net positions for swap transactions that are linked to the on-shore capital of foreign bank branches. If implemented, these new thresholds will effectively shut down the swap market and make it impossible to hedge large offshore loans, such as those supporting necessary national infrastructure projects.

Recommendation: We recommend the SBV reconsider this restriction and ensure that a viable swap market continue to be available for legitimate hedging of offshore loans, the majority being for State-Owned Enterprises. Foreign bank branches have extensive experience in managing risks associated with these standard contracts while creating critically important hedging option for borrowers.

5. Rating Agencies

Rating agencies play a critical role in market efficiency, especially in the disintermediation process. To achieve this effectively, experience in other markets has shown that rating agencies need to be formed within the country to enable a wide cross-section of companies to access their services and to enable them to gradually enter the bond and commercial paper markets with rated paper. The introduction of rating agencies also plays a transformational role in areas like accounting practices, corporate governance, etc., thereby leading to a more efficient market with greater transparency.

Recommendation: The government should encourage and expedite the setting up of at least 1 or 2 "independent" rating agencies within Vietnam to undertake the above.

6. Regulation for Derivative Transactions

We understand that the SBV is working on a draft regulation for derivative transactions and we

would be eager to be involved in the drafting, commenting and discussion process. With our long time experience in this particular area, we believe that we could share with the SBV our international best practice and lessons learnt.

Recommendation: The regulation should meet international standards while ensuring that market participants to have a sound risk management system and to meet prudential requirements. This should allow relaxation of the current proposals limiting the maximum notional amount of a derivative to 30 per cent of capital, and requiring minimum capital of VND1 trillion for a bank to undertake derivative transactions, both of which would be extremely limiting of derivative transactions.

7. Regulatory Reporting

Currently there are approximately 100 regulatory reports that a bank has to send to the State Bank of Vietnam or the government, ranging from daily to annual frequency. Whilst it is fully appreciated that timely and accurate reporting of critical data enables the regulator to monitor the state of affairs, all reporting adds to manpower costs both within the bank and at the SBV. This ultimately adds to the “cost of delivery” of finance to the end customer.

Recommendation: It is recommended that a working group comprised of the SBV, banks and the World Bank be created to review and overhaul the reporting requirements to ensure that reporting is appropriate and robust and unwanted duplication of reports is eliminated.

8. Close Out Netting and Set-Off

A continued issue in Vietnam is the lack of regulation that addresses netting of market transactions. While trading partners within Vietnam may agree to offset their positions or obligations, it is unclear whether these agreements are permissible or enforceable under current local laws. Besides reducing transaction costs, netting is a critical tool for efficient markets as it reduces credit and liquidity risks, and ultimately systemic risk. Additionally, given that netting results in more favorable capital treatment for credit risks, netting arrangements are crucial for Vietnamese-domiciled banks as it may help to improve their credit ratings when they participate in the international markets in order to hedge their positions.

Recommendations

The Government should work with industry and external experts to develop regulation on close out netting and set-off in line with international best practice.

Pillar 3: Consumer Banking

1. Wealth Management Products

Wealth management products are now globally a core offering for banks to its retail clients. This has proved advantageous for consumers, given that banks provide significant oversight and expertise to ensure that products are appropriately provided to customers by proper assessment of client’s risk appetite and purpose.

Recommendation: Given that current regulation is silent on investment products, the government is encouraged to bring into place a law that allows commercial banks to offer investment products to their customers, provides protection to investors in the sales process, and requires transparency in the pricing/returns and risks of such products.

2. Credit Bureau

According to Credit Information Centre (CIC), conditions for granting operation license for a credit bureau are at least 20 commercial banks committing to provide credit information exclusively to that credit bureau. In return, those 20 commercial banks can obtain data from the credit bureau that

they commit to provide information. Such regulation on information exchange between CIs and credit bureaux is to ensure CIs' responsibility of providing sufficient and proper information to the credit bureau. Furthermore, the regulation that there should be at least 20 commercial banks committing to provide information to a credit bureau is to limit the number of credit bureaux. This regulation is drafted based on international specialists' recommendations and international practice in order to avoid data splitting amongst bureaux. To enable CIs to have full access to the data and a wholistic view, the Decree also allows credit bureaux to share data with each other and with CIC.

The current regulation on membership exclusivity does not promote healthy competition in this field. Furthermore, industry data will be split amongst the bureaux and banks will not get a holistic view as they are not able to access the data. Although bureaux are allowed to share amongst themselves, the likelihood of sharing information amongst competitors is low.

Recommendations: We recommend that credit institutions are allowed to use services from more than one credit bureau and that the SBV work closely with commercial banks, consumer finance companies and other market participants to encourage the rapid development of full and complete credit bureau reporting and infrastructure.

DIỄN ĐÀN DOANH NGHIỆP VIỆT NAM

Vietnam Business Forum – VBF

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Hanoi, 29 March 2011

To: His Excellency Nguyen Văn Giàu
Governor
State Bank of Vietnam
47-49 Ly Thai To
Hanoi

CC: Mr. Duong Quoc Anh
Chief Inspectorate
Bank Supervisory Agency
Lot E, Vuon Dao, Phu Thuong
Tay Ho, Hanoi

Subject: Implementation of the SBV decision No 2336/NHNN-TTGSNH dated on 30 March 2010

His Excellency,

We would like to thank you for all your support in the past given to the 100% foreign owned non-banking credit institutions, which closely cooperate with the Bank Working Group. We are fully aware of the objectives which the above-mentioned temporary decision has been expected to reach, and we are supportive to the SBV efforts to assure the conformity of the SIP model with SBV's regulations.

According to the SBV decision No. 2336/NHNN-TTGSNH dated on 30 March 2010 (hereinafter referred to as the "Decision"). The principles defined by the Decision are followed by the Consumer Finance Companies (CFC) during this test period:

1) Commitments for implementation of the decision

- Report to local bodies as requested in this decision: quarterly reports on all SIP's openings and closures were communicated to SBV and its local branches.
- Respect of the operational scheme: SIP serves as a point of introduction to the Consumer Finance Companies' services in which their sales representatives introduce the CFC services to the dealers' customers.
- Each decision for granting loans to customers is taken by the Credit Underwriting Department of the head office of each CFC. The staff located in the SIP have no decision making power, their role is to explain the nature of services, to define the most convenient financial scheme of the loan with the customer and to verify the requested customer's documents
- The security of the transaction is reinforced with this face to face contact and the risk of fraud is accordingly limited by the absence of cash transactions between the sales representative and the customer.
- The name plates of the CFC are not visible or hung on the dealers' shop façades, only some advertising supports are displayed upon dealers' consents for the promotion of some dealer's campaigns or for supporting them to increase their sales

2) Advantages and benefits generated by the SIP model:

As reported to the SBV Inspection and Supervisory agency already the SIP model has a favorable impact on the CFC production and profitability results.

a) Advantages granted to the dealer:

- Overall sales support – thanks to the flexibility in setting- up the CFC's presence in Dealer's shop: the Dealer saves considerable amount of means on marketing for capturing new clients and increases his sales by the use of external financing of the customer's purchase. We can estimate the amount of the sales financed by loans through SIPs between 10% and 30% of the dealer's sales.
- Adaptability to the dealer specific requirements for selling some specific product or launch of a new one.

b) Advantages for the customer:

- Security and reliability: the customers are guided by the dealer's staff to CFC Sales representative to address their needs. The face to face contact with the customer and the CFC sales representative improves the quality of information given to the customer but also enhances the quality of CFC production (application of KYC principle, verification of customer's documents)
- Very convenient solution for the customer: no need to go to the CFC's office or branch. The entire process, including the selection of financing and the delivery of product, is managed within the dealer's shop; this brings many advantages for the client resulting in considerable time savings and limiting the number of intermediaries the customer deals with.

c) Advantages for the Consumer Finance Company:

- Reinforcement of the security and development of the "bancarization" of the Vietnamese population: The credit assessment is carried out upon the Consumer Finance Company's criteria and after several controls (at place and at CFC head office). The financial transactions are performed through banks or post office transfers both for the dealers and from the customers
- Limited investment for the CFC to distribute financial products efficiently through the SIP while limiting the intermediation costs.
- Favorable conditions to allow the geographical expansion of the financial services throughout the country while supporting the Vietnamese population and thus to facilitate the access to credit and to enhance their everyday life.

Therefore, we would like you to consider and to agree the legalization of the "Service Introduction Point" status as the business model of the Consumer Finance Companies in order to pursue the successful development of their activities strictly in compliance with SBV regulation and to make their activities profitable in line with the long-term business projections, with a positive impact both on CFC partners' activity and on customers' interests.

Thank you very much.

For and on behalf of the Bank Working Group, Vietnam Business Forum

Brett Krause
Chairman

**PROPOSED AGENDA ITEMS FROM BANKING WORKING GROUP
FOR THE MEETING WITH STATE BANK OF VIETNAM
May 12th 2011**

*Prepared by
Banking Working Group*

1. **New Base Interest Rate Mechanism:** Through various meetings with the SBV, we understand that this will be approved soon. We would like to have an update on the change and get the SBV's view on the development of the monetary management policy (including the use of open market operations instruments) in 2011.
2. **Interbank Placement Cap:** Clarification on the SBV's view on the continued need for lending rate caps between banks. The continued linkage between the base rate and the interbank lending rate, when the linkage no longer applies for customer rates, has created market issues and leads to inefficient allocation of capital across the bank market. We would recommend that this be clearly eliminated.
3. **Prudential Liquidity Ratios:** As SBV continue to work on the new draft circular replacing Circulars 13&19; the BWG appreciates the opportunity to be involved in the process and provide review of the draft.
4. **Swap Market:** Official Letter 2554/NHNN-CSTT on new thresholds for swap transactions under Decision 62. The limitations linked to notional swap amounts will shut down the swap market. The current draft, tied to local on-shore capital limits, will make it impossible to hedge large off-shore loans supporting infrastructure development and we would like to encourage that this be reconsidered.
5. **Derivative Regulation:** the BWG understands that new draft regulation on derivatives is being drafted by the monetary policy department. We would like an update and an opportunity to engage in the review of the regulation as it is being drafted. Further, the BWG would offer to bring in specialists to discuss overseas market experience that may be relevant to Vietnam.
6. **Forward Market Development:** We would like an update on the status of the new mechanisms that will enable the normal development of an FX forward market using negotiable rates per the reported Prime Minister's instruction. Could the SBV share the roadmap?
7. **Inflationary Control Measures:** Discuss the current set of interest rate hikes, credit growth constraints and other measures per Directive 01 and Official Letter 2956 of the SBV and understand how these measures are working and what other actions may be taken in the coming time.
8. **Consumer Finance:** follow up on letter sent to the SBV in April from the Consumer Finance group on the use of sales booths.
9. **Single Borrower Limit ("SBL"):** As advised, the SBV will consider to allow foreign banks' guarantees or stand by LCs to be included for calculation of SBL. We would like to get an update of this issue.
10. **Customs Declarations for FCY Deposits into Accounts:** Currently, our customers complain that they could not get the customs declarations at border gates. We would like to get the SBV's view on how to deal with this issue and what are the limits for deposits.

11. **Risk Management System:** the SBV is working on a draft Circular on Risk Management System. It is recommended the SBV allowing foreign bank branches of which their parent banks have complied with Basel II will be allowed to follow parent banks' organizational structures and policies/procedures in risk management.

Capital Markets

REPORT FROM CAPITAL MARKET WORKING GROUP

*Presented by
Dominic Scriven
Head of Capital Markets Working Group*

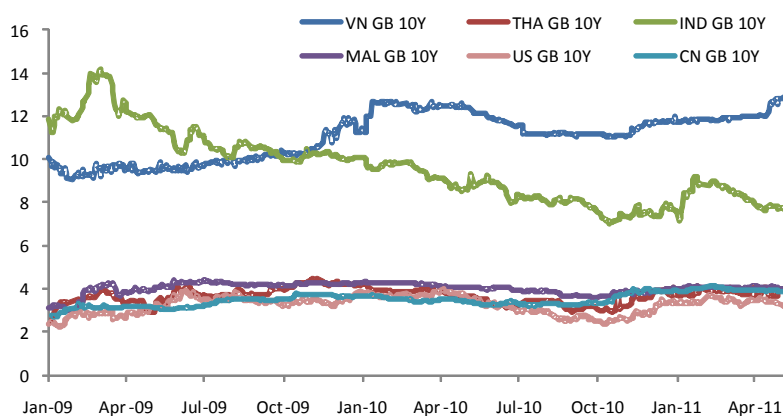
Ladies and Gentlemen,

Today, on behalf of Capital Market Working Group (CMWG or the Group) of Vietnam Business Forum (VBF), we would like to have some discussions on the development of Vietnam Capital Market during the period December 2010 to June 2011 as follows:

General Review

During the first six months of 2011, Vietnam's economy has experienced a challenging period with many macro instabilities e.g. high inflation, unstable forex and gold markets, high interest environment and scarce liquidity in banking system. The Government has clearly stated tightening fiscal and monetary policies in order to curb inflation and stabilize macro conditions. In general, we support the Government's policies and in fact, it has gained some positives so far. However, we must admit that these actions were made with a delay and more important without an effective communication between the policy makers and business community which might have caused some shocks to entrepreneurs.

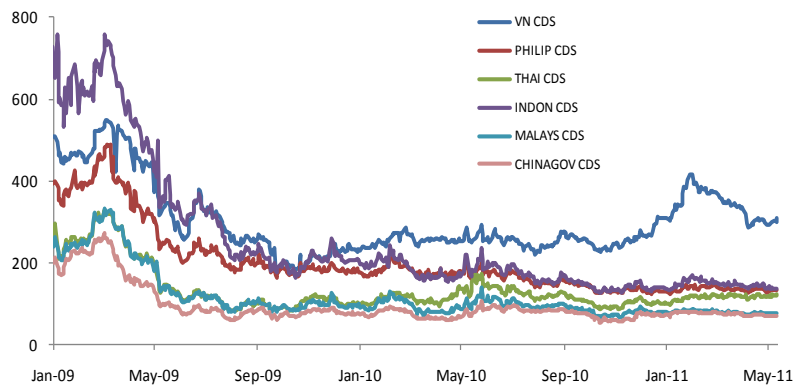
Cost of capital surged up, scarce liquidity in banking system while tightening macro policies to battle high inflation



Source: Bloomberg

Credit rating deteriorated while peer countries regained since 2009 crisis showing a signal of losing confidence.

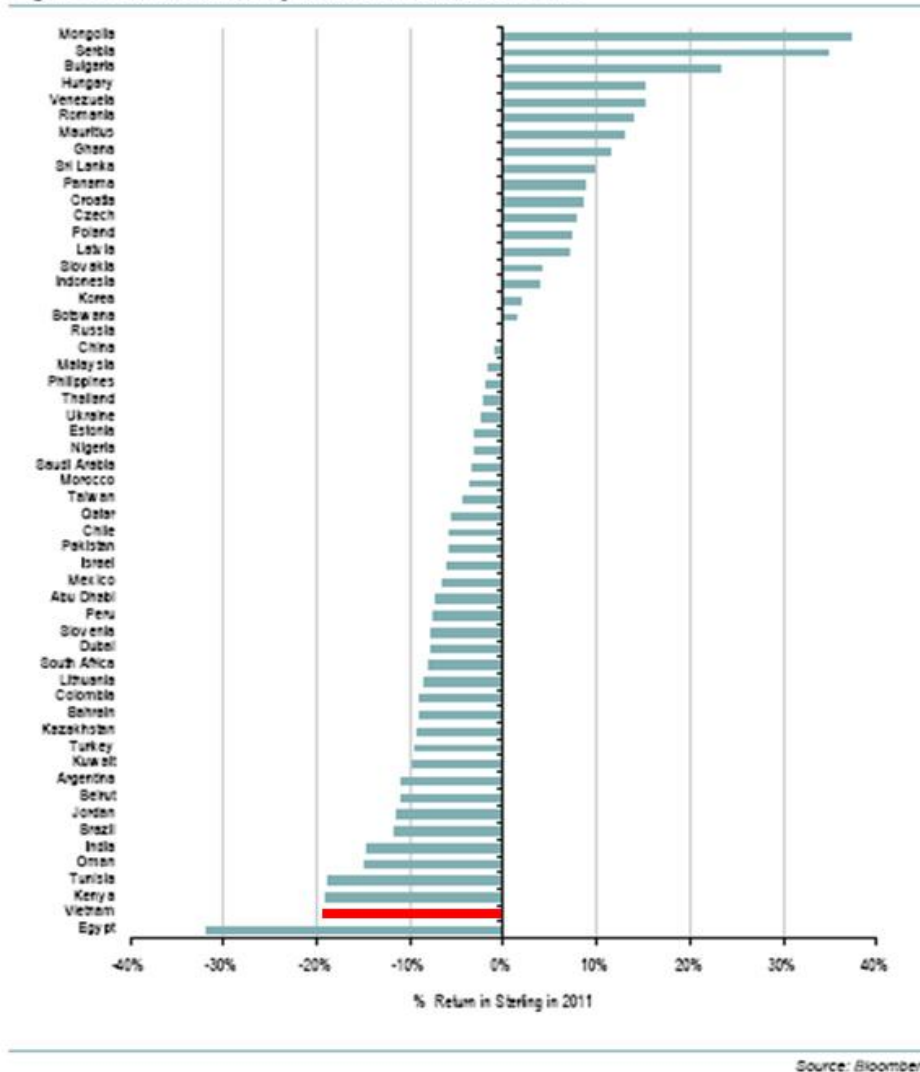
Notes: Countries' CDS USD Spread 5Y Index



Source: Bloomberg

VNI-Index went down in 2010 and it is continued to fall sharply in early 2011. VN-Index is nearly the worst performer among emerging markets

Figure 8. Performance by Market Year-to-Date 2011



Vietnam's stock market is being undervalued or simply reflected truly its inherent risk & macro instabilities? The answer shall depend on how Vietnam Government runs its macro policies.



Source: Bloomberg, as at 20/05/2011

Vietnam still has a long path ahead to accumulate sufficient conditions for sustainable growth. We believe that in coming time the priorities for the Government shall be economic stabilization and regaining the confidence from business communities.

Regarding the capital market, during the time MOF/SSC have issued/drafted various regulations which are in line with what have been discussed between us. The Group indeed appreciated that cooperative process; however we also need to stress that some critical regulations which are expected to bring significant impacts to stock market are still in legal making process such as Guidance Decree for Law 62 Revisions and Amendments to Law of Securities, Circular of Securities Trading, Open-ended fund... and a few outstanding issues are still pending.

Suggestions

Debt Market

Basically, the country's bond market is still very modest in size and low liquidity. The Group supposes that creating benchmark bonds with large outstanding, high liquidity would help to improve the size and liquidity of the bond market. And the development of credit rating agencies and expanding the investor base of T-bill market are also suggestions made in previous meetings. The Group also emphasis on studying, reassessing the taxations in the field of bond investment in order to encourage the investment channel via considering to exempt, reduce a few taxations such as 10% coupon tax, 10bps tax on repo transactions, income tax on swap.

Capital Market

Accomplishment of regulations on stock market: The Group recognizes that MOF/SSC are drafting various legal documents in accordance to Law 62 Revisions and Amendments to Law of Securities. Some of that shall have critical impacts to stock market e.g. Guidance Decree of Law 62, Circular of Securities Trading, Circular of Open-ended funds, Circular on Corporate Governance for public companies, Circular on Information Disclosure replacing Circular 09/2010... These drafts in fact have been prepared and released for comments for quite a long time. The Group expects that the legal making process should be boosted up and these regulations should be put in practice soon. Furthermore, other issues such as extending trading hours, widening trading band and simplifying procedures to open trading accounts for foreign investors should be reviewed and addressed.

Enhancement of transparency and effective dialogues in macro management: Transparent disclosure of economic indicators and effective communication between policy makers and business community on macro policies are extremely important to restore macro stabilization and regain confidence of market participants. From local media, we studied that General Statistics Offices of Vietnam revealed its plan to regularly release a new set of economic indicators including critical ones e.g. forex reserve, banking data from 2012. The Group regards it a big improvement from the governmental department and encourage the progress must be continued. Together with enhancing the transparency, the governmental bodies should construct a promoting campaign for Vietnam, boosting presentations at international economic conferences, regional business forums in order to convey a true message regarding the prospect of Vietnam to international business community.

Promotion of Vietnam to MSCI Emerging Market Indices: MSCI market classification consists of 3 criteria from an immature market “*Frontier*” to “*Emerging*” and then “*Developed*” markets. The classification is based on various factors e.g. economic development, size, liquidity as well as market accessibility. In Asia, Vietnam is listed in Frontier Market together with Bangladesh, Pakistan and Sri Lanka. In past few years, the country's stock market has developed rapidly and being considered a great potential. Having discussed with a few market participants, the Group considers that a well-defined plan by Government bodies which represented by SSC and market

participants, is absolutely necessary to upgrade the country into the widely recognized MSCI Emerging Market Indices. In fact, it does not aim at any title but the qualifications that the country will strive to meet in order to be classified in the world-class investment benchmark.

Calculation of VN-Index on free-float basis: Since the establishment of Vietnam stock market, VN-Index has been used as a major indicator for the market. After 10 years, VN-Index is showing some weaknesses. The most significant issue is about full market capitalization weighted average. Though this is a most traditional way to calculate an index, it is not sophisticated enough to correctly indicate the market's movement. In reality, many listed companies has low free float. Most of their shares are owned by the State, top managements and strategic investors and these investors hardly trade the share. In addition, there are some other shares which are under a certain lock-up period i.e. shares issued to employees or private placement. In fact, shares in the above situations are not traded, thus they will have no impact on the market's daily movement and should be excluded from the index calculation. Therefore it is suggested that the index should be free-float adjusted market capitalization weighted average. This is a common practice in many countries to prevent an index from influence of low free-float stocks.

Equitization

We suppose that, the equitization process of state-owned enterprises (SOEs) of the Vietnam Government has achieved some successes so far. However, this process has been slowed down recently partly due to sluggish of the stock market. The Group supposes that the stock market still needs new quality products to attract investors both local and foreign. Thus, the Group suggests the Government to speed up the equitization progress via defining a new roadmap with clear targets and timeline. The equitization of SOEs should not mostly focus on the financial perspectives but also other factors such as restructuring SOE segment especially after the crash of Vinashin, and attach IPOs of SOEs with listing requirement.

The Group would like to propose some solutions to address a critical issue regarding valuation in the IPOs of SOEs. Due to various reasons both objective and subjective that some IPOs of SOEs have been failed or delayed recently and the major reason was due to a "high offer price" versus market expectation. The Group would suggest that the valuation duty should be made by one or a consortium of independent valuation institutions whom have a competent specialty and get market sense which provide a fair valuation and appropriate to market conditions, and it's also critical to limit the influence of the enterprises' board of directors and governmental bodies who holds stake in the equitized enterprises. At the same time, we also suggest a mechanism which gives more authority to the Equitization Committee (of issuers) in adjusting the offer price (reference price) in auction to boost up the IPO process and make it more relevant to the market condition.

Accounting Issues

Regarding some proposals made by the Group in previous meeting regarding fair value and expensing bonus and welfare spending, employee stock option plan (ESOP), the Group is aware that these issues may fall into jurisdiction of other governmental departments or even require approval of National Assembly. Thus, the Group would suggest cooperation among governmental bodies in order to co-study, discuss and practice these accounting regulations in Vietnam.

Taxation of Securities Activities

The Group supposes that the taxation issues regarding securities activities are more and more becoming a critical topic and the demand of a unified taxation regulation system, separating for securities activities, is tremendously necessary. Moreover, taxation is also an effective tool for governmental agencies to implement macro policies. The Group also highlighted comments from market participants on some specific taxations such as 1) Income tax of 25% on dividend paid from

on-shore funds meanwhile should foreign institutional investors make trading transactions themselves they only have to pay 0.1% on sales proceeds. This taxation therefore should be considered for abolishment to encourage the participation of foreign institutional investors in on-shore funds, 2) Business Income Tax (BIT) currently of 25% on capital gains from share transfers in non-public JSC should be revised to the same methodology/tax rate as regard with public companies i.e. 0.1% on sales proceeds.

CAPITAL MARKETS POSITION PAPER

*Prepared by
Capital Markets Working Group*

1. BOND MARKET

Creation of Benchmark

Better liquidity in the bond markets most likely requires a well-defined yield curve which is only achievable by having a number of large, outstanding, very liquid bond issues. These bonds can represent the supply and demand of interest market and called benchmark bonds. In theory liquidity can be obtained through many small bonds but in practicality it doesn't work: (i) very difficult to trade large lots without having to construct elaborate basket systems; (ii) impossible to hedge without using agreed baskets for delivered bonds. Thus benchmark bonds with large amounts outstanding are necessary to create a better bond market.

We studied that State treasury has started to use re-issuance methodology and is planning a swap program where they buy back some 40-50 small-sized bonds and replace these with 3-5 larger bonds. Thus improvements may be on their way.

The withholding tax for swaps should also be abolished as dealer's can't effectively use IRS/CCS to hedge positions with offshore counterparties due to the tax, and this also limits dealer's ability to hedge.

Credit Rating Agency for Corporate Bonds

As the corporate bond market has expanded with several bonds offered recently, the need of credit rating agency arises. The Group suggests that MOF/SSC to establish the legal framework for such agencies in the upcoming time to speed up the formation of credit rating agencies in the country.

T-Bill Market

The T-bill market is currently a closed circle. T-bills issued by both the State Treasury and SBV are auctioned by SBV only. The T-bills are essentially bought by the SBV members only while other end-users, such as mutual funds and insurance companies, are rare or maybe even non-existent players. The T-bills fill a very important function in all markets from many respects. They are an important segment for liquidity and cash management, and they help to define the entire yield curve or term structure. The Group encourages MOF/State Treasury and SBV to promote the state treasury T-bills to a broader investor basis using simplified procedure e.g. phone line or electronic means. It must be stressed that T-bill should be regarded as a key-tool in the government funding operations as provides flexibility and fit financial institutions liquidity management. Maturities should be 3, 6, 9 and 12 months. Furthermore, the issuance schedule say 3, 6 or 12 months in advance should be published. In this way, better planning can be prepared by the buyers.

Ceiling Coupon Rate

Unless the ceiling rates meet the markets nothing will help to improve the liquidity in the bond market – primary dealer system, buying back bonds, having a functioning recording system. In the case of Vietnam admittedly there are factors which make it difficult to maintain a good primary market as the investor basis is minimal – there are only the onshore banks and a handful of small insurance companies.

The issue is rather trivial and MOF will remove it when they feel like removing it. With current state of the market the ceiling rate may actually be defensible. The other factor is that the ceiling rate seems to have worse impact on auctions than underwritings. Underwritings where the issuer and the investors sit down and negotiate give both sides a chance to change their numbers. Thus when markets are difficult the government should use underwritings almost exclusively.

Repo Market

In most countries the repo market makes up the backbone of the money markets and the banks' ability to manage cash. The repo transaction must not be pure buy-sell agreements. Today in Vietnam a repo trade is just made up by ordinary two spot transactions and foreign institutions also get pounded by the 10bps transaction tax which is detrimental and very expensive. Thus off-shore institutions have very limited possibilities to handle cash in Vietnam.

The SSC has drafted the Circular about repo activities, but it addresses only Securities Houses while most of the repo activities in the bond market are between a client and a Commercial Bank. The Group suggests the facilities and legal framework for repo activities need to be in place. The details however are technical legal issues which we leave to banks legal teams.

We recognized that infrastructure for repo activities have been set up on Hanoi exchange. The Group keeps suggesting removing 10bps transaction tax for off-shore investors.

Coupon Tax

Currently, foreign investors are imposed a 10% coupon tax which is considered expensive. We understand in general the taxation measures would be constructed to control the hot capital in-flows to a country or redistribute the investors' income. However, the current coupon tax applied in Vietnam seems not reasonable for the time being as (1) hot money in-flow is completely not the case of Vietnam now (2) the immature bond market here is very quiet with a limited investor basis and modest participation of foreign investors; and ca 100bps is a too heavy expense for bond investors. Thus the Group suggests MOF to remove current coupon tax or apply a flexible taxation framework for bond investments which directs foreign investment flows toward a long-term horizon, a progressive taxation mechanism e.g. Tobin would be a good choice for Vietnam.

Foreign Exchange

The FX market in its' current form is preventing substantial amounts of foreign capital from entering the country. Additionally, the FX Forward market, and particularly the use of the policy rate to determine forward points, exacerbate the problems in the spot market, and also inhibit foreign participation in the markets.

The Group suggests that foreign investors should be allowed do forward contract for hedging its position. Investors may not want to take the liquidity risk (non – availability of US\$) and FX risk (devaluation of currency).

2. EQUITY MARKET

2.1 Regulations on Securities Trading

In previous meeting with MOF/SSC for the VBF in Dec 2010, we studied that MOF/SSC are drafting a Circular on Securities Trading which is in accordance with the revised Law of Securities 62/2010/QH12. The new circular would regulate broad trading activities such as multiple account trading, margin trading, BUY/SELL simultaneously in one trading session, various orders stop loss, market orders etc... We considered these new trading regulations are improvements for stock market and reflect the investors' practical needs. Thus the Group suggests MOF/SSC to boost up the legal making process and bring these regulations into implementation. Furthermore, other issues

such as extending trading hours – for example there should be morning and afternoon trading sessions - or widening trading band should be studied and applied.

2.2 Requirements for account opening of foreign entities

While it is very easy for Vietnamese entities to invest in Vietnamese securities, it is far more complicated for foreign entities to do so. Many investors have been turned away by the pile of documents and stamps required to open a Capital Contribution Account (granted by the State Bank of Vietnam) and a Stock Trading Code (granted by the Vietnam Securities Depository), with many of them deciding not to invest in Vietnam at all due to complicated procedures. This is regrettable as these investors would have enhanced market liquidity, increased HOSE and HNX revenues and augment tax collection from trading activities.

As such, and with the sole purpose of improving securities markets for all participants, we would like to suggest the relevant authorities to explore simplification of documents and processes required to obtain a CCA and a STC, perhaps by taking example of how it is done in countries in the region.

Of note, one item really adds a lot of difficulties to account opening for foreign individuals that since December 2008, foreign individuals must provide a criminal record clearance to obtain their STC. While we can understand the need for this document, this has proven difficult for many investors, not because of criminal history, but because the production of such document by authorities of certain countries can be very difficult, in some, impossible, especially when these investors come from developing countries. For example, it is extremely difficult for Indian nationals to obtain a criminal record in their country. The process requires securities companies to provide a specific request letter to the attention of Indian authorities, and then it takes several weeks to obtain the document. And then these documents need to be certified by the Vietnamese embassy in that country, also a lengthy process. All in all, it takes 2-3 months for an individual to open an account, not something everyone is willing to do.

2.3 Guidance on Decree 01/2010/NĐ-CP on Private Placement Issuance

The Decree 01 dated 4 January 2010 on private placement of corporate companies has raised various issues in implementation. Until now, no guiding regulation has been published which caused disputes & uncertainties in application. We understand that SSC has prepared and submitted to MOF a draft of circular guiding on Decree 01 but not yet finalized. We would recommend that MOF/SSC to finalize and issue the circular taking into account comments from market participants in an appropriate timing.

2.4 Derivative market

The Group suggests MOF/SSC to study and launch derivative instruments and maybe the first instrument could be VNINDEX future. In fact, we are aware that SSC held some workshops on the derivative market and was underway to launch some initial derivative instruments on organized stock exchanges. However, the project may take up to 2-3 years for implementation.

2.5 Information Disclosure

MOF issued Circular 09/2010/TT-BTC in 15/01/2010 on Information Disclosure. Follow that, SSC has released a new draft Circular on Information Disclosure which replaced Circular 09. In general, the new Circular is in line with the latest discussions between the Group and MOF/SSC in Dec 2010 which stipulates more disclosure responsibilities for public companies/big-sized public companies. Then, the big task now is to put those regulations in practice; and for that purpose rigorous penalties must be imposed. Moreover, the Group keeps suggesting some following points:

- For companies who are parent company of others, the release of financial reports includes the financial reports of the parent company, and that of the subsidiaries where the parent company owns more than 50% AND the subsidiary's charter capital is more than 25% of the parent's one; and consolidation reports.
- To standardize the financial reporting and require enterprises/auditors to unify the way of presentation, classifying of accounts
- To facilitate the analysis of investors, companies should release basic financial reports such as Balance Sheet, Income Statement in Excel format, post to Stock Exchanges and companies' website.
- Securities firms must disclose the holdings in companies where they provide consultant works such as listing, IPO or private placement... Other types of enterprises must provide full detail of financial portfolio including ownership, costs in the yearly financial statements and annual report.

2.6 Independent SSC

The Group suggests the Government to study a roadmap to turn SSC into an independent agency.

2.7 Disclosure of Macro-Economic Information

The Group calls for a better communication between the Governmental bodies and investment community on the monetary & fiscal policies. A lack of communication will create uncertainties and let market live with rumors. Some of our specific suggestions are:

- Define an economic calendar for releasing economic indicators (by whom, what time). For example, GSO is responsible for releasing monthly CPI at 9:00 AM on 25th of month.
- To expand the number of economic indicators to be released e.g. unemployment rate, manufacturing inventories, housing data... By that, the Government should consider on releasing some other relatively "sensitive" information such as forex reserve, information of banking system (outstanding deposits and loans; breakdown of loans by sectors, by regions, by corporate/individual, and by currencies; breakdown of deposits by regions, by corporate/individuals and by currencies) on a regular basis. For the sensitive information, a latency period of 3-6 months would be acceptable.
- The methodologies to calculate the economic indicators must be consistent over time. Any change needs to be announced before it is applied.
- For some indicators, it is necessary to release more detailed information. For example, FDI disbursements need to be separated into local and foreign amounts, MOF/SSC needs to collect, statistic and disclose officially the FII flows and other information relating to stock market e.g. total number of trading accounts, cash balance on trading accounts ... on regular basis.

From local media, we studied that General Statistics Offices of Vietnam revealed its plan to regularly release a new set of economic indicators including critical ones e.g. forex reserve, banking data from 2012. The Group regards it a big improvement from the governmental department and encourage the progress would be continued.

2.8 The Group suggests a sound PR campaign for Vietnam at governmental levels

As mentioned above, with a well-defined economic calendar in place, Vietnam would convey to investment community a true picture of the economic health. Although sometimes the country's health is not really well, we strongly believe that a transparency policy would create value to Vietnam. Beside, the Vietnamese governmental bodies need to actively participate and present at international economic conferences, regional business forums in order to disseminate a sound message of the country's prospect to international investment community.

2.9 Promotion of Vietnam market into “MSCI Emerging Market Indices”

MSCI is a leading provider of investment decision support tools to over 5,000 clients worldwide, ranging from large pension plans to boutique hedge funds. The Company offers a range of products and services - including indices, portfolio risk and performance analytics, and governance tools - from a number of internationally recognized brands such as Barra, RiskMetrics and ISS. *(Please refer to attached appendix for more information about MSCI)*. MSCI market classification consists of 3 criteria from an immature market “Frontier” to “Emerging” and then “Developed” markets. The classification is based on various factors e.g. economic development, size, liquidity as well as market accessibility. In Asia, Vietnam is listed in Frontier Market together with Bangladesh, Pakistan and Sri Lanka.

In past few years, the country’s stock market has developed rapidly and being considered a great potential. Having discussed with a few market participants, the Group considers that a well-defined plan by the Government bodies which represented by SSC, is absolutely necessary to upgrade the country into the widely recognized MSCI Emerging Market Indices. In fact, it does not aim at any title but the qualifications the country will strive to meet in order to be recognized in the world-class indices. Hence, the Group suggests that SSC should study and work with other governmental departments, market participants on this.

2.10 Calculation of VN-Index on free-float basis

Since the establishment of Vietnam stock market, VN-Index has been used as a major indicator for the market. After 10 years, VN-Index is showing some weaknesses. The most significant issue is about calculating VN-Index upon full market capitalization weighted average. Though this is a most traditional way to calculate an index, it is not sophisticated enough to correctly indicate the market’s movement. In reality, many listed companies has low free float. Most of their shares are owned by the State, top management and strategic investors and these investors hardly trade the shares. In addition, there are some other shares which are under a certain lock-up period, i.e. shares issued to employees or private placement. In fact, shares in the above situations are not traded, thus they will have no impact on the market’s daily movement and should be excluded from the index calculation. Therefore it is suggested that the index should be free-float adjusted market capitalization weighted average. This is a common practice in many countries to prevent an index from influence of low free-float stocks.

Furthermore, VN-Index is the only representative for HCMC stock exchange. It is normally called a composite index because it consists of all listed stocks. In order to develop derivative products and new types of investment funds, there is a need for a simpler index which includes a smaller number of stocks but still can replicate the composite index. Thus we should also consider an index of largest companies, for example, Shang Hai stock exchange has SSE Composite along with SSE 180 and SSE50; and Korea has KOSPI Composite along KOSPI 200 and KOSPI 100.

Currently, there is a project for constructing a set of market indices at HOSE with a technical assistance from a CMWG member. The project aims to solve current weakness of VN-Index as well as to make a foundation for the development of advanced financial products in Vietnam.

3. EQUITIZATION

3.1 More “Quality Supply” for Securities market

The equitization program of Vietnamese Government has achieved some successes so far; however the process was slow down recently due to the stagnating stock market. Some Initial Public Offerings (IPOs) have been failed or delayed and the major reason was due to a “high offer price” versus market expectation. Meanwhile, a few equitized SOE tried to delay listing claiming unfavorable market conditions. In fact, there were some concerns of oversupply in stock market but

the Group thinks that the stock market needs more “quality supplies” to attract investors both local and foreign. Thus the Group would suggest the Government to:

- Boost up the equitization process via defining a new roadmap with clear targets and timeline. The equitization of SOEs should not mostly focus on the financial perspectives but also other factors such as restructuring SOE segment especially after the crash of Vinashin
- So far, most of the IPOs of SOEs got problem with valuation issue. Although the valuation of SOEs could be made/consulted by independent valuation firms but the final decision in reality is laid on the issuer - normally a governmental body whom represented the State’s ownership. We suppose that there are some issues here e.g. the sellers tend to bias on a high valuation and not consider essentially other factors such as market expectation, common valuation standards... or the sellers, here governmental bodies would be very concerning about “selling cheap state assets” or in some case the conflict of interest arises. Thus the Group would like to suggest a solution, by that the valuation duty should be made by one or a consortium of independent valuation institutions whom have a competent specialty and get market sense. In fact, MOF/SSC is entitled to create a short-list of qualified valuation firms to ensure their professionalism. Moreover, the valuation itself only provides a base for setting up the initial price (reference price) of the auction and it’s not what the issuer would receive.
- We also suggest a mechanism which gives more authority to the Equitization Committee (of issuers) in adjusting the offer price (reference price) in auction to boost up the IPO process and make it more relevant to the market condition. For example, if one IPO fails due to the price issue, the Equitization Committee is enabled to lower the offer price in the next auction by maximum 10% but it must not be lower than the book value. There would be maximum 3 consecutive auctions to be held and if all the auctions fail, the whole valuation work needs to be reassessed.

3.2 A roadmap to reduce state ownership in equitized enterprises

One target of the equitization program is to reduce/divestment the state ownership from industries, companies which state ownership is not necessary to be there. In reality, high state ownership (>51%) causes some difficulties in strategic planning, business operations and even conflict of interest... The Group suggests that the Government define a specific roadmap (industries, companies, reduction target, timeline...) to reduce state ownership. Enterprises where State’s holdings account for majority ownership, should actively elect more independent directors.

3.3 The role of SCIC

As the largest investor in the capital market, SCIC clearly plays a critical role and its moves are sensitive to market sentiment. The Group suggests it’s necessary to clarify clearly the role of SCIC; and as we assume that SCIC plays a financial role, we recommend that SCIC needs to comply with Information Disclosure requirement as other market participants.

4. INSTITUTIONAL DEVELOPMENT

4.1 Establishment of new types of institutional investors e.g. Pension fund, Open-ended fund:

It is necessary to develop the type of institutional investors to improve liquidity and enhance professionalism to stock market. The Group suggests MOF/SSC to study and allow establishment of new types of institutional investors such as pension fund, open-ended fund...

MOF has issued a draft Circular on Open-ended fund & collected comments from market participants for a while. The Group expects that MOF/SSC put the regulation into practice soon.

4.2 Enhancing the role of institutional investors

MOF/SSC needs to encourage long-term investments, creates a balanced securities market structure between retail and institutional investors. An investor basis of 60% institutions and 40% individuals is appropriate for the country's securities market.

MOF/SSC should also communicate more with market via its professional associations: Capital Market Working Group of VBF, Club of Fund Managers, VAFI, Association of Securities Companies, Vietnam Bond Market Association...

5. ACCOUNTING ISSUES

5.1 Mark to market

Current regulations require provision to be made for unrealized loss from financial investments but not for realized gain. This leads to distortion in reporting the value, true efficiency of the investments. International practice allows the concept of reporting investments at 'fair value' or realizable market value (mark-to-market). The Group has mentioned this issue in the previous report, suggested MOF to allow the application of this regulation for Vietnam companies.

MOF has issued new Circular 210/2009/TT-BTC, dated 6 Nov 2009 and be effective for financial statements made in 2011, regarding application of IFRS guidelines for presenting financial instruments, allowing using the fair value concept in financial reporting. It is a big update to Vietnam Accounting Standards, thus the Group suggests MOF provide further guidance to put this advanced regulation in practice.

5.2 Bonus and welfare funds

Current regulations treat management bonuses and welfare funds not expenses and therefore the profit figures reported by companies do not reflect exactly the earnings to shareholders. International practices would consider management bonuses and welfare funds as "before-tax expenses" of the company. The Group suggests the bonus and welfare should be expensed before tax and presented in the company's income statement.

5.3 Employee Stock Option Plan (ESOP)

Several Vietnam companies launched ESOP to employees, although in fact most of the compensation programs in Vietnam are purely bonus issues or preferential right issues to employees. The Group recognizes it an important part of benefit package to retain talent staffs. However, the international accounting standards treat the issuance program as an expense made by companies or more exactly the expenses that shareholders pay for retaining good personnel. The Group would suggest MOF to study on international accounting standards and update the Vietnam accounting regulations, by that treat the ESOP as an expense to companies.

6. TAXATION ISSUES

The Group supposed that taxation on securities activities is becoming a critical topic and it's necessary to build up a separate taxation system for securities area. For the time being, the Group would like to have some comments on:

Income tax on dividend paid from on-shore funds: Currently, if foreign investors make investments via on-shore funds, they have to pay 25% income tax on dividend paid from the funds while should they make trading transactions themselves they only pay 0.1% tax on sale. This tax rate does not encourage foreign investors to put money on on-shore funds, limiting the participation of this type of institutional investors and therefore should be considered for abolishment.

Income tax on capital gain from transferring share in non-public JSC: On 20 September 2010, the Ministry of Finance ("MOF") issued Official Letter No. 12501/BTC-CST giving guidance on tax treatment on share transfer of non-public JSC. By that, foreign institutional investors carrying out business and trading activities in Vietnam and earning income from share transfers in non-public JSC shall be subject to 25% Business Income Tax (BIT) rate. Whilst share transfer made in public company or that made by non-resident investors shall be subject to 0.1% of sale proceeds.

In practice, the majority of Vietnamese entrepreneurs are non-public, small companies (SMEs) which have significant contributions to growth, job creation, and poverty alleviation in the country. However, it's very difficult for SMEs to have access to bank financing. Hence, venture and private equity are very important to the development of SMEs and should be encouraged. The Group suggests that the BIT on share transfer in non-public JSC should be applied at the same rate as regard with public companies i.e. 0.1% on sale proceeds.

COMMENTS ON DRAFT CIRCULAR ON CORPORATE GOVERNANCE GUIDELINES APPLICABLE FOR PUBLIC COMPANIES

*Prepared by
Capital Market Working Group*

Article 2: Terminology

- Corporate governance: There should be a mention of sound accounting principles.
- What is meant by large scale public company? It should not be the size of the company that is the deciding factor but rather the number of shareholders.

Article 3: Shareholders rights and responsibilities.

- Not only should compensation be considered for the shareholders, but the Board of Directors and the CEO should be removed and duly fine and even imprisoned depending on the gravity of the action.

Article 4: Major Shareholders responsibilities

- This is wishful thinking, majorities unfortunately always will have the upper hand, these are facts of life.

Article 6: Shareholders Annual General Meeting

- This is very convoluted and can be simplified
- Five days of notice of list of shareholder eligible for AGM attendance is totally impractical and it should be at least 30 days
- Lawyers should also be included
- What is meant by advanced information technology? The best way to keep shareholders informed is by mailing and preferably registered mail for important motions.

Articles 7 and 8

- There should be mention of aggregate remuneration for the whole board as well.

Article 9: Selection of Candidates

- Again 7 days is far too short and the candidates should be mentioned in the AGM papers sent out 30 days prior.

Article 10: Qualification of the Board

- Anyone with a criminal record or who has been fined by the Securities Commission cannot be considered.

Article 11: Board Membership

- At least 60% should be non executive. The best form of governance is to have a totally independent board.

Article 12: Rights of the Board of Directors Members

In order to promote non-executive, independent BOD member's role, this Article should be added in as follows:

- Each BOD member would be entitled to request BOM (Board of Management, Ban Điều Hành), BOS (Board of Supervisors) to provide information, explain for particular issues; and where necessary request independent auditor's opinions. The company must provide sufficient facilities for the BOD member to conduct the inquiries.

Article 13: Responsibility

- There should be a close period when directors cannot deal in shares. Such periods occur before the announcements of results.

Article 14: Responsibilities and Mandates

- The Board should **NOT** be involved in the selection and dismissal of personnel, this is the responsibility of the CEO and his managers. The Board's main purpose is to defend the shareholders interests and **NOT** to run the company.

Chapter 4: Supervisory Board

- Is there really a need for a Supervisory Board? It only adds to the layers of reporting. Any effective Board is capable of reporting to the share holders. A Supervisory Board only adds complexities.

Article 32: Responsibility of Reporting and Disclosure

- 25% is way too high and the threshold for reporting by shareholders should be 5%. This is the norm in many markets.

Article 33: Large Scale Public Company

- Why the differentiation? How is a large scale public company defined? All listed companies should have the same rules applying to them.
- If it is a must to have this, some basic criteria to define a public company as large scale would be suggested as follows:
 - + Charter Capital: The Top 50 companies in listed bourses are reviewed; and it is observed that the charter cap ranges from VND 300bn - 17,500bn and the average is VND 3,100bn. Hence a charter capital of around VND 500bn-1,000bn should be considered a big scale public company. In fact, market capitalization would be a better indicator but some difficulties will occur in monitoring it especially for OTC companies.
 - + No. of outside investors: the exposure of public ownership is also a good indicator for defining a big scale public company (excluding employees, State, founding members...)

Article 34: Membership of the Board

(See Article 11 above)

- At least 60% should be non executive. The best form of governance is to have a totally independent board.

Article 36: Board of Directors Committees

- Most of these committees should be made up of Board members, especially the audit and compensation committees. Role of Nomination or Remuneration committees should be highlighted as they are essential parts of any Board of Directors.

Article 39: Oversight and Article 40 Sanction

- This is much too brief and there should be more detail and on implementation.

Enforcement of the Law

- The draft Circular which should have derived from the existing Decision 12/2007/QĐ-BTC on Regulations on Corporate Governance for Listed companies is another development made by SSC. Then there are more concerns on the enforcement of the regulation in practice. In many cases, violations from the company's management goes against the law and there is no stringent enforcement in place. Further active steps from SSC are in need to improve the enforcement of the laws such as:
 - + Establishing a dedicated department for receiving & deal with claims from shareholders on corporate governance issues.
 - + Educating the investors community esp. retails on Corp Gov & promote investors' role in this field.

Section III

INFRASTRUCTURE

ATTRACTING PRIVATE SECTOR INVESTMENT INTO INFRASTRUCTURE IN VIETNAM

*Presented by
Tony Foster
Head of Infrastructure Working Group*

The VBF infrastructure group respectfully would like to report on the views collected from its members on issues and steps that could encourage much-needed private sector investment into infrastructure.

1. PROBLEM

1.1 In the next ten years Vietnam will need an estimated \$160 billion in order to develop its infrastructure. This includes investment in roads, railways, ports and other transportation systems; bridges; telecommunications; power plants; water supply networks; and waste treatment plants.

1.2 According to the World Economic Forum, Vietnam continues to rank *last* on the competitiveness index for infrastructure quality compared to other neighbouring countries.

1.3 The lack of suitable infrastructure is costing Vietnam many billions of dollars. Potential foreign investment is not occurring in those sectors of the economy where it would be most useful, such as in parts of the industrial value chain where good communications and good power supplies are important.

2. POLICY ISSUES

2.1 Energy

- (a) Despite the recent increase in power prices, the price is approximately the same in dollar terms as it was many years ago. The VBF infrastructure group has noted Decision 24, which gives EVN the power to adjust retail power prices as often as every three months from June 1, 2011 depending on market conditions and input costs. This will help to encourage development of private power projects, but it will not solve all the problems until there is some indication of how the Decision will be implemented.
- (b) The construction of new power plant capacity is not keeping pace with demand. Although the Nghi Son 2 project has been tendered, extended delay to the project has created delay in supply. Major industrial projects sometimes have to build in their own power source, which is not efficient.
- (c) The government is well advanced in developing a competitive power generation market. This may help existing power plants that are struggling with prices that are too low because of EVN's purchasing monopoly. But as the Electricity Power Trading Company is itself an EVN-controlled entity, in order to attract new generators who are not State-owned or controlled into this market, there will need to be a genuinely independent regulator.
- (d) The recent increase of the size of power plants that can be sold to foreign companies (to 500MW) is a step towards attracting foreign investors into such a market. Buyers are likely to require a level playing field or some other assurance of offtake.
- (e) There are some small wind farms being developed, geothermal is being explored and thoughts about solar energy are everywhere. But the focus on renewable energy is muted despite the threat to Vietnam of climate change and despite the renewed concerns about nuclear. The VBF infrastructure group calls for effective implementation of laws on renewable energy as well as for further thought about feed-in-tariffs supporting all large renewable energy sources (wind, biomass and biogas production) in order to stimulate new investment.

- (f) Nuclear energy will inevitably be more difficult post-Fukushima. Countries without existing nuclear power programmes, such as Vietnam, have an even more complex and challenging task than they did before. Vietnam will no doubt be confronted with the challenges that have been thrown into relief by Fukushima as well as those that already existed before:
- Generating international confidence in nuclear non-proliferation and nuclear security;
 - Developing human resources: recruiting, training and educating for industry and regulators;
 - Implementing comprehensive domestic legal and regulatory infrastructure that actually works in a crisis;
 - Ensuring that the regulators are effectively monitoring the industry and not simply ex-industry or non-expert officials in quasi-retirement;
 - Maintaining political will and developing public support and acceptance;
 - Validating economic competitiveness of nuclear power; and
 - Developing of physical domestic infrastructure to support nuclear power, for example the capacity of the national electricity grid.

2.2 Roads and Ports

- (a) Ports are small and scattered up and down the nation. The VBF infrastructure group suggests that a few major port centres, each backed by proper land side infrastructure, might be more efficient.
- (b) State-owned port operators have lower land costs and are therefore able to compete in a manner that is detrimental to the development of the industry.
- (c) The VBF infrastructure group expresses a strong concern about the development of the roads and related infrastructure projects necessary to ensure timely and efficient movement of cargo. Significant increase in passenger and freight traffic in and around the Ho Chi Minh City area and the poor connectivity of the Haiphong port has fuelled this concern. In particular, the group is concerned about the lack of planning transparency – it is very difficult for port operators to plan if they do not have visibility into the plans for roads leading to the port. Even more troubling, it has difficulty ascertaining the progress of actual projects. A better system of communications should not be difficult to achieve and would constitute an easy way of improving the investment environment.

2.3 Water

- (a) Water resources are becoming a major infrastructure constraint for areas where rapid urbanization is taking place and numerous industrial and economic zones. There have been few water supply projects and the private sector could provide much needed investment in this sector.
- (b) Environmental disasters are multiplying. Both foreign and Vietnamese companies are responsible. Sanctions for creating an environmental problem are seen as so weak that there is no deterrent effect. This encourages unscrupulous businesses to save the money that protecting the environment costs. Meanwhile food inspectors in Hanoi have found that large numbers of food products are contaminated. The media is rapidly making the connection between the two.

2.4 Telecommunications

- (a) There should be a national network development plan which focuses on the broad availability of connectivity with suitable bandwidth and reliability.
- (b) For many years the VBF infrastructure group has requested clear information about the reality of equitisation of mobile telcos. While the sub-group recognises that this is a very political area, the VBF infrastructure group has little confidence in any equitisation occurring in a meaningful timeframe or in a meaningful manner, so this request is now

largely irrelevant.

- (c) It is important to find a fair balance between competition levels sufficient to satisfy the customers' needs and needs of industry. The government is urged to look at minimum regulations that discourage aggressive promotion campaigns causing destructive losses of players in the sector.
- (d) Concerns have arisen that the Telecommunications Specialized Management Agency (*TSMA*), at least with the parameters set for it in Decree 25 (April 2011), will not be truly independent (by including policymaking functions, for example). The telecom sector needs a strong and independent regulatory body to ensure a level playing field for all operators, and to secure further development in the sector. In order for this to occur it would be useful to set out a list of specific functions for the *TSMA* and to seek public comment on such list.
- (e) The VBF infrastructure group feels that the *TSMA*, as an independent body with appropriate parameters, would be the proper entity to settle interconnection disputes and we would like to commend the MIC for giving the *TSMA* the role of chairing interconnection dispute negotiations.

3. POWER PROJECT PARAMETERS

The VBF encourages a continuation of the recent rethink about how the private sector can support the rebuilding of Vietnam's infrastructure, which began with the recent introduction of pilot PPP regulations. There remains a lot more to be done, as demonstrated by how few private sector infrastructure projects exist, particularly foreign-invested ones which can tap into foreign financing. There are three structures through which the foreign private sector attempts to invest in infrastructure projects in Vietnam, and they each have separate weaknesses that precludes much activity.

3.1 BOT Projects

The participation of the private sector, including foreign investors, in the Vietnamese infrastructure sector in the form of build-operate-transfer (*BOT*), build-transfer-operate (*BTO*) and build-transfer (*BT*) projects resulted in two concluded projects: Phu My 2-2 and Phu My 3.

Partly in recognition of the shortcomings of the existing legal framework, several decrees, including Decree 108 of November 2009 were issued with the aim of providing a uniform framework applicable to both Vietnamese and foreign investors. This resulted in the Mong Duong 2 power project in April 2010, which was the first project to receive a licence from the MPI for a *BOT* power project since Phu My 2-2 and Phu My 3 in 2001. Since then, the regulatory framework has expanded some more, with the arrival of Decree 24 in April 2011 (which is an amendment to the previous Decree 108). Decree 24 broadens the scope of the previous Decree 108, by encouraging investment in infrastructure facilities (in the sectors of medical health, education, training, occupational training, culture, sports, etc.).

Unfortunately, Decree 108 plus Decree 24 make little substantive difference to the prior Decree 78. Both documents are general and leave much discretion to the government bureaucracies charged with administering them. As these bureaucracies operate by consensus and as the projects are often complicated, all implementation of these decrees is at best slow. It is difficult to conclude that these decrees are written for the purpose of encouraging the swift implementation of infrastructure projects.

Suggestion: The VBF would suggest that it is time for some radical action. This could take the form of improving the substance of the regulations to provide greater support for investors. Or at least the imprecision of existing regulations could be eliminated so as to remove administrative discretion (and hence reduce delays). Many investors who are willing to commit hundreds of millions of

dollars find it unnecessarily tiresome that the regulations contain so few clear answers and that everything depends on administrative discretion. The cost of these delays to the Vietnamese State and people can be substantial.

3.2 Joint Stock Companies

The second method of privately investing in infrastructure is through merchant operations under the Investment Law. Under such a structure, there is no formal support from the Government other than the incentives available under the Investment Law. There are various examples of such plants in the domestic sector, and one or two in the foreign sector, including the Hiep Phuoc plant. The Hiep Phuoc plant recently reported large losses. It was apparently unable to obtain natural gas to operate its plant, and therefore had to import expensive oil so as to operate it. It sold the power to customers in its industrial zone at prices less than the cost of producing it. Had it decided simply to stop producing, the country would have suffered because the industrial users would have shut down until they were reconnected to EVN. The message that private infrastructure investors take away from this sort of episode is that they need to lock in their revenue stream up front; otherwise they too might suffer large losses. This is not the message that should be sent if the Government is trying to reduce the duration of power purchase agreements between EVN and private producers.

Suggestion:

If the Government wishes to encourage risk takers in private enterprise to be involved in creating an infrastructure base for the country then it should enforce fairness as between state-owned companies and the private sector. In the context of the Hiep Phuoc power plant, excess unallocated gas (all of which is controlled by PetroVietnam) was used by state-owned plants and was not allocated to Hiep Phuoc. In situations like this, the only private sector companies that will emerge are domestic companies that are themselves insider companies with access to well-connected officials. This does not create a deep or strong market.

3.3 PPPs

In November 2010, Vietnam issued regulations permitting PPPs on a trial basis in certain sectors.¹ The regulations did not limit the form of private participation in infrastructure. The trial PPP framework will let the Government share the risk with private investors in infrastructure projects. The Government can fund up to 30 per cent of the required investments, unless otherwise decided by the Prime Minister. We understand that donors are considering how to provide finance for this effort.

According to Decision 71, the Government will decide which projects can be undertaken as a trial PPP. We understand that these are now being discussed with the People's Committees of Hanoi and HCMC. The Government will prepare the feasibility study, select investors through public competitive bidding and monitor post-disbursement activities.

The new regulations are pilot project regulations. The pilot projects will provide the experience on which fuller regulations can be based. The VBF realises that these regulations are open-ended in order to leave maximum flexibility for creation of pilot projects of different types. Greater detail should be provided about the relevant parameters as soon as experience from the pilot projects

¹ (a) Roads, road bridges, tunnels and ferry landings for road traffic; (b) railways, railway bridges and railway tunnels; (c) urban transport; (d) airports, seaports and river ports; (e) fresh water supply systems; (f) power plants; (g) health (hospitals); (h) environment (waste treatment plants); and (i) other infrastructure development and public services supply projects as decided by the Prime Minister.

allows this, in order to implement a comprehensive regulatory PPP framework that provides real and sustained commitment from the government and to improve bankability.

Suggestions:

There is obviously a lot to do in respect of developing a viable PPP program. The VBF infrastructure group understands the obstacles and stands ready to support in any way it can the Government's efforts to move the program forward.

- (a) In the meantime, the VBF infrastructure group believes that realistically it may be an appreciable time until PPPs prove to be successful in a specific field. Until then, the BOT regulations should be radically improved and then used with greater vigour.
- (b) The Government should tender simple pilot projects first in order to accumulate experience for the more detailed PPP regulations, which will result in greater certainty for bidders and quicker and more efficient projects.
- (c) After the initial projects, the PPP regulations should permit the private sector to participate in the regeneration and management of projects (as opposed to focussing on construction only), and provide a clear framework for such projects.
- (d) A centralised authority should be established at the outset with clear and agreed goals, full decision-making authority for the project, and full power to manage the bid. The MPI has been taking a much-needed and well-regarded leadership role here. The VBF infrastructure group would like to see this power at work in implementing a project efficiently and quickly.
- (e) Projects will only work smoothly if all arms of central and local government that are relevant to such project agree on a common position in respect of it, and if there is buy-in from all of the non-governmental entities with a stake in the project, such as any relevant industrial zone authorities, seaports, water suppliers, EVN etc. Hence the need for strong centralised authority.
- (f) Sufficient human and financial resources are needed to support implementation of PPP regulations. The VBF infrastructure group hopes that the Government and the donors are providing the necessary funds to make this possible.
- (g) The VBF infrastructure group would also like to suggest that projects be fully and quickly formulated before they go out for tender with very narrowly defined bid parameters to ensure a quick and successful tender process that results in the most competitive bid.

4. PRECISE POINTS

4.1 Governing Law

In the Phu My projects the selection of foreign law in the Government guarantee and other major project contracts was an essential risk mitigant for international lenders. The Government's position on this has now hardened and it insists that Vietnamese law should govern all project agreements. This creates exposure for the BOT company, as well as lenders, since Vietnam's legal system is relatively undeveloped. While Vietnamese law has improved over recent years, it is still a relatively unknown quantity and foreign lenders do not tend to lend large sums against it. This position on the use of Vietnamese law for contract interpretation presents significant challenges to financing infrastructure projects. Of course, no one disputes that the projects, or the companies that develop them, have to comply with Vietnamese law in their operations

A change in the governing law contract provisions would create corresponding uncertainties in the dispute resolution provisions. The comfort international lenders derive from the willingness of the Government to agree to international arbitration of disputes arising under project agreements cannot be decoupled from the selection of foreign law. The value of international arbitration is greatly diminished in the absence of a recognised and well-understood system of laws.

Suggestions:

The use of Vietnamese law in complex projects will necessarily deter financing (and possibly development) of infrastructure projects. The VBF infrastructure group believes that it is premature to try to impose the use of Vietnamese law. Even if Vietnamese law documents are accepted in a specific situation with a specific set of finance-providers (such as Chinese banks) – which is still questionable - they will be rejected in others. This will reduce the pool of capital available to assist in the construction of Vietnamese infrastructure.

4.2 Financing

Financing large-scale private infrastructure projects in Vietnam is not straightforward. While appearances are sometimes deceptive, lenders do not fall over themselves to lend billions of dollars to poor projects. But they will lend to well-conceived projects with the right cover. International commercial banks are likely to lend only if there is significant participation by multilateral or bilateral institutions and the commercial loans are covered for political risk and counterparty default risk. Developers are all looking to Japan, Korea and China as the sources of large-scale, long-term loans.

Suggestions:

- (a) The domestic banking sector generally does not have the ability to lend large amounts of money on a long-term basis as matching long-term deposits are insufficient. Over time this should be improved. In addition, there should be a gradual increase in the variety and sophistication of the financing structures used for infrastructure projects. An example would be to pass regulations that would support the creation of private funds to provide subordinated debt or additional equity to projects.
- (b) Another perennial request (aging in the cellar for well over a decade now) is for project companies to be permitted to mortgage land use rights and assets attached to land to foreign lenders. Currently such mortgages are only allowed to credit institutions operating in Vietnam. Each time an international syndicate tries to lend the odd billion or two, this is a problem because it cannot take security over the land. Each time there are lengthy and quite predictable discussions with the Government and the Ministry of Justice and eventually a fudged solution is found. At a minimum, project companies should be allowed to mortgage their land to Vietnamese banks acting as the agent of foreign lenders. And it should be clear that if no rent is required under the BOT regulations then that is deemed to be full payment for purposes of the ability to mortgage land. Neither of these requests should pose any policy risks and the VBF infrastructure group does not understand why adequate steps have not been taken some time ago.
- (c) Similarly, it would be useful if specific regulations were issued to overcome the financing issues arising in the road sector out of the difficulty of mortgaging land for which no land use rights certificates have been issued.

4.3 Government Support

The greater the risks in a project, the less the certainty, and the higher the price that the developer will charge for the risks it perceives itself to be taking. Investors invest where the risks are more easily managed and where governments provide support for certain risks. In the Phu My projects the Government guaranteed the performance of all Vietnam project counterparties, legal stability, foreign exchange convertibility, remittability and availability, and support in removing administrative obstacles. The lenders regarded this all-encompassing guarantee as essential given uncertain outcomes in Vietnam's legal system, foreign exchange controls, and the absence of free convertibility of Dong at the time (2001).

The Government has assumed significantly more conservative positions in recent BOT project negotiations, departing far from the Phu My precedents. The Government's view is that guarantees of the contractual performance or payment obligations of all Vietnam project counterparties are no longer necessary. To date, the Government's position seems to be that:

- (a) Guarantee coverage will not extend to the stability of the legal regime because sponsors are sufficiently protected by change in law provisions in the project documents.
- (b) Guarantee coverage will not include performance obligations of any Vietnamese contract counterparties or payment obligations of some Vietnamese contract counterparties.
- (c) Guarantee terms will expire prior to the termination of the project (except for any termination payments themselves).
- (d) Guarantees on the availability and convertibility of foreign exchange will cover less than 100% of all payments (30% has been the suggestion, but it is not clear how this will work).

Suggestions:

- (a) The reasons for wishing to reduce the scope of the guarantee are of course understood. But in principle, the coverage of guarantees should be reduced when the risks that the guarantees cover are reduced. It would be useful if the current doubt about the scope of government guarantees is dispelled, particularly in respect of what foreign exchange risks can be covered. This may of course have an impact on interest rates and hence on project costs.
- (b) In the PPP regulations that will ultimately replace the pilot project regulations, it would be useful to have specific guidance on the allocation of risks between the Authorised State Body and investors. These risk allocations are fundamental to the feasibility or attractiveness of an investment and have been negotiated in BOT power deals several times already. Certain principles can be drawn from these negotiations and the principles should be used to improve the certainty and transparency of future developments in Vietnam.

4.4 Administrative Burdens

There are numerous delays in the negotiation of large infrastructure projects because of the multiple layers of departments and bureaucracy that are involved. A normal gas-based power BOT project would require a developer to negotiate separately with (and the list below, depending on the circumstances, may not be exhaustive):

- (a) the Government Office;
- (b) the Ministry of Industry and Trade;
- (c) the Ministry of Planning and Investment;
- (d) the Ministry of Finance;
- (e) the Ministry of Science and Technology;
- (f) the State Bank of Vietnam;
- (g) PetroVietnam;
- (h) Electricity of Vietnam;
- (i) the local People's Committee (more than one if there are pipelines crossing different provinces); and
- (j) local providers of infrastructure such as land and water.

Suggestions:

- (a) Various efforts have been made to centralise negotiations. For example in BOT power projects, the MOIT acts as the convener of general meetings and requests the presence of different ministries and bodies. But this is different from having an infrastructure ministry with the power to cut across vested interests and entrenched bureaucratic opposition. It would be useful if the body that has the responsibility to carry out the functions of the Authorised State Body in PPP projects has the power to make decisions that might adversely affect other ministries, localities or other interested parties. Otherwise the current system – where every actor has a veto or at least substantial delaying power – may continue to hold the country back.
- (b) These units could be especially empowered to use and rely on the advice of external advisors when conducting the negotiation or preparation of project contracts. We realise that this is the intent of the PPP regulations, but the track record in the BOT context is poor.

4.5 Affordability Gap

The final fundamental – and extremely difficult issue – is price. The private sector cannot develop projects without an adequate return; yet often the population cannot afford the prices that the private sector would charge. The government therefore does the project directly or through a State-owned entity. But as this may be less efficient, the price to the populace is even higher in the end.

This has in some sectors resulted in price caps, which compound the development challenges.

Suggestions:

- (a) The pilot PPP regulations contemplate the possibility of mechanisms through which the government can subsidise the affordability gap. They will be established by the Prime Minister, based on the proposal of the Authorised State Body and the appraising opinion of the MPI, i.e. on an ad hoc basis after substantial review and possible delay. It would be useful if examples of these mechanisms could be spelt out at some stage.
- (b) There are various mechanisms for covering the affordability gap beyond a pure subsidy:
 - The private sector could design, construct, finance and maintain the asset for the duration of the project with the government providing the revenues, so that the private sector takes usage risk but the risk is not affected by the cost of the toll in a road project.
 - The private sector could design, construct, finance and maintain the asset with both the public and private sectors providing services, for example: an airport where the technical and security staff is employed by the government while other services such as building maintenance and retail services are provided by the private sector entity.
 - A project may involve both public and private funding with the private sector and the government working together as joint developers.
 - In order to increase the economic attractiveness of marginal road projects, the PPP regulations could contain provisions granting project companies the right to exploit services along the route such as the right to advertisement hoardings or to operate petrol stations, restaurants and hotels.
- (c) Prices should not be subject to regulatory caps, though the pricing formulae should be agreed in line with reasonable factors such as changes to the consumer price index.

Section IV

EDUCATION

HIGHER EDUCATION POSITION PAPER

May 2011

*Presented by
Education & Training Working Group*

As a general issue, the feeling amongst private universities in Vietnam is that the Government tries to exert far too much control over the day-to-day operations of universities. For the upcoming dialogue we would like to focus on the following key issues:

1. Control of Student Enrollment

The current situation is that private universities must apply to the Ministry of Education and Training (MOET) for approval of student enrollment targets for each type of degree. This procedure is overly bureaucratic as burdensome and unreasonable criteria issued by the MOET determines student enrollments, such as the number of professors and square meters of lecture halls. We encourage the MOET to adopt a method used in many developed countries where student enrollment is not controlled by a Government Ministry. However, in cases where a university is seen to be offering poor education the Ministry can step in to work with the university and address the situation.

Some of MOET's current guidelines in this area are impractical. For example, why should a university need a professor to lecture on fashion and design? In other developed countries a competent fashion and design lecturer usually has a degree/masters and years of experience. A professorship is not needed in such an area.

Furthermore, some new regulations issued recently by MOET (Decision 795/QĐ-BGDĐT dated 27/2/1020 and Decision 795/QĐ-BGDĐT dated 15/2/2011) stipulated that the number of new enrolment for every university is allowed to increase only 5% -10% per year. We suggest this limitation be removed, especially for private universities.

2. Licensing for Each Program

The current system of obtaining MOET approval for every program launched is also too controlling. We suggest that universities be allowed to offer programs depending on market demand and send a copy of all offered programs to MOET. The MOET's role will be to step in when a university is not meeting its promises to students.

3. Conditions and Procedures for Opening Training Programs

3.1. Conditions for Opening Training Programs

Currently, there are inconsistencies in Joint Circular No. 14/2005/TTLT-BGD & DT-BKH & DT dated 14/04/2005 (Circular 14) and Decision No. 07/2009/QĐ-TTg dated 15/01/2009 (Decision 07) on opening training programs.

According to Decision 07, a university that does not meet MOET conditions for opening training and admission programs within two years from the date of its establishment may have the establishment license revoked. Meanwhile, Circular 14 allows a foreign-invested university - but not classified as a foreign education institution - to conduct collaboration programs with a foreign accredited college or university during the first five years of operation to ensure the provision of accredited training programs, which are recognized by a Vietnamese or foreign auditing agency.

The above Circular 14 provision is reasonable as it facilitates the private sector's participation in education, ensures a proper time frame for transferring international training programs and quality management skills, and allows foreign-invested institutions to have sufficient time to ensure curriculum quality. Therefore, we propose to supplement Decision 07's regulations on opening training programs for foreign-invested higher education institutions not established by foreign colleges and universities as provided in Circular 04, i.e. to allow these institutions in the first five years of operations to associate with foreign accredited universities and colleges to provide collaborated training programs, and later to either continue to implement those collaborated programs or open their own degree programs based on collaborated programs audited by reputable accreditation agencies. In the process of amending the above regulations, we suggest the MOET issue written instructions on this matter.

3.2. Requirements for Programs

According to Circular 08/2011/TT-BGD&DT dated 17.02.2011 (Circular 08), to open a program not named in the MOET's training list at IV level, universities must present the scientific basis of a new training program and have it approved by the Training Science Council, other countries' practical training and experiences, together with training program references from at least two accredited foreign universities.

To facilitate universities offering new programs, meeting international integration requirements and the practical needs of businesses, we propose:

- Universities that collaborate on training programs with foreign universities be allowed to open similar programs as agreed by the foreign university partner after the collaborated programs have expired. This ensures a program's quality as it has been evaluated and approved, avoid cumbersome administrative procedures, while ensuring stability in a university's training, research activities and teaching work.
- As reputable foreign universities tend to find their own training strengths in each area to build up their brand and reputation, we propose that if programs have not been named in MOET's list of education and training programs, a training program reference from one accredited foreign university together with explanations of the program's appropriateness to Vietnam's practical conditions should be satisfactory for recognition/approval from the MOET. We feel that obtaining references from at least two accredited foreign universities, as stipulated in current regulations, is unnecessary.

3.3. Regulation for Fixed Four-Six Year Programs

Appendix IV attached to Circular 08 states a regulation on general education including subjects such as foreign languages, physical education and national defense education. We propose, for universities conducting programs in collaboration with foreign universities or international programs in foreign languages, that the Ministry clearly stipulates the exemption of the above-mentioned subjects and allows universities to teach subjects providing soft skills to students such as research methods, conflict management methods and business skills to enhance research activities and prepare students for future jobs.

In addition, to cope with flexible training models in private universities and universities using foreign training models (a number of universities already have good training models with three semesters per academic year, ensuring cost savings and increasing career opportunities for students), we propose that the Ministry should not apply rigid rules for four-six year programs and allow universities to design three year university training programs, together with a prescribed minimum number of credits and other requirements for training credits.

3.4. Requirements for program validation

Currently, under the provisions of Article 6 of Circular 08, universities wishing to open programs can either themselves conduct program evaluations or send a written request to the MOET for appointing a reputable training institution to appraise a training program if they are not be able to conduct the appraisal themselves. In such cases, if a university needs to open various programs and is not able to self-appraise the programs, the MOET may have to appoint many different educational institutions to evaluate the programs.

To improve the accountability and autonomy of universities, and reduce the Ministry's administrative work in receiving and handling evaluation written requests, we propose the Ministry allow universities themselves to establish evaluation councils by involving evaluation experts who meet MOET requirements. In some cases the universities can invite foreign experts, and recognize the evaluation results of foreign collaborated partners or foreign credible evaluation organizations.

4. International Cooperation in education

All universities and investors are still waiting for new regulations in this area. The current regulations issued 10 years ago (Decree 18/2001/NĐ-CP dated May 4, 2001) focus on non-profit cooperation only. Draft of new regulations is still "under-drafting" for long time, since 2009 and not been finalized yet. We would like seek clarification and greater transparency regarding the current status and expected implementation date of the new regulations.

5. Strengthening Dialogue between Universities, Training Institutions and the MOET

To improve the feasibility of State education management legal provisions, to promptly address universities' difficulties and follow up on suggestions for their operation, we propose to enhance dialogue and exchanges between education institutions and State management agencies, of which MOET is the focal point. Especially regarding laws and the drafting and issuing of regulations, the MOET should organize seminars/workshops/forums for gathering training institutions' opinions. The VBF's Education Group is willing to be an active participant in assisting in these activities.

IMPROVING THE HIGHER EDUCATION SYSTEM TO DEVELOP VIETNAM'S MANUFACTURING SECTOR AND INCREASE VIETNAM'S COMPETITIVENESS

Presented by

Uyen Ho

Manufacturing & Distribution WG

Distinguished Guests, Ladies and Gentlemen!

Thank you very much for the invitation to this Business Forum. We are very pleased to have the opportunity to address Vietnamese government officials, business leaders and share with you our perspective on how to improve higher educational cooperation and institutional partnerships with Vietnam. My remarks will focus on the how to improve the higher education system in Vietnam to increase Vietnam's competitiveness and to become a world-class center of excellence in manufacturing.

We all know that human resources are one of most important components for Vietnam's development and having a high skilled and knowledge workforce is the key to improve the country's competitiveness. We again would like to applaud and recognize relevant government entities for their openness to Vietnam education reform and stress that we must continue on this path to that goal.

We have been working closely with MOET, MOLISA and local universities to support training of local faculty, students to develop a better workforce for sustainable economic growth across Vietnam. Vietnam's higher education system does a good job of providing solid Math & Science theory, which are fundamental components of any knowledge-based economy. However, the Vietnamese education system misses the opportunity to enhance the skills characteristic of the most innovative workers in the world: an individual's practical ability to apply the knowledge gained in school to solve real-world problems, to think critically, to defend ideas and know when to change them, to work in teams, and communicate effectively.

What is the main reason for students possessing strong theoretical knowledge yet weak ability to apply that knowledge in a real-world setting? We have learnt through our various programs with local universities that:

- The system places too much emphasis on the final exam. There must be more homework, quizzes, and mid-term exams for students to reinforce their learning throughout the year.
- The system also places too much importance on individual learning and not enough on collaboration. Consider what would happen if students were assigned projects in several courses throughout the year. What kinds of skills would a student gain if required to work on teams with fellow students solving a real problem brought to them by a real company? What if the students had to manage their project within a timeframe and then present out their findings in English to the rest of the class? That exercise would reinforce the following skills: applied knowledge, teamwork, project management, problem-solving, and presentation. What if that course was taught in English, with English textbooks? Also, the class size must be smaller to be conducive to this type of learning.
- We have learnt that the key to make the change happen would be to change the teaching methods from lectures, memorization, final exams, low faculty-student interaction to a more interactive learning environment.

- Buildings, labs, and other facilities are not adequate. Professors are underpaid. High school graduates and young people have little idea as to where the growth will be and young women are not encouraged to pursue the kinds of degrees that the high tech manufacturing sector needs.

The commitment to do so must start at the top, and it must include policy changes in addition to partnership with the schools themselves and industry leaders. There are promising efforts toward this vision of a more modern Vietnamese higher education system. Yet Vietnam will only realize its potential when the change is system-wide and pervasive.

As an example of addressing these major challenges of the Vietnam higher education system, a number of companies such as Intel, Siemens, and other industries, together with USAID and Arizona State Universities have been working with 8 local universities partners in a program called HEEAP (Higher Engineering Education Alliance Program) to train faculty new instructional methods based on ABET criteria. We have just completed our first evaluation and assessment of the program at participating Vietnamese universities. We will be happy to share our report to our partner schools and MOET with in the coming days and we are calling for the government's investment and other industry to join us in this program to create a bigger system-wide impact to the higher education system.

Following are our recommendations to the government for moving forward on the path to creating a highly skilled workforce:

- Prioritize the sectors that will become the economic engine of growth.
- Set policies to allow for more local institutional autonomy over student assessment and curriculum.
- Develop or adopt an international recognized accreditation process that includes the assessment of student learning outcomes.
- Evaluate the level of quality of education system across Vietnam, based on student learning and research.
- Set policies that incentivize universities and colleges, whereby to develop a number of universities to be the center of excellence. (which will also set up a Mentor system whereby the best universities and colleges become the role models for others)
- Address the shortage of qualified teachers who can modernize teaching and learning methods, curricula, and facilities, as well as graduate education and research. Provide a better compensation and retention package for teachers and educators.
- Integrate industry input on the training and education strategy and create opportunities for industry to assess and improve student quality.

In closing, our call to action is that Vietnam adopt education reform as a priority to make the country more competitive in the global economy. It is time for Vietnam to improve its capacity and capability to offer the kind of skilled workforce required to reach the vision of being a global competitor. We are passionate about this vision and in forging an even deeper cooperation with MOET, MOLISA and Vietnam academia in order to reach it.

Thank you for your attention and I wish you all the very best of luck, happiness and a good and long life for educational partnerships, which I am sure can contribute positive to Vietnam's continued social and economic development.

Section V

REPORTS FROM OTHER WORKING GROUPS

Manufacturing & Distribution

REPORT FROM MANUFACTURING & DISTRIBUTION WORKING GROUP

Presented by

Fred Burke

Head of Manufacturing & Distribution Working Group

Honored Co-Chairs, Guests, Ladies and Gentlemen,

On behalf of the Manufacturing and Distribution Working Group, I would like to express our thanks for your continued involvement and support of the Vietnam Business Forum.

Vietnam and its manufacturing and trading sectors have faced external and internal challenges over the past six months in terms of inflationary pressures, currency pressures, continuing infrastructure gaps and labor difficulties. External factors such as high commodity and energy prices, continuing weakness in some export markets, the knock-on effect of the tragedy in Japan and other factors have contributed to the difficulties we face. We appreciate the opportunity to discuss these issues frankly today in a common effort to work out solutions.

Looking at the inflation and currency pressures in particular, in general, the Government's response to these pressures has been measured and pragmatic, helping to maintain macroeconomic stability. However, from the point of view of manufactures and distributors who would like to expand their businesses, create new jobs and generate more tax revenues for the State, it is a matter of some concern that so much of the emphasis has been on limiting demand, rather than encouraging supply.

Vietnam stands at a crossroads where international manufacturers are looking for a new home to establish the shop floors of the future and we can seize that opportunity or lose it. Following on the successful Intel investment, first rate global companies such as First Solar and Nokia are making strategic decisions to invest in Vietnam as a competitive manufacturing base for the future. These are decisions that will create tens of thousands of good quality jobs and substantial export revenues.

But some of the recent policies that are intended to manage short term issues are creating long-term problems. Given the fact that much of the inflationary pressure is due to global macroeconomic factors beyond Vietnam's control, growth rates are lagging behind inflation rates so the net result for many people will not be as encouraging as it has been in years past unless growth is allowed to keep pace. Instead of trying to keep prices and interest rates down by legal fiat, we would suggest some "supply side" approaches to meeting demand as the way to keep improving the lives of the people and moving Vietnam up to middle income country status. Some of the relevant measures are outlined below.

1. Perennial Issues

Before getting into our main points, I need to note that there are some issues that we will not raise today because they have been raised at many prior VBFs and in the absence of progress there seems to be no point in continuing to dwell on them, even though they remain of concern to the relevant stakeholders. These include among others:

- The 10% cap on the deductibility of marketing expenses – possibly the VBF's oldest issue;
- The "So-called "Automatic Import Licensing", which is anything but automatic and is generally regarded as being inconsistent with WTO standards;
- The so-called "Economic Needs Test" for foreign invested retail establishments;

- Difficulties of businesses in obtaining and developing land outside of the industrial zones, particularly in urban centers where it affects the services economy;
- CDM (“Clean Development Mechanism” Projects under the Kyoto protocol) approval processes, which have been streamlined under Project 30, but which is still as inefficient as in the most bureaucratic countries in the region, so that opportunities for legitimate CDM projects have been lost.

Rather than use up time on those old issues, today we’d like to present some newer issues affecting the manufacturing and distribution sectors.

2. Labor Code Amendments and Illegal Work Stoppages

As the regional cost survey conducted by JETRO each year shows, Vietnam’s main competitive advantage remains its labor cost, especially as compared to the coastal areas of China. Export manufacturers, particularly in the competitive garment and footwear and furniture sectors that account for a large part of Vietnam’s exports, consistently raise two main concerns: (1) labor tensions; and (2) inconsistent power supply. There are those who seem to think that Vietnam can move up the value chain and become a high-tech manufacturing center if it just raises wages. Obviously, that is not going to be enough without more investment in vocational training, infrastructure and supply chain efficiency.

First, the much-debated changes to the Labor Code are at a critical stage. After much dialogue with the various stakeholders, it is clear that no result going to please all of the different interests. From the perspective of the manufacturing community, I can say that manufacturers are not opposed to measured increases in wages and other benefits. They also strongly support reform to the approval process for industrial action and strikes to help manage the ongoing plague of illegal work stoppages that disrupt production whenever some rumour about a change in minimum wage is leaked out into the labor market.

But if the law goes too far, too fast, then the net result will be a loss of jobs at the precise time when Vietnam needs to generate millions of new jobs each year to absorb new entrants into the labor pool. That could lead to more disparity in wealth and more instability. We urge the drafters to take it step by step and listen carefully to the realities of the market forces here and in global markets as they finalize the draft Code for the National Assembly’s consideration.

Since there seems to be a lack of understanding about the true nature of the total compensation regime under the Labor Code and other related laws, and to show how the costs for manufacturers are continuing to escalate, we summarize in the charts below the factors that contribute to labor costs today:

a. Personal Income tax: 5% - 35%.

b. Social Insurance

Salary used to contribute is capped at 20 times of general minimum salary, which is VND830,000/month (approximately US\$40/month) as from 1 May 2011.

The contribution rate increases over the next few years according to the following schedule:

<i>i) Employer:</i>	<i>ii) Employee:</i>
<i>Current: 15%</i>	<i>Current: 5%</i>
2010: 16%	2010: 6%
2012: 17%	2012: 7%
2014: 18%	2014: 8%

c. Health Insurance

Salary used to contribute is capped at 20 times of general minimum salary, which is VND830,000/month (approximately US\$40/month) as from 1 May 2011.

The contribution rate increases over the next few years according to the following schedule:

<i>i) Employer:</i>	<i>ii) Employee:</i>
<i>Current: 2%</i>	<i>Current: 1%</i>
2010: 3%	2010: 1.5%

Workers and employers alike complain about the red tape involved in making claims and the small payments that are available, so much so that many employers find that this health insurance must be supplemented with commercial health insurance if they really want to provide their staff with meaningful coverage.

d. Unemployment Insurance

Salary used to contribute is capped at 20 times of general minimum salary, which is VND830,000/month (approximately US\$40/month) as from 1 May 2011.

The contribution rate is **1% for employer** and **1% for employee**.

e. Increase in Minimum Wage

The impact of these taxes is further exacerbated by new increases in the minimum base wages.

General minimum wage was increased on 1 May 2011 to VND830,000 per month and is expected to increase again early 2012.

The Government also just increased minimum wages applied in domestic and foreign invested enterprises. The spectrum of adjustment in minimum wages range from 10% to 15.7% for foreign invested enterprises and from 13.7% to 37.8% for domestic enterprises, depending on the region. The regional divisions were also changed in the direction that more cities and provinces were put on the Region I and II which made the actual minimum wage increase even higher than the above range. The Decrees on minimum wages were issued on 29 October 2010 and took effect on 1 January 2011 (while for some provinces and cities the implementation date is pushed further to 1 July 2011). This does not give enterprises enough time to prepare for the increases of labor costs and related financial budgets.

Specifically, enterprises applied under Decree 108 (domestic enterprises):

Area I: VND 1,350,000/month (up from VND 980,000/month) (an **increase of 37.8%**)
Area II: VND 1,200,000/month (up from VND 880,000/month) (an increase of 36.4%)
Area III: VND 1,050,000/month (up from VND 810,000/month) (an increase of 29.6%)
Area IV: VND 830,000/month (up from VND 730,000/month) (an increase of 13.7%)

Enterprises applied under Decree 107 (foreign enterprises):

Area I: VND 1,550,000 (up from VND 1,340,000/month) (an **increase of 15.7%**)
Area II: VND 1,350,000 (up from VND 1,190,000/month) (an increase of 13.4%)
Area III: VND 1,170,000 (up from VND 1,040,000/month) (an increase of 12.5%)
Area IV: VND 1,100,000 (up from VND 1,000,000/month) (an increase of 10%)

The increased minimum wage, together with the steadily-increasing payroll taxes, already imposes substantial financial burdens on employers that many observers do not fully appreciate when assessing the compensation costs for industrial labor in Vietnam.

On top of that, Two new funds have been proposed for the amended Labor Code – a “Disaster Relief Fund and an ”Accident Fund”, both of which the employer would bear full responsibility for. Changes like extending maternity leave to six full months would contribute to higher overheads costs.

The question is, at what point do these costs discourage new investment in manufacturing capacity that could create new jobs, revenues and taxes? Some might say we’ve already reached that point.

3. Electrical Power for Manufacturers

We are all aware of the challenge that higher commodity prices pose for power producers and manufacturers who consume power. Manufacturers would agree that a greater element of market forces should be introduced into the power sector so that investment can be attracted into the development of new power supplies.

But for the time being, power shortages are really starting to cripple manufacturers. We hear growing concerns that power cuts, even where notified to enterprises in advance, are hurting exporters ability to fulfil their contracts and keep their workers employed. Electricity is one of the critical elements in reliability of suppliers, and if Vietnam-based suppliers are not seen as reliable they won’t get orders.

Shifting subsidies from consumer petroleum for motorbikes and cars to electrical power supply, especially for feed in tariffs for alternative energy sources, would be a part of the solution. Based on the Japan nuclear experience and the prospect of becoming dependant on Indonesian and Chinese coal imports, Vietnam should be using its gas reserves and developing wind, solar and other alternative technologies. Why has it taken so long for the next Phu My-type gas commercialization project to be approved? Investors in manufacturing thought that with the successful Phu My 2.2 and 3 BOT projects, it would be easy to build on that experience, but instead the next projects in line seem to have been bogged down in endless buck-passing and negotiations. These delays are wasteful to the economy as a whole and we hope that the projects can get moving faster.

Finally, the new Energy Efficiency Law gives the Government an opportunity to incentivize manufacturers and distributors who reduce energy consumption and draw on alternative energy sources. We urge the rapid introduction of implementing measures but caution against focusing on penalties imposed by local authorities whose main interest may be in finding yet another source of “informal revenue”. Instead, the emphasis of implementation should be on encouraging positive behaviors.

4. Draft Law on Price Control

Investors are concerned by the implementation of the existing price controls under Circular 122, which took effect last October, and they are frightened about the prospect of a new Price Control Law.

Not only does this trend undermine Vietnam’s arguments that it is moving towards a market economy, and therefore should be exempted from the “Non-Market Economy” status it suffers in some key export markets, it is actually making price pressures worse in respect to the commodities it is intended to protect. We have seen investors shelve their proposed investment projects in cement and milk just because the price controls make the outcome of the investments too unpredictable. The “supply side” solution to the increasing costs of cements and milk formula is to stimulate more investment in production, thereby bringing supply into balance with growing demand. Usually, investors don’t like to tell the MPI when they have decided against investing in

Vietnam, so you have to take our word for it, based on purely anecdotal evidence, that this is hurting. If it continues, it will only create more dependence on imports and exacerbate the real market's price pressures.

Also, on the administrative side, the prospect of having to file input production costs with every provisional authority under the new Law is unreasonable and wasteful. We beg careful reconsideration of this and other aspects of this important area of law.

5. Import Restrictions and Non-Tariff Barriers: Weakening the Supply Chain

In recent months, apparently in response to the trade deficit, a number of ministries have begun issuing legal normative documents that impose material new non-tariff barriers on imported goods and services. Everyone is familiar by now with the notorious “automatic” import licensing regime, which continues in force notwithstanding repeated international concerns, but recently there has been a sudden proliferation of more specifically targeted measures. While the intent is to target non-essential luxuries, this phenomenon is having a broader negative impact on the entire supply chain.

It is impossible to list all of the new non-tariff barriers and it seems unlikely that they have all been properly notified to the WTO, but anecdotal evidence suggests we are currently experiencing an epidemic of “baby permits”. To name just a few:

- Notice No. 197/TB-BCT of the Ministry of Industry was issued on May 6th and takes effect on June 1, imposing unexpected new non-tariff barriers on imports of mobile phones, cosmetics and alcohol. Among other things, it requires:
 - + Importers must have a letter of authorization notarized, legalized, and consularized from the source declaring that the importer is authorized by the authentic manufacturer or trader -- and the rule takes effect on June 1. It is impractical to comply with and there seems to be no basis for the inconvenience except to slow down imports.
 - + Mobile phones, alcohol and cosmetics can only be imported through one of three international sea ports for the entire country – no more air freight, train or truck entry. Again, unreasonable paperwork and inadequate notice make this impossible for companies whose supply chains have been worked out months in advance to comply with.
- Circular No. 20/2011/TT-BCT was issued 12 May 2011 and takes effect June 26th. It imposes new procedures for the import of automobiles with less than 9 seats, including additional burdensome documentation requirements such as:
 - + Designation Letter or Authorization Letter issued by the authentic manufacturer or trader to the distributor or the importer, or an Agency Contract of the authentic manufacturer or trader of the imported products. These documents must be notarized, legalized and consularized (per the same process that applies imports of alcohol, cosmetics and mobile phones under Notice No. 197/TB-BCT above).
 - + A Certificate of qualification for warranty and maintenance units (*i.e.* Giấy chứng nhận cơ sở bảo hành, bảo dưỡng ô tô đủ điều kiện) issued by the Ministry of Transport of Vietnam.

The reasons stated for these procedures under Resolution No. 11/NQ-CP, dated 24th February 2010, are to restrain inflation and stabilize the macro-economic situation and protect social welfare, and protect the rights of consumers and road safety.

Legal deadlines for responding to applications for Investment Certificates in the services sector are routinely ignored without consequence, especially where supply chain services are involved. To be fair, this is partly due to the imposition of new administrative procedures without providing adequate resources to the departments who are charged with implementing them.

Distribution licenses that should take 45 days are routinely taking 5 months to a year to process. For such licenses, there are only a couple of officials at the Ministry of Industry and Trade who are supposed to process “opinions” for the entire country, and it seems they are usually on study leave or in workshops so they cannot possibly discharge their responsibilities even though they work hard.

Foreign Currency loans are not allowed for imported consumer products, even by private, commercial lenders.

Imported garments must be tested for chemical contaminants based on each SKU imported, without consideration as to whether the goods have already passed international level standards testing, which is wasteful, and there are only two testing centers for the whole country, so it is impossible for them to process all of the samples that should be tested.

A new customs program to collect Terminal Handling Fees, even though these were dropped in 2010, retroactively for the years 2007 – 2010 based on invoices.

New customs rules are impossible for importers to learn about through the Department of Customs website. This website does list new measures, but only by their document number and not by reference to a product or HS code. It is unrealizable to think that Vietnamese much less international traders can review every single document posted on this site just in case one that affects their products come up. Even the local level customs authorities are regularly uninformed about them. A more “user friendly” website, which listed new measures by product and HS code would be a step in the direction of providing timely notice to traders.

Valuation and classification disputes are increasingly frequent, and an importer who has won a dispute in one province or municipality often finds the same challenge arising in other provinces. Importers who have to pay up front pending resolution of disputes suffer interest costs on their working capital while the authorities delay their resolution of cases, further driving up costs to the economy. Easier access to centralized dispute resolution for valuation and classification matters would be very helpful in such cases.

Most of these measures are inconsistent with the principles of Project 30, which reflects the Government’s policy to reduce red tape and streamline administrative procedures. Since many of them apply to inputs such as construction materials, raw materials and components for exports products, these procedures undermine the efficiency of the supply chain and weaken Vietnam’s overall competitiveness. The 2011 Provincial Competitiveness Index (“PCI”) reported that 70% of enterprises said they had to pay bribes to get their goods through customs and these arbitrary and discretionary non-tariff barriers will only make that situation worse. And though these obstacles may slow down imports, they do nothing to increase State duty revenues, especially with the level of corruption reported in the PCI.

It is worth noting that most of these measures were adopted without consulting the relevant stakeholders in a transparent way, and their implementation has not been accountable in terms of rights of appeal. They do not contain contact points for inquiries as required by certain international agreements.

What is the impact of such non-tariff barriers? According to the calculations of one importer of construction materials in Ho Chi Minh City, the current import licensing and related procedures are costing a reduction of over 30% in profits to small as well as large scale enterprises. To demonstrate the direct cost alone, an importer submitted the following breakdown of the additional costs

generated from just one of these non-tariff barriers for small, medium and large shipments alike:

<i>Assumptions</i>	<i>Small</i>	<i>Medium</i>	<i>Large</i>
Annual Sales/Rev	1,000,000	10,000,000	50,000,000
Gross profit %	20%	20%	20%
Net profit	10%	10%	10%
Value 40' container	\$20,000	\$20,000	\$20,000
Daily Demurrage /Container	\$30	\$30	\$30
Average Delay (days)	7	7	7
Inventory levels (months)	1	1	1
Interest rates	15%	15%	15%
Cost of Sales	800,000	8,000,000	40,000,000
Containers per year	40	400	2,000
Demurrage year	\$8,400	\$84,000	\$420,000
Inventory Level w/o Policy	\$66,667	\$666,667	\$3,333,333
Inventory Increase	23%	23%	23%
Inventory Increase Amount	\$15,556	\$155,556	\$777,778
Interest Cost	\$2,333	\$23,333	\$116,667
Standard Net Profit Amount	\$100,000	\$1,000,000	\$5,000,000
Direct Costs of Policy	\$10,733	\$107,333	\$536,667
Decrease in Profit Due to Direct Costs	-11%	-11%	-11%
Lost Sales in Time Sensitive Business	20%	20%	20%
Lost Sales Amount	\$200,000	\$2,000,000	\$10,000,000
Lost Net Profit Amount from Lost Sales	\$20,000	\$200,000	\$1,000,000
Total Loss Amount	\$30,733	\$307,333	\$1,536,667
Decrease in Profit	-31%	-31%	-31%

In case anyone believes that these barriers only affect luxury items like make up and wines, the fact is that these kinds of measures are causing delays and higher prices for construction projects and agricultural production that have a knock on effect throughout the economy, including exports. A new measure requiring a new and superfluous standard for imported factory tiles, for example, delayed the installation of the equipment that was supposed to sit on those tiles to manufacture export products.

It is imperative to reverse this trend in non-tariff barriers and find more constructive, WTO-consistent approaches to resolving the trade deficit. We think that the current focus on “non-essential items” is not addressing the more fundamental issues of energy policy, vocational training, and delayed infrastructure that could remedy from the supply side of the equation. Again, better supply side policies to encourage manufacturing for export in a WTO-consistent manner are what the manufacturing and distribution community would like to see.

6. Disappearing Tax Incentives

A lot of “development specialists” have spoken about how “tax incentives are not important to foreign investors in choosing where they invest.” Unfortunately, this advice has been misinterpreted in Vietnam to mean that tax incentives are not necessary to attract the kind of investment and generate the number of jobs Vietnam wants. The result of having done away with the tax incentives we had under prior law without replacing them with WTO consistent incentives is that some good projects are being lost.

Vietnam was required to eliminate some export-linked tax incentives over a period of five years, and immediately with respect to garments, as a condition to its WTO entry in 2007, so the timely implementation of that requirement is now being felt. There are however many kinds of tax and fiscal incentives that are WTO compatible that are not provided for in the current tax and land laws and which should be mobilized to give the Government the tools it needs to move Vietnam up the value chain.

The fact is that most foreign investors don’t ask about tax incentives when considering where to invest because they assume that every country that says it wants their investments and their technology offers at least the same foreign investment incentives. Most foreign investors in the most desirable industries would be wooed by host governments anywhere in the world, but in Vietnam they are finding that someone forgot to include them in the new tax rules so the Government’s ability to offer them is limited. Among other things, the current fiscal incentives for “high-tech” industries are too narrow to cover many of the most lucrative foreign investment projects that might come to Vietnam. Again, investors don’t usually inform the MPI when they decide to invest elsewhere after looking at Vietnam.

* * *

On behalf of the Manufacturers and Distribution Working Group, I would like to express our thanks to the organizers of the Vietnam Business Forum for giving us this opportunity to raise our earnest concerns. Success is never guaranteed and we live in a competitive world, but we do hope that through this constructive dialogue the VBF can continue to contribute to Vietnam’s successful socio-economic development in the years ahead.

Taxation

ISSUES TO BE ADRESSED IN REVISION OF DECREE 123/2008/ND-CP GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE LAW ON VAT AND DECREE 124/2008/ND-CP GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE LAW ON CORPORATE INCOME TAX

*Prepared by
Tax Sub - Group*

I. Decree 123/2008/ND-CP providing details for implementation of several articles of Law on Value Added Tax

1. VAT on Services Provided to Processing and Exporting Enterprises

Issues

- Under existing regulations, products and services provided to export processing businesses are considered as exported products and services, and are accordingly entitled to the 0% VAT tax rate. However, according to Circular 129, services provided to companies located in non-tariff areas but the location of provision and consumption of the service is outside the non-tariff areas such as lease of houses, conference halls, office space, hotels, warehouses, transportation, and commuting services for employees, are not entitled to the 0% tax rate.
- Excluding transportation of goods, employee commuting services, warehouse leases, and other service charges from the 0% tax rate is inappropriate. Most export processing businesses are located deep inland and concentrated in export processing zones. They must rent warehouse at ports for transit of merchandise and regularly have the need to transport commodities from the plants to the port and back. Warehousing and transportation expenses incurred by export processing businesses are enormous as all their products are exported.

Recommendation

- For that reason, it is recommended that MOF review this regulation and allow application of 0% VAT rate for services provided by local companies to export processing businesses. Only lease of hotels, lodging or office space outside non-tariff areas should be excluded, to increase competitiveness of Vietnamese export processing businesses.

2. Export Services

Issue

- According to current regulations, exported services include services directly provided to foreign entities that do not have permanent facilities in Vietnam and are not VAT payers in Vietnam. Requirements for entitlement to the 0% tax rate include: (i) being a party to a contract for provision of services with a foreign entity or individual; and (ii) being able to present a bank transfer payment as evidence for the services.
- The problem here is that when the Vietnamese companies provide their services to foreign entities, they may have no way of knowing whether the foreign entities have their permanent establishments in Vietnam and whether those entities are VAT payers in Vietnam or not. So the question is: what evidence or documentation is needed to prove that the customers do not own any permanent facilities in Vietnam other than those mentioned documents?
- One specific example is where a foreign-based holding company hires a service company in Vietnam to provide monitoring and financial audit services to one of its subsidiaries in

Vietnam. In this case, the service should be qualified as an exported service, but the problem is how to prove that the holding company is non-resident, given the presence of very generic provisions on residence status in existing tax-related laws. It should be easier for the businesses if only two criteria, namely holding a contract and making direct payment overseas are sufficient to prove that the entity is non-resident.

Recommendation

- It is recommended that MOF should issue more specific guidelines on this issue.

3. Goods or Services Purchased by Deferred or Installment Payment

Regulations allow the input costs of the seller to be deducted in case of late payment from the buyer as long as it is specified in the contract. However, enterprises want to eliminate the tax inputs once at the end of year when they are due without any proof of payment.

4. Procurement of Equipment for Canteens and Break Houses

Is the procurement of equipment for canteens and break houses deductible for input and depreciation or not?

II. Decree 124/2008/ND-CP Providing Details for Implementation of Several Articles of the Law on Corporate Income Tax

1. Other Incomes

Issue

- There remain some flaws in the determination of other incomes. Take for example a business having broken equipment in 2008 which records a loss of US \$1 million in its accounting book; in 2009, the business receives compensation from the insurer for the broken equipment which is considered as other taxable income. How should such expenses and income be accounted and allocated for the business to properly identify what is taxable? For the time being, guidelines should be provided on how to determine such income, for example using the allocation costing method, so that businesses know what to do.
- According to the Law on CIT, other incomes are not entitled to CIT incentives.
- The exclusion of other incomes such as income from capital assignments, income from transfers of securities, income from asset liquidations and offshore income from tax incentives is appropriate. However, the exclusion of other income such as income from interest on savings, interest on late payments, trading in foreign currency, recovery of provisions for bad debts from tax incentives is not really reasonable because these types of income are closely related to and play a part of the main business activities of enterprises.

Example:

(i) Interest from installment payments is closely related to an enterprise's main business activities. It is a popular type of sales transaction. Income from interest on savings is from enterprises' unutilized cash held at banks. The exclusion of these expenses respective to these types of income is impossible. For example, it would be impossible to separate out the expenses incurred for installment payments. Obviously, enterprises may have loans from banks to maintain their business activities while they have uncollected payments from customers. It is impossible to determine the interest expenses in relation to the uncollected revenue and the interest expenses in relation to normal business activities.

(ii) Similar to the above, income from foreign exchange differences and income from trading in foreign currencies play a significant part in business activities, particularly in enterprises earning

income or incurring expenses in foreign currencies or borrowing in foreign currencies for investment activities. These types of income arise from the revenue/borrowing in foreign currencies and/or the payment in foreign currencies. As such, they should be a part of revenue from business activities. The separate recording of these types of income is only to evaluate the impact of foreign exchange on business activities. Moreover, it is impossible to determine expenses in relation to this income, in particular the gain/loss from differences in foreign exchange, which may differ year to year.

(iii) Income from the reverse of provisions – by nature, this income is earned from business activities. From accounting perspectives, the reverse of provisions is recorded as an expense reduction, not as “other income”. Provisions are accruals in respect of potential loss. When the debts are recovered or when the potential loss is lower, provisions are reversed by decreasing expenses, and thus, taxable revenue increases.

Recommendation

The types of income mentioned above should be considered as income earned from production and business activities and entitled to the general CIT incentives of the enterprise. As such, it is in conformity with the nature of the income and simpler for the authorities to determine tax obligations.

2. Tax-exempt incomes

Pursuant to the Decree 124, only aid used for educational, scientific research, cultural, artistic, charitable, humanitarian or other social activities in Vietnam is tax-exempt income. But in fact, there are some current foreign projects funded for small and medium enterprises in order to improve their business capacity. Global Competitiveness Facility Project (GCF) of Denmark, for instance, is operating to sponsor export development initiatives of small and medium enterprises. The above mentioned aid is also a contribution of sponsors together with the government to support enterprises and it is non-profit operation. Thus the aid should be determined as tax-exempt income, not taxable income.

3. Income from Overseas Investment

Issue

- Under the current regulations on CIT, where a Vietnamese company has income from its investment in another Vietnamese company, this income is not subject to CIT. But a Vietnamese company's income from an overseas investment will be taxed. Vietnamese enterprises are allowed to deduct the tax paid overseas. However, current regulations are not clear as to when this income is subject to taxation - when it is transmitted to Vietnam or at the time it is incurred. In accordance with Circular 130, this income shall be declared in the following year after the income is generated. However, Circular 130 also requires enterprises to submit an enterprise's decision on overseas profit division. These two conditions are in contradiction. Meanwhile enterprises may wish to retain their income to reinvest and may not divide their annual profit.

Most countries impose tax only when the income is divided and transmitted to the main investor. In regard to domestic enterprises' investments, income (or dividends) is recognized only when it is paid, not when it is generated. Many countries even foster investment abroad by not imposing tax on income from overseas investments.

Taxing income from overseas investments while not taxing investments in domestic companies will impede those Vietnamese companies that would like to expand their operations overseas.

The MOF should consider this issue and provide specific guidance on taxes on income from overseas investments, especially regarding the timing and method of deducting overseas taxes. The MOF should also consider tax incentives for overseas investments such as full tax exemption or reduced tax rates or taxing income from overseas investments only when the income is transmitted to Vietnam (i.e. overseas reinvestment will not be taxed in Vietnam).

- For income from overseas investments, Vietnamese enterprises may deduct the tax amount already paid overseas. In practice, however, with the exception of dividends, there are no specific provisions on any other types of investment income, and little information on document requirements and the criteria used to judge if a deduction qualifies.
- With respect to dividends, tax levy timing in Vietnam is now set at the time the income is generated and not at the time of payment. Nevertheless, some companies overseas may decide to withhold dividends for reinvestment without paying to shareholders, which leaves nothing taxable.

Recommendation

It is expected to receive specific guidance from MOF on taxation of income from overseas investments other than dividends and how to achieve an adjustment in specifying the timing for tax levy on dividends.

4. Loss Carry Forward

Issue

- Pursuant to Article 7 of Decree 124/2008/ND-CP, losses must be carried forward in a consecutive manner. There is no specific guidance on “consecutive”, however a recent ruling from Ministry of Finance (Official Letter 7250 dated 7 June 2010) guided that the loss must be carried forward to any profitable year following the year of loss (within a maximum 5 years). The ruling is silent for the case where the taxpayer is exempted from CIT under tax incentives regime. In the absence of specific guidance, it will be understood that loss must be offset to profits of any profitable year, including tax exemption year.
- This would cause significant impacts on the business projection / plan of many taxpayers. This would impair the value of the tax incentives that the Government provided in previous regulations and severely restrict the utilization of tax loss, a legal asset of the company.

Recommendation

- We would recommend that the requirement for “consecutiveness” of loss as mentioned in Official Letter 7250 should be removed, and loss utilization should be at the discretion of the taxpayer, provided that the loss can only be used within 5 years.

5. Limitation to Advertising, Promotions and Marketing Expenses (“A&P expenses”)

- A&P are actual expenses of the company, and as such if they are supported by proper documents they should be deductible in full. The current limit of 10% (15% for newly established companies) is in many cases too low compared with actual disbursements of company and therefore should either be removed or increased.
- In many cases A&P expenses are incurred for the whole group and not for an individual company. However the 10% cap is applicable to only one company. There should be some considerations, for example, that in case a company incurs the A&P expenses for the whole group, the cap would be calculated on the group’s expenses.

- Commission expenses paid to participants in multi-level sales networks are not cost of advertising and promotion, so it should not be subject to the 10% limit for advertising and promotions. This cost is essentially the operation cost of enterprises and therefore should be fully deducted.

6. Tax Regulations on Income from Transfer of Real Estate

Issue

- The Government issued Resolution No. 33/2008/NQ-CP dated December 31, 2008 on the pilot application of a number of administrative procedures for construction investment in projects on new urban centers, residential areas, and technical infrastructures of industrial parks. Accordingly, “the local authorities could issue land use right certificates for the owners of houses and buildings on the land, without the necessity to issue a land use right certificate for the whole project for the level 1 investor”.

Whilst the land use right is certified by the land use right certificate, whether the transfer of developed land from the level-1 investor to the level-2 investor, without having any land use right certificate, is regarded as transfer of land use right or not? As a result, is there any possibility for income from such transfer being treated as normal business income?

- According to Decision 90/2006/NĐ-CP providing guidance for implementation of Housing Law, the developers are required to retain 2% of the sale proceeds of apartments to raise funds for an apartment building’s public areas. This amount is included in the selling price that the buyer must pay and deducted before any tax calculation (the Government does not collect tax on such expenditure). However, there is no guidance on the deduction of such maintenance expense from taxable income in taxation regulations issued in 2008.

Recommendation

- We would like to request for MOF’s consideration in relation to the above land policies and introduce an appropriate tax policy in accordance with legal framework on land to reduce uncertainty in its practical application. In particular, we suggest MOF make clear the treatment of the 2% deduction of maintenance expense from the taxable income, and its subsequent description on the VAT invoice as soon as possible as the legal requirement for the deduction was introduced some time ago.

7. Application of CIT Incentives

Issue

- Tax incentives have effectively been banned for business expansions. In practice, however, problems may arise in case an active business in an export processing zone enjoying the preferential tax rate of 15% decides to increase investment and expand its business operations at the same location. In this case, any profit generated from the increased capital shall be subject to a 25% CIT tax rate as under the new regulations. Nevertheless, it is very difficult to tell which part of the profit comes from the expansion. It is recommended therefore that businesses be allowed to continue adopting the existing rate.
- The government needs to keep its commitments made to investors to protect their interests, and a non-recourse principle should be applied. It has been reported that an investor, after two years in operation, received notices from the Ministry of Finance that the incentive tax rate would be changed as it was mistakenly set earlier at a different rate. Such an unpredictable business environment cause’s distrust among investors.
- Regarding large and established enterprises, when a new plant is built, the name remains the same and the plant is dependent on the parent company for accounting. However, such an

undertaking is not considered to be new investment and consequently does not qualify for incentives.

- There exist a number of definitions such as “socialization sector”, “especially important infrastructure” in assessing conditions for application of tax incentives in the regulations on Corporate Income Tax. However, there is **no** further guidance providing precise definitions of the above jargons. Specific guidance on the said issues should be provided.

8. Deductible Bonus Expenses, Contingency for Severance Allowances and Wage Expenses, Insurance Expenses for Employees

Issue

- Bonuses for employee are ultimately expenses on production and business activities and thus should be fully deducted for tax purpose if enterprises present valid documents and the bonuses are recorded in the employment contract.
- While some local tax office branches have adopted flexible regimes on deductible bonuses, this has so far been entirely subject to the discretion of the respective tax jurisdiction. Changes to the regulation are therefore needed for the deduction of bonuses to be performed consistently and not rely on the subjective interpretation of local tax authorities.
- Contingency for severance allowances and wage expenses are increased annually and needs to be deductible.

Recommendation

- It is necessary to stipulate regulations to encourage the establishment of pension funds (e.g. retirement pension fund), and design a management mechanism for these funds. Simultaneously, a regulation on tax incentives for contributions and income from these funds is also recommended. Particularly, the government should permit enterprises to deduct enterprise’s contributions to retirement fund/retirement pension and benefits for employees.

9. Registration of consumption norms of materials and goods

The registration of consumption norms of materials and goods is difficult to implement for enterprises. The regulations should be removed and registration should be based on the actual receipts. If not removed, require registration for only some basic materials.

10. Accrued expenses

Issue

- According to current regulations, when a company issue VAT invoices, normally the company is required to recognize taxable revenue for VAT and CIT purposes while accounting revenue has not yet been recognizable. It is unclear under current regulations whether taxpayer can accrue expenses as deductible expenses in the year of recognizing taxable revenue or not.
- In fact, as the expenses are not supported by proper voucher, it is very likely that the expenses will be non-deductible. Even worse, when the expenses are actually incurred, tax authorities may still disallow these as deductible expenses because these are not matched with revenue (i.e. not creating taxable revenue in the year these expenses are incurred because revenue has already been taxed last year).

Recommendation

There should be clear guidance on whether and how accrued expenses can be deductible.

MINUTES OF MEETING ON AMENDMENTS TO DECREE 123/2008/ND-CP ON IMPLEMENTING VAT LAW AND DECREE 124/2008/ND-CP ON IMPLEMENTING CIT LAW

Time: 2:00-5:00 PM, Thursday, March 17, 2011

Venue: Room No. 348, Ministry of Planning and Investment, 6B Hoang Dieu, Hanoi

Participants: See Annex 1 - List of participants

AGENDA

- Amendment schedule for Decrees 123/2008 and 124/2008
- Presentation on issues to be revised in the existing VAT and CIT provisions by the VBF's Tax Working Sub-Group
- Responses by representatives of the Ministry of Finance (MoF)
- Free discussion

I. Amendment schedule for Decrees 123/2008 and 124/2008

Mr. Pham Dinh Thi, Deputy Director, Tax Policies Department, MoF

- The amendment of Decrees 123/2008 and 124/2008 has been included in the Government's agenda for Quarter III.
- The MoF is compiling feedback on issues to be revised in the two pieces of legislation and is undertaking an extensive consultation process with the business community.

II. Presentation on issues to be revised in the existing VAT and CIT provisions by the VBF's Tax Working Sub-Group

Ms. Le Thi Kieu Nga, Deputy General Director, KPMG Vietnam

- Loss carryforward: There are different interpretations by local tax authorities on consecutive losses carried forward for up to five years since the loss incurring year. Is it mandatory for enterprises which are in the tax incentive and tax break stages to carry forward losses on a year-after-year basis? Consecutive losses carried forward will make tax incentives and tax breaks virtually useless for enterprises in such tax break stages.
- Incentives for business expansion projects: Many issues remain unclear in relation to granting incentives to business expansion projects prior to 2009. Many different interpretations exist between tax authorities and licensing agencies regarding the concept of business expansion. For example, is capital increased considered as business expansion?
- If an enterprise increases its capital only to pay debt or compensates its business losses without increasing fix assets, installing new production lines, increasing production scale or renewing technologies, will it be deemed business expansion? Will the incentive start to apply when the expansion project is put in operation or when it begins to make profit? How are increased earnings determined for a business expansion project?
- VAT for local exportation:
 - If an export processing company is selling products to an overseas buyer but the delivery is made in Vietnam and the goods does not go through any further production processes to make export goods, it is considered local sales. However, will that company be then considered an export processing company defined as purely a producer of export products?
 - If local company A sells its products to a foreign buyer who authorizes company A to deliver the goods domestically to company B and if company B does not further process the goods for export, the relationship between company A and the foreign buyer will not be considered an exporting one and will instead be viewed as local sales subject to a

VAT rate of 10%. On the other hand, as company B is buying from a foreign business, even though the goods are physically delivered locally by the said company A, company B still has to pay import duty and VAT. It means that the same lot of goods in this case will be levied with VAT twice.

Ms. Dinh Quynh Van, Deputy General Director, PWC Vietnam

- Definition of separate account keeping: The concept of separate account keeping has never been defined in any legislation. For direct costs, only input material costs may be separated but labor costs can only be allocated. Will this be called separate account keeping?
- Preferential corporate income tax for business expansion: In the case of a business having been previously entitled to tax incentives, if such a business increases its capital for business expansion at this stage, continues to make the same products but also installs more production lines in accordance with existing laws, the earnings resulting from the expansion will not be eligible for preferential tax treatment. Nevertheless, in practice it is impossible to tell which part of the earnings has resulted from the expansion to impose non-preferential tax treatment.
- Incentives for new investment: The provisions on this issue in Decree 124 (Article 19) have been interpreted that only an investor who is completely new and has never had any investments in Vietnam is qualified for new incentives. Does this mean that a large business group's newly established subsidiary or affiliated companies in another area are excluded from the incentives under this Decree? We recommend that the MOF reconsiders this provision when amending Decree 124.
- The concept of permanent establishment: This is very difficult to identify. There has been significant debate in defining whether a company has permanent establishment in Vietnam for tax purposes. We recommend that amendments to the two Decrees address this concern.
- Settlement through a bank: If the on-time payment of contracts becomes a precondition for input VAT deductions, it will be a major problem and prove impractical.
- VAT payments by branches: Accounting-dependent branches without separate book-keeping are entitled to a temporary VAT deduction of 2%. The question here is how is having "accounting books in place" defined? Local tax offices that have jurisdiction over such branches often refuse to accept this 2% claim, which causes headaches for businesses.

Ms. Dang Tuyet Huong, Manager, Hanoi branch, Hapag-Lloyd Vietnam

- VAT on forward agent commissions for overseas shipping firms: Before 2009, forward agent commissions were not subject to VAT. From 2009, forward agent commissions were subject to 10% VAT. However, from 2009 there have been inconsistent guidelines on whether forward agent commissions are subject to VAT. A uniform definition in this regard is needed. A forward agent commission for a foreign shipping company is a fee paid to a local shipping firm for the provision of services on behalf of the foreign shipping company.
- Personal income tax: Air fares for foreign workers' family members should be excluded from personal income tax proceeds.

Mr. Phan Vu Hoang, Tax & Consulting Director, Ernst & Young Vietnam

- Capital transfer: The concept of a purchase price needs to be clearly defined. Does it include the original capital amount and retained earnings, or only the original amount?
- Both sales and purchase prices now have to be converted to VND based on the applicable exchange rate. The sales price must be converted based on the applicable exchange rate at the time of transfer and the purchase price must be converted based on the exchange rate at the time of capital contribution. If the amounts are converted to USD, it seems that even a non-profit transaction is subject to the capital transfer tax. This is unreasonable since a tax has been levied on exchange rate differences. It is recommended this matter be reviewed.
- Income from overseas: From when is income from overseas subject to taxation in Vietnam? Is it when the income is transferred or when the income is generated?

- Other incomes: Interest from other incomes is accounted as other incomes but related losses are deducted from deductible expenses. These provisions are inconsistent.
- Consecutive loss carryforward: As losses are liabilities of a business, how they are carried forward should be decided by the business itself. If it is obligatory that losses be carried forward even when a business is in a tax break stage, the true meaning of the tax incentives will be annul as the company no longer benefits from such incentives.

III. Responses by Representatives of the MoF

Value-Added Tax (VAT)

Mr. Pham Dinh Thi, Deputy Director, Tax Policies Department, MoF

- Services provided to export processing businesses: In accordance with Circular 129, services such as the leasing of houses, meeting rooms, warehouses, office space, hotels and commuting services for workers are not entitled to a 0% tax rate. Regarding the transportation of goods, a 0% VAT tax rate has been formalized in a MoF guideline.
- Permanent establishment: The MoF is aware that determining whether a business has permanent establishments in Vietnam remains unclear and wants to hear from stakeholders to allow it to provide better guidance on this issue.
- Local exportation: In principle, an export processing company is purely a producer of export goods and its commodity-based relationships with the outside world are *deemed* exporting activities. Also, an export processing firm pays no tax when buying goods in the local market.
- Forward agent commissions for overseas shipping company: Forward agent commissions in general are not subject to the declaration and payment of VAT. The General Department of Taxation will further explain this in the section below.
- Products and services purchased on a deferred or installment payment basis: From January 1, 2009, specific guidelines were introduced requiring the presentation of bank payment vouchers for the procurement of goods and services for amounts of VND20 million or above. If on the due date, no bank vouchers are presented, the business shall be deducted input VAT. The MoF duly acknowledges the recommendation to make a single year-end adjustment to address businesses' paperwork burdens.
- Equipment costs for canteens and rest houses: These are accounted as fixed assets and eligible for depreciation. The MoF will provide further details in a new Circular.

Ms. Nguyen Thi Thu Ha, Manager, VAT Policies Division, General Department of Taxation (GDT)

- VAT for local exportation: The GDT is also aware of this concern. It is reviewing the issue and will report to the MoF to address this.
- In principle, goods delivered in Vietnam must be further used to produce export goods to be considered exportation. Otherwise, they will be deemed locally-consumed goods.

Corporate Income Tax

Mr. Pham Dinh Thi, Deputy Director, Tax Policies Department, MoF

Responses to questions raised during the meeting

- Business expansion: Business expansion are no longer entitled to tax breaks. Capital increment and business expansion are different. Separate accounting does not work with deep expansion. Regarding horizontal expansion, separate accounting may be applicable, even to product cost estimates. Only overheads are shared and even if these costs are not accounted for separately, they can be allocated by existing accounting norms.
- Loss carryforward: Circular 18/2010 has made clear that losses carried forward must be uninterrupted, for no longer than five years and not be intermittent. Tax Sub-group's proposal to allow businesses to choose which years to carry forward losses provided that it is within the five-year limit will be considered.

- Incentives for new undertakings: An active business developing a new local plant is not considered “engaging in a new undertaking” and hence is not entitled to incentives for new undertakings.
- Tax breaks for businesses: The agreed principle is non-retrospective and existing incentives stated in an investment certificate will remain as is. If more incentives are given in new regulations, businesses will be entitled to such newly established benefits.
- CIT on incomes received from overseas: Only if a dividend payment decision is made and dividends are received, shall income tax on the difference be paid. In principle, only the earnings made overseas that are subject to a lower tax rate than in Vietnam are levied. While the taxation timing has not been fixed at present, the point in time when the income is received from overseas should be used, not when it is generated. This will be further elaborated upon.

Responses to questions raised in the Tax Sub-Group’s recommendations

- Advertising and promotion costs: The existing restrictions are provided in the CIT Law 2008. Any amendments to the law need more careful reviewing and reporting. However, the case of a subsidiary paying the accumulated advertising cost for an entire group of companies being allowed to register such cost as a cost of the whole group is a new issue. The MoF will consider Tax sub group’s recommendations on this issue.
- Other incomes: The MoF is also well aware of the setbacks in the implementation of the current regimes. Adjustments to parts pertaining to the CIT law might wait, but for parts under the Government’s jurisdiction, the MoF will assemble available comments and consider relevant amendments.
- Incomes eligible for tax exemption: Foreign financial support (ODA) to small and medium-sized enterprises to help increase their business capacities should also be exempted from tax. The MoF duly recognizes this comment and will address this in the new Decree implementing CIT law.
- Commissions for multi-level salespeople: The MoF will take a closer look at this issue.
- Retention of apartment sales proceeds for maintenance: As these funds are set aside before tax calculation and without proof of payment, they are not deductible. Currently regulatory guidelines on the deduction of such maintenance expense from taxable income are not in existence. The MOF notes this issue and will provide clarification later.
- Bonuses: This has been clearly defined in Circular 18, the amendment to item 2.5b, paragraph 4, Part C. Any bonuses paid to employees, for which specific terms and levels are not available in the employment contracts, collective agreements or financial rules of a company or group of companies, shall not be considered deductible costs. This provision will avoid discretionary interpretations by local tax authorities.
- Encouragement of establishment of employees’ allowances and pension funds: This comment is duly noted and will be considered in the amendment of the Decrees.
- Registration of material consumables norms: Amendments have been made in Circular 18 in relation to this point. However, a registration form for material consumables norms has not been introduced yet.
- Capital transfer: The transfer price consists of the original capital and retained earnings.

IV. Free Discussion

Bonuses

Ms. Dinh Quynh Van, PWC Vietnam

- Bonuses are often not determined beforehand as annual bonuses are often fixed only after the accounts are closed. It would be better to leave this to the company management’s discretion since predetermining terms and levels of bonuses in an employment agreement or corporate regulations is impractical in both cases. On the other hand, a company may comprise multiple units, each having a different way of determining bonuses.

Registration of Material Consumable Norms

Ms. Dinh Quynh Van, PWC Vietnam, Mr. Nguyen Minh Hoang, Manager, Hoang Thang Audit and Tax Consulting Co. and Ms. Le Thi Kieu Nga, KPMG Vietnam

- Registration of consumables norms, as discussed above, will not be viable. A registration form is also yet to be available.
- Even if businesses are able to register their consumables norms, related tax authorities will have no way of knowing whether the registering companies' disclosures are accurate.
- When the year ends, new registrations will be required based on actual changes. Therefore the requirement of consumables norms registration should be removed.

Mr. Pham Dinh Thi, Deputy Director, Tax Policies Department, MoF

- A company may register incorrect consumables norms and the related tax authorities may not know that. However, if tax authorities do inspection and find discrepancies, the company's behavior in providing wrong or false statements may constitute misconduct and be subject to penalties.

Ms. Dinh Quynh Van, PWC Vietnam

- By "norms", estimates at the time of registration are meant. However in reality, variances in material consumption levels do not constitute sufficient grounds for imposing penalties on companies. A more practical approach to measuring consumption is recommended since businesses have different levels of management efficiency. The issue here is the amount of paperwork generated by businesses having to repeatedly make registrations, only to change them later.

Accrued Expenses

Ms. Dinh Quynh Van, PWC Vietnam

- Up until recently, accrued expenses were allowed to be consolidated with turnover. Yet, tax authorities still request full presentation of related invoices and vouchers, which in effect, no longer qualifies the costs as accrued expenses.

Exported Services

Ms. Dinh Quynh Van, PWC Vietnam

- Definition of exported services should be based on two criteria - having a contract with a foreign partner and payment made directly from a foreign country. If a foreign company wants to reallocate the cost of such services to its affiliates in Vietnam, it would still have to pay withholding tax which already includes VAT. As such, the regulation on "permanent establishment" could be removed.

Mr. Nguyen Minh Hoang, Hoang Thang Audit and Tax Consulting Co.

- Similarly, services provided to foreign contractors in Vietnam are also subject to double taxation in effect. A local company providing services to a foreign contractor pays VAT as usual, then the foreign contractor pays withholding tax collected through the employer on such services.

Ms. Nguyen Thi Thu Ha, Manager, VAT Policies Division, GDT

- VAT is a tax levied on consumption. Other countries also rely on consumption in other territories to determine what an exported service is. The concept of permanent establishment is in fact associated with direct taxation and would be problematic if used in relation to VAT. Businesses' comments on the impediments have been duly noted.

Ms. Duong Thi Ninh, Manager, Income Tax Policies Division, Tax Policies Department, MoF and Mr. Pham Dinh Thi, Deputy Director, Tax Policies Department, MoF

- Defining whether a service is consumed in a foreign country is difficult, e.g. tax consulting and auditing services. References to laws of selected countries indicate that the concept “non-permanent establishment” is used. The question is what documents can be used to prove that a company has non-permanent establishment and thus doesn’t have to pay taxes in Vietnam.
- If only the two above proposed criteria are used, a wide range of services provided to foreign users in Vietnam will be deemed exported services.

Capital Transfer

Mr. Do Nhat Hoang, Director, Department of Foreign Investment, Ministry of Planning and Investment (MPI)

- For example a company invested USD\$2 million in 2000 (exchange rate: VND11,000), later on it transferred the investment to a subsidiary company also for USD\$2 million. At the time of transfer, the exchange rate was VND18,000 for a USD and the difference in VND was subject to taxation. That will cost the company. The exchange rate at the time of granting investment licenses should be used in such cases.

Ms. Dinh Quynh Van, PWC Vietnam

- Capital: This should be recorded as the owner's equity at the time of transfer. If it remains as it is currently, it may easily be misunderstood as the initial capital value at the time the investment license was granted.

Mr. Pham Dinh Thi, Deputy Director, Tax Policies Department, MoF

- The term equity price at transfer is correct in essence. The question is only to define what that price entails to avoid confusion.

Forward Agent Commissions

Ms. Nguyen Thi Thu Ha, Manager, VAT Policies Division, GDT

- Agent commissions from the sales of freight packages are not subject to VAT. Other types of commissions are subject to VAT. Specific guidelines from the GDT have been released on this issue.

Ms. Dang Tuyet Huong, Hapag-Lloyd Vietnam

- The GDT has separated agent commissions from sales of freight packages and fee collections. In practice, however, shipping agents do not separate these commissions. Businesses, therefore, find it impossible to comply with the regulation. It is recommended that no costs incurred by an agent, when working for a foreign shipping company, be declared and taxed.
- What is the difference between not subject to VAT and a 0% VAT tax rate?

Mr. Pham Dinh Thi, Deputy Director, Tax Policies Department, MoF

- We suggest that a detailed inquiry in writing is submitted to the Tax Policies Department, MoF or a meeting is held in person with the Tax Policies Department’s Deputy Director, who is in charge of VAT, to discuss this issue in more detail.
- A company not subject to VAT is not entitled to a VAT input refund, while the 0% VAT tax rate allows for an VAT input refund, which is more beneficial for company.

Ms. Nguyen Phuc Thanh, Chief Accountant, Cathay Pacific

- What are the VAT refund procedure in the case of a 0% VAT tax rate?

Mr. Pham Dinh Thi, Deputy Director, Tax Policies Department, MoF

- Qualification for tax refund and procedures are provided in details in Circular 129. If a company chooses to adopt foreign accounting standards, such standards must be approved by the MoF in advance.

Income from Business Activities in a Foreign Country

Ms. Dinh Quynh Van, PWC Vietnam

- While income from business activities undertaken in a foreign country, particularly from services provided by companies in Vietnam to foreign businesses, is subject to withholding tax as in Vietnam, no specific guidelines exist to help local companies apply for deduction of the tax paid in foreign countries.

Capital Transfer

Mr. Phan Vu Hoang, Ernst & Young Vietnam

- In a capital transfer deal there is an additional term requiring an extra payment if the business yields profits within two years. In such a case, will the sales price include such terms from the outset or only when such extra amount is received? Moreover, will it be accounted for in CIT calculations and will such an amount be deductible for tax refunds later?

Mr. Do Nhat Hoang, Director, Foreign Investment Department, MPI

- In amending the two Decrees, list of areas eligible for investment incentives should be provided for separately in another Decree or a Government's Decision.
- Incentives: Incentives should be determined based on sectors and areas, and not depending on specific companies. In other words, the principle is to determine incentives by projects and not by companies. If a company is working on different projects that fall under preferential categories or are located in preferential areas, the granting of incentives cannot be said to be associated with the company. We suggest that MoF takes note of this issue and coordinate with MPI to address this issue while waiting for revising the CIT law. And when it comes to revising the CIT Law, amendments should take into account a project-based and not company-based approach to incentives.

Annex 1 - List of Participants

<i>No</i>	<i>Name</i>	<i>Position</i>	<i>Organization/Company</i>
<i>Ministry of Finance (MoF)/General Department of Taxation (GDT)</i>			
1	Pham Dinh Thi	Deputy Director	Tax Policies Dept.
2	Duong Thi Ninh		Tax Policies Dept.
3	Nguyen Thi Thu Ha		GDT
4	Vu Thinh Huong		GDT
5	Luu Thi Len		GDT
<i>Ministry of Planning and Investment (MPI)</i>			
6	Do Nhat Hoang	Director	FIA
7	Hoang Minh Phuong	Deputy Director	Legal Dept.
8	Pham Tuan Anh	Official	Legal Dept.
9	Vu Quoc Huy	Official	Economic Zones Dept.
10	Le Thi Nguyet Anh	Deputy Manager, Policies Div.	FIA
11	Nguyen Quang Vinh	Official	Business Development Dept.
12	Bui Thi Yen	Official	Management Board of IPs & EZs in Hanoi
<i>Business Community, Vietnam Business Forum</i>			
13	Phan Vu Hoang	Director	Ernst & Young Vietnam
14	Nguyen Thi Hai Yen	Branch Director	TNI Vietnam Ltd.
15	Do Thi Minh Theu	Chief Accountant	TNI Vietnam Ltd.
16	Ogura Masanori	General Secretary	JBAV
17	Do Ha Phuong	Secretary	JBAV
18	Nguyen Minh Hoang	Director	Hoang Thang Co. Ltd.
19	Dang Tuyet Huong	Hanoi branch Manager	Hapag-Lloyd Vietnam Co.
20	Le Bich Ngoc	Manager	KOTRA

21	Nguyen Hoang Anh	Officer	Standard Chartered Bank
22	Khuat Thi Lien Huong	Officer	Grant Thornton Vietnam
23	Dinh Quynh Van	Deputy General Director	PWC Vietnam
24	Hoang Thi Nhu Quynh	Deputy Director	Piaggio Vietnam
25	Nguyen Phuc Thanh	Chief Accountant	Cathay Pacific
26	Phạm Thi Thanh Phuong	Credit Manager	Maybank
27	Le Thi Kieu Nga	Deputy General Director	KPMG Vietnam
28	Pham Lien Anh	Coordinator	Vietnam Business Forum

Mining

**COMMENTS ON DETAILED GUIDELINES ON IMPLEMENTATION
FOR THE LAW ON MINERALS NO. 60/2010/QH12**

April 2011

*Prepared by
Jennifer Cook Clark, J.D., LL.M.
Consultant to Mining Working Group of the Vietnam Business Forum*

From an international perspective, the Draft Detailed Guidelines on Implementation (Version 2) (hereinafter referred to as “Draft Guidelines”) for the Law on Minerals No. 60/2010/QH12 contains provisions that (when read in conjunction with the recently promulgated Minerals Law), is likely to further deter diverse international investment into Vietnam’s mineral sector. This is of concern because the current status of the development of Vietnam’s mineral sector is at a stage where high-quality exploration and development is desirable for technology transfer, to provide increased high-quality data and information about Vietnam’s underlying resource potential, to gain needed state revenue through taxes and royalties to assist the next levels of socio-economic development and to start development in more remote areas of the country where development potential is otherwise low. It is highly unlikely that these goals can be realized by relying primarily on domestic or regional companies, who lack the most sophisticated exploration and mining techniques and equipment.

In addition, to rely on older exploration and mining techniques and technology is to knowingly risk damage to the environment and communities surrounding exploration and mining concessions. Especially now, when mining is very controversial within the country, it is most important to attract state of the art companies that can operate to international best practice standards, to provide the country with the best set of benefits that mining can offer while minimizing the negative impacts of mining so as to avoid a negative track record of mining in the country.

In short, unfortunately, the Draft Guidelines will fail to assure that the best quality companies (with their ability to provide the best geological data and information, exploration and mining techniques, development benefits and to minimize where possible the negative impacts of mining) will invest in Vietnam’s mineral sector.

It should be noted that for 2010, the Mining Economics Group (“MEG”) *World Exploration Trends 2011* reported a worldwide exploration budget total of US\$11.2 billion dollars based on information collected from more than 3,200 mining and exploration companies internationally. Many of the best companies are always looking for new exploration targets and Vietnam could obtain a share of this worldwide exploration budget if it could offer a competitive, attractive legal regime similar to that of other successful mineral economies. Otherwise, as now, the best companies will spend their exploration budgets in other countries.

Specifically, the main problems of the Draft Guidelines are similar to issues discussed in previous comments on the various drafts of the Mineral Law and can be summarized as follows:

1. Although the regulations on auctions will be covered separately from the Draft Guidelines (Article 1), there remains too much uncertainty on how mineral properties can be accessed by

foreign companies to undertake exploration and mining and whether it will be through auctions or otherwise. It may be helpful to clarify this in the Draft Guidelines.

2. Regarding export restrictions in Article 2, it has been reported widely in the international trade media in the last couple of weeks that the World Trade Organization's (WTO) Dispute Resolution Panel has determined that China's restrictions on exports for several commodities (discussed in previous comments on the Draft Mineral Law) to be a violation of the General Trade and Tariff Treaties as an illegal protectionist measure. While the decision has yet to be publicly reported (estimated to be released later in April 2011), and China will have the opportunity to appeal, the Dispute Resolution Panel has reportedly found that there is no legitimate basis under the GATT Treaties for China to limit exports of mineral commodities.² As a result, it is suggested that Article 2 of the Draft Guidelines be amended accordingly and to either revise the applicable Mineral Law's export restriction provisions or to effectively modify them in the Draft Guidelines. Otherwise, both pieces of legislation will likely run afoul of WTO obligations.

3. The concept of cost reimbursement for basic geologic surveys (in Article 3) will, unfortunately, be very problematic for international companies no matter how it is calculated (although a unit calculation would probably be considered the worst way to calculate it).

The basic geological surveys, although marginally helpful to determine broad exploration targets, will not be used as the basis for detailed exploration decisions and companies will expect to be able to do all their own exploration based upon their own exploration models (many of which are highly proprietary). Most successful mineral economies around the world have found their best interest is to attract the best companies by providing information from geological surveys free of charge or for nominal rates (for example, for the amount it costs to reproduce the information). Requirements to pay back costs for exploration work that will need to be repeated has always been viewed very negatively by the international industry. It would be a shame to discourage exploration by short-sighted attempts to recognize gain from what is normally considered a government function.

While perhaps not prohibitive in and of itself, taken along with the extremely high royalty and tax rates and the new "mining right fees" (that essentially constitute a double royalty (see discussion below)), the Guideline drafters should be prepared to accept that Vietnam will effectively be crossing itself off the lists of the best companies with provisions such as Article 3.

In addition, to bring in the Ministry of Finance to define cost measurement measures, will be viewed even more negatively as it will then be perceived as a political issue.

4. With regards to Article 4, Mineral exploration funded by the state budget, it is inefficient for the government to undertake exploration when international companies can do it. If it is undertaken to then be able to auction off properties, the international industry will indicate that all exploration will have to be redone to their standards, especially for large projects. Worst yet, what the government should be seeking to get is the expertise and experience of companies to undertake the exploration so it can take advantage of the high-quality data, analysis and results of the exploration. The government misses this opportunity if it attempts to do it itself unless there is no other alternative.

It is even more troubling that a non-technical agency such as the Ministry of Planning and Investment would be the lead agency to determine state-financed exploration. Such a scheme will put off the best companies because it will appear that the Government does not understand geology, exploration and the international minerals industry. Moreover, companies will not be interested in

² Recent news articles and the formal opinion (when released) can be provided upon request.

reimbursing exploration costs to the Government where it will need to, in virtually all cases, to undertake its own expensive exploration.

5. In Article 6(3)(b), most companies will not object to responding to “reasonable” ad-hoc reporting requests that are relevant to legitimate regulatory purposes and this is suggested as an amendment.

6. Chapter II incorporates the concept of mineral master planning which has been discussed in previous comments. The Draft Guidelines generally tend to miss the distinction that the business of geological exploration and mining is to find deposits that are previously unknown. The level of planning that is required both in the Mineral Law and in the Draft Guidelines runs the serious risk of obscuring the purpose of baseline geological surveys, exploration and mining – to discover new information that is not going to be adequately provided for in such rigorous pre-planning. It will be perceived by the international industry (as it has been here) that the two concepts (pre-planning and the purpose of studying geology and exploration) run counter to one another. Instead of locking in activities that are consistent with pre-planning, it would be more beneficial to encourage surveys and exploration in areas that have not been previously explored. As a specific example, in Article 8(6), how can an area be planned for “zoning” for auction rights that has not been adequately explored?

7. In Article 11, giving an entity a priority for an area that may or may not be zoned as an auction area is not a true priority.

8. In Article 12, the Attachment 1 which is referenced but not included could not be evaluated.

9. Article 13’s criteria for designation of areas as not subject to minerals mining right auctions appears to be extremely narrow especially as many of the criteria appear to be on categories of minerals that are restricted from general exploitation. Access to adequate areas of land for exploration and mining is an extremely important criteria. The Draft Guidelines appear to further restrict access to these areas.

10. Article 14 appears to allow selection of entities for exploration permits based on criteria other than “first-in-time” or “first come, first served” which is perceived in the international industry to allow for significantly increased risk of not obtaining permits fairly or based on merit. In addition, it is perceived as being a method where more unscrupulous companies can gain advantage for speculation through corruption and encourages copying of legitimate companies’ submissions by companies that otherwise could not put forward legitimate applications. In addition, there are two criteria for preference indicated which creates a conflict. Moreover, in some instances, increased processing or metallurgy may not be economic and such preferences will encourage less-efficient operations rather than more efficient operations which then tends to encourage overall less-optimal use of resources.

11. The “right to mine” is undermined by placing increased criteria on transfer of exploration rights, such as those in Article 16, which will discourage international investment.

12. Part II’s “Appraisal and Approval of Mineral Reserves” will be particularly troubling as the entities that sit on the Committees are political entities not technical entities. Although discussed previously in comments on the Draft Mineral Law, appraisal and approval of reserves and resources by the government has not been adopted by successful mineral economies and is generally considered an outdated procedure. Where it may be used to determine when less legitimate companies seek to high-grade a deposit or otherwise over- or under-state reserves or resources for speculative or cost-saving purposes (such as to avoid large work program expenditures by

understating potential resources), the problem is better addressed by screening these companies out in the beginning and not allowing them to explore or operate in the first place and by favoring high-quality companies that do not have reason to engage in such undesirable behavior.

13. Provincial People's Committee's (other than those who deal extensively with mineral development or who have technically qualified people) in Article 20, are unable to determine whether reserve and resource estimations are correct which leads to corruption to obtain approvals.

14. Article 23 misunderstands the "right to mine". It is not the same as a mining license. Please see previous comments to the Draft Mineral Law. Instead, the right to mine is the ability of a company to move from initial exploration to mining without undue discretion allowed in the law for officials to interrupt the progression if a company is technically and financially qualified to operate. Although preferences and priority are given in various places in the Mineral Law and in the Draft Guidelines, there is no true "right to mine" under the recently passed Mineral Law. Restrictions on the ability to transfer exploration and mining licenses are considered breaks in the "right to mine" because if a company invests in mineral activities and it cannot sell or transfer its licenses without undue encumbrance, then there is no real "right to mine" and usually indicates that there is too much risk to investment in the first place.

15. Article 25 concerning appraisal of mine closure proposals tends to somewhat miss the point that a closure plan should provide and ensure for long-term safety and stability of structures and the minimization of negative impacts from mining over the longer term after mining stops and that the surrounding communities have been developed such that surrounding area is capable of some level of sustainable development although the mine site itself has closed.

16. The extensive provisions on contents of applications might be better handled under specific regulations that can be changed more easily than the Guidelines which handles a number of other topics.

17. Chapter V "Mineral-related finance and mineral mining right auctioning" provides in Article 34, the calculation of the mining right fee. As there is no "right to mine", it is a serious misnomer to call this a mining right fee. If it cannot be removed entirely, it should be renamed. Because it is also generally based upon factors of price and reserves it is essentially a double royalty. Moreover, it provides that the government will set the price of minerals which are instead set by the market. To set the price of minerals will be seen as ludicrous by the international industry. Also, the coefficients as presented have no basis in fact that people can evaluate or measure. As such, this will be very negatively viewed by the international industry as it will be believed that the government does not understand either the basics of mineral economics or international mineral trade. It will be perceived that the mining right fee is simply another fee that the government wishes to impose upon mining companies. Companies expect that fewer fees and taxes be imposed upon mining companies because it is a far riskier line of business than other businesses. To impose additional schemes for additional fees will virtually guarantee that companies will not invest in Vietnam unless they can somehow negotiate an investment contract that excludes such unreasonable fees. This then undermines the law and the country is back where it started. If at all possible, the mining right fee should be taken out because it will discourage the best companies and it will be perceived by the international industry as an indication that the government does not understand the mining industry.

All of the above comments are underscored by the issue that major high quality mining projects are virtually all undertaken with international financing. International financing organizations have their own criteria for approving finance for mining projects. All of the above comments and issues, especially the last "mining right fee", will impact directly on whether a high quality international

company may be able to obtain financing and the cost of that financing. A lack of understanding of how international financing places very real bounds on what legislation may realistically impose will likely result in a legislative and regulatory scheme that will preclude the financing of high quality international projects. Unfortunately, the current Draft Guidelines contains provisions that will preclude high quality international industry from obtaining finance for major projects.

COMMENTS ON DRAFT DECREE GUIDING MINERAL LAW

April 2011

Prepared by
Duane Morris Vietnam LLC

1. Reporting regime (Article 6): The deadline for preparation and submission of the report (05 days) should be clarified to as “**05 business days**” and only apply upon periodic report regime under clause 6.3.a. In case of request by the state mineral authorities, deadline to serve irregular report should be extended to **10 business days**.
2. Criteria for designation of areas not subject to minerals mining right auction: need a clear definition on “large resource scale” (Article 13.1)
3. Conditions for granting mineral exploration permits (Article 14):

JVC and 100% FoE set up by foreign investor(s) should not be subject to the prerequisite condition “to have at least 5 years of good experience in mineral”.

Comment: Foreign investors would prefer setting up JVC/100% FoE in Vietnam and use the Vietnamese JVC/100% FoE to apply for exploration license as a first step to pursue further mineral/exploitation activities in Vietnam. Therefore, the “5 years experience” should not apply upon the JVC/100% FoE but only to the investor establishing the company.

In addition, due to uncertainties and difficulties while pursuing mining projects in foreign countries, and also for easier management and control of each project, mining investors often wish to setup and use separate SPVs to act as “investor(s)” while pursuing mining projects in Vietnam. In this regards, the draft should outline further principles under which authorities should be able to “look through” the SPV to assess the experience criteria.

4. Handling of application file:
 - Consulting period (Article 16.3.c and 23.3.c): should be inclusive/accounted for in the total timeline for handling of application for transfer of mineral exploration/exploitation right. Or at the very least, there should be a clear time-limit for the total consulting period(s).
 - Application can be lodged directly or via post mail. Application files shall be deemed received by a note of receipt issued by licensing agency (re Article 26.3) and timeline for handling of application file shall be counted from issuance date of receipt note. However, in practice, agency only issues and handle receipt note when directly receiving application file. How application file sent via post mail be deemed received?
5. Onerous requirement/condition for mineral exploration/exploitation right transfer:
 - The following conditions should be considered for removal:
 - Article 16: Requirement on fulfillment of liabilities specified in Item (h) of Article 42.2 of Minerals Law (re “other liabilities” of investor as set out by laws);
 - Article 23: Requirement on fulfillment of liabilities under item (k) of Article 55.2 of Minerals Law (re “other liabilities” of investor as set out by laws).

Comment: all mandatory liabilities on mineral activities have been covered under items (a) to (g) of Article 42.2 and items (a) to (i) of Article 55.2. Each item (h) of Article 42.2 or (k) of Article 55.2 refers to general by laws liabilities which might be imposed upon any investors, without prejudice to mineral activities. Assignors still bear general liabilities under other laws, irrespective of the transfer thus it should be free from above condition.

- Condition re “mineral reserves remain in the subject concession” need to be clarified: how and which body shall determine the remaining mineral reserves (i.e. by simply compare the estimated mineral reserves under exploration report and actual volume of exploited work; or should there has other method for calculation?)

6. Preparation of application files (Article 27 and 29):

- Re exploration license: should include the Business Registration Certificate (“BRC”) OR Investment Certificate: Investment laws allow Investment Certificate serve as BRC while certain foreign invested companies can be setup by way of issuance of Investment Certificate (briefly: “FDI companies”).

Should companies established by way of BRC issuance need to prepare investment project to pursue mineral exploration project?

- Re exploitation license:
 - **Both** BRC AND Investment Certificate are required. However FDI companies do not have BRC but only Investment Certificate, thus requirement re both BRC and Investment Certificate should be simplified to require only BRC or Investment Certificate.
 - Certification of submission of mineral exploration reports to the Geological Archive and geological and mineral specimens in the Geology Museum: is there any guiding and timeline limit for this procedure?

7. Typos within the draft:

- Art. 6.4.b (Vietnamese version): typo: fifteen days or 30 days (we assume 15 days)?
- Art. 16.3 and 23.3: typo reference re item a of Clause 16.4 and of Clause 23.4.

VILAF COMMENTS ON DRAFT MINING DECREE

A28 April 2011

*Prepared by
Vilaf Hong Duc*

A. Draft Mining Decree

Article 5 – Toxic Minerals

Article 5 provides for a definition of toxic minerals and introduces the list of toxic minerals. Two issues here:

- (i) When the draftsman defines the toxic minerals, has he or she referred to the definition of “toxic materials” under the compulsory Vietnamese Standards (TCVN) and under other laws and regulations. We suspect he has not referred to those available definitions and therefore the list of toxic minerals are unlikely sufficient;
- (ii) What is the purpose of introduction of the “toxic mineral” definition in this Draft Decree? Except for this definition, the Draft Decree has never touched again to the “toxic minerals” such as the exploitation or management of the mining activities in relation to the toxic minerals.

Article 6 – Reporting the Mining Activities Results

Article 6.1 of the Draft Decree provides that: “Entities and individuals permitted to carry out mining activities shall be responsible to report their mining activities’ results to the relevant competent authorities in charge of minerals and shall be responsible for the accuracy and correctness of the reported data and information.” The mining investors also wish to know the mechanism from the competent authorities on how to secure the confidentiality of the reported mining activities’ results and any remedies in the case of any leakage of the information.

It is not specified in this Article and also other provisions in the Draft Decree as to the right and procedures and fees for the investors to get available information on mineral reserves from the State in order to save costs for the investors exploring minerals in the specific areas.

Article 8 – Planning the Exploration, Exploitation and Using of Minerals in Central Provinces and Cities

Article 8.6 of the Draft Decree provides that: “Zoning of areas subject to or not subject to auction for mining rights shall comply with the planning set out in this Article for issuance of the mining licenses pursuant to the regulations.”

This provision raises as question the mining license may not be considered for issuance in the case where (i) the mining planning has not been completed in a specific location; or (ii) although the mining planning has been completed but the zoning of the areas subject to and not subject to the auction has not been carried out by the competent authority. Investors wish to know when the mining planning and zoning for auction for mining rights have been completed for the whole country.

Article 11 – The Rights and Interest of Entities and Individuals Financing in the Basic Geological Survey of Minerals

Article 11 of the Draft Decree provides that the entity or individual who finances the basic geological survey of minerals in a specific area shall be given the priority right to explore minerals

if the relevant area is zoned by the competent authorities not being subject to the auctions for mining rights. There are 2 issues:

- (a) The investor at the stage of finance the basic geological survey of minerals always wish to know if the areas is not subject to the auctions for mining rights. He or she will not be guaranteed for his/her first priority right to the exploration if the relevant area is not planned for being subject to (or not subject to) auctions for mining rights. This provision may not encourage private sectors to finance the basic geological surveys of minerals for those areas.
- (b) Article 14 provides that if any entity or individual wish to apply for the mineral exploration permit in the area not subject to the auction for mining rights, it must have mining experience for at least 5 years. This provision may discourage entities and individuals who intend to finance the basic geological survey of minerals if those entities and individuals has less than 5 years of mining experience.

Article 16 – Conditions, Content of Transfer of Mineral Exploring Rights

Article 16.3(c) provides that the time required for the licensing authority obtain opinions from the relevant authorities for issuing the exploration license will not be taken into the licensing period of 45 days. Given this provision and the fact that the time for the licensing authority to obtain opinions from the relevant authorities would usually take very long, the drafting committee should specify the consulting time frame.

Chapter IV – Provisions on Procedure of Issuing Mining Licenses

- This Chapter fails to deal with the situation where the investors are issued with the Mining License but have not carried out the mining activities or only carried out the mining activities within a part of the licensed area.
- This Charter has not required if the investors have to enter into the land lease agreement of the entire area subject to the Mining License or only a part of the mine and processing plant.
- The fact with respect to FIEs is that while they have to obtain the Investment Certificate at the People's Committee, they have to obtain their Mining License at the MONRE, which make the procedure complicated, inconsistent and time-consuming. Draft Decree should consolidate those two procedures at the same level, e.g. the People's Committee.

Article 34 – Mining License Fee Formula

- G: commercial mineral price: how to determine or obtain this price;
- Q: What happens if the mineral reserve is much far from the reality or far from the ability to exploit?
- K: has not been taken into account the co-efficient of advance technologies or environmental friendly mining method.

Other Issues

Priority Right of Investors Carrying Out Mining Activities

- The Draft Decree fails to specify if the existing investor who has the exploring license will be given with the priority right to exploit mineral and obtain the mining license in the specific area, particularly in the area which is subject to the auction for mining rights.
- The Draft Decree also fails to specify if the existing investor who is exploiting a specific mineral in the specific area will have the priority right to apply for the exploring and exploiting other minerals in the same area.

- No priority right of the entity and individual to extend the term of the Exploration and Mining Licenses.

Mine Design Approval and Mine Construction Permit

It is not specified in this Draft Decree as to the obligation and procedure for the mining company to submit and obtain the approval on the mine design.

Under the old regulations, MOIT will be in charge of issuing approval for the mine design. However, it is likely (not crystal clear) under the law that the MOC will issue the approval for the design of the mineral processing plants. This will be complicated for investors who exploits mineral and at the same time builds a mineral processing plant in dealing at the same time with these 2 ministries. The Draft Decree should expressly provide that the MOIT will be the contacting point for obtaining both these approvals.

Requirement for the Environmental Rehabilitation Fund & Licensed Bank to Hold the Fund

Is this required? How much? How is the mechanism of using this fund in the future for the purpose of rehabilitation of environment?

Conditions and Procedure of Contribution into the Investment Capital in Form of Mining License Value

No provision on the contribution into the investment capital of a JVC by the value of the Mining License.

Can the Authority Have the Right to Take Extraordinary Inspection

Irregular inspection of mining activities by the competent authority

Typos in the Draft Decree

For example, reference to Article 2.2 in Article 4.3 is wrong reference. No Article 2.2 and Article 2 has not dealt with matter referred to in Article 4.

B. Draft Mining Auction Decree

1. The deposit for participation into the auction has a large range from 1% to 5%. Please be more precise, say 2% or 3%.
2. It is not clear as to the right and procedure for foreign investors having not incorporated their companies in Vietnam to participate into the auctions and if yes, how can they make the payment of the deposit and how to receive it back particularly as to the foreign exchange conversion.
3. Decree fails to deal with the situation when the winner of the auction does not follow the project after his winning of auction, i.e. whether the auction will be re-organized or the next investor in the list will take the project.
4. Re-consider the formula for the initial bidding price in respect to the components of K, G and Q as commented in the Draft Mining Decree.
5. Should use the same term with the term used in the Draft Mining Decree for the formula for the initial bidding price.

COMMENTS ON DRAFT DECREE IMPLEMENTING MINERAL LAW 2010

April 2011

*Prepared by
Terry Bates
Meritus Minerals Ltd*

Signs of improvement came with the introduction of the 1996 Mining Legislation but the abysmal performance of the various authorities charged with administering that legislation negated any benefits that may have been derived had it been properly administered. Subsequent amendments to that legislation have invariably disadvantaged private investors.

Since about 2004 the situation has worsened with various arbitrary financial impediments placed in the way of investors causing complete disruption to the financial planning of industry participants.

In spite of repeated assertions by the authorities that Vietnam seeks and welcomes private investment, both foreign and local in the mining industry their various actions demonstrate otherwise. Further they demonstrate a complete lack of understanding as to how private investors, particularly experienced and capable foreign investors operate and what their requirements are to invest.

THE DRAFT DECREE ON MINING RIGHT AUCTIONS

It appears to provide for the involvement of many organizations which will need to make reference to many plans. Numerous meetings will undoubtedly be required and even assuming it is all done efficiently and decisions eventually get made it will be a very time consuming and frustrating process for the Investor. By the time a decision is nearing, the relevant plan will probably change so the process might drag on indefinitely.

There is no definition in the new Law or in this Draft Decree of what a mineral mining right is. It appears to include both mining licenses and exploration licenses but this is not clear, although both these terms are used at various times in the Law and the Draft Decrees.

A strong case can be made for a State auctioning of the right to develop and mine a resource where it has financed the definition of that resource or has defined it through evaluating and putting together the results of work by previous explorers who have abandoned the target area. The potential investors is going to require that a package of reliable data is available and they are going to need to conduct their own re evaluation of the data, particularly assay results and any resource /reserve estimates before submitting a bid.

No case can be made for conducting auctions of ground where no resource has been established, i.e. for exploration territory, especially where the auctioning body is going to set a reserve price.

This piece of legislation appears to treat a mining license and an exploration license the same way i.e. Article 20. This is not practical.

For an exploration project

How do you determine Go when neither the type, grade nor quantity of minerals has been established. How is Q determined when there is no resource.

How is K1 determined when no pre feasibility study has been completed and no choice of mining method has been or can be made.

How can anyone make offer re K2 that is sensible when none of the above factors are known. This system just will not work for exploration ground.

In the time I have been in Vietnam and having been involved in a number of these exercises amending legislation going back to establishment of the 1996 Law I can only conclude that the Government and various authorities involved with establishing and administering the legal and financial frame work for the mineral industry either have no understanding of what the private investor ,particularly the sophisticated and technically competent foreign investor, require to make investment decisions, or else the involvement and contribution of those investors is not wanted.

As a reminder the technically competent and experienced foreign investor seeks the following when making decisions to invest in a new country

- i. There is a well defined title system and progression between the prospecting (i.e. low impact exploration), exploration and mining titles with the later being subject to meeting the necessary environmental and social requirements.
- ii. It is possible to easily and quickly identify land that is available for exploration; that reserves where mining and or exploration are either banned or temporarily prohibited are easily identifiable.
- iii. There is a well defined process for granting an application that is well administered by competent people and that is transparent. Preferably largely lead through one agency.
- iv. There is a stable and realistic fiscal regime. That there will not be arbitrary provisions of levys, increases in royalties and other impositions hoisted on a project when it looks like it will be a successful development.
- v. That having made a high risk investment the successful explorer is not shut out from developing a deposit located, by the state confiscating the deposit and auctioning it off to the highest bidder.
- vi. Within the country there is a well developed legal system that protects investors rights.
- vii. The titles granted for exploration and mining have appropriate terms and conditions attached to them and allow the necessary work to proceed.
- viii. There is not undue interference in the exploration and development projects and that an investor is left to determine when and what methods are used and to change those where necessary without undue interference and additional consent processes.
- ix. Bureaucracy is at a minimum and what there is efficient and knowledge in the issues they deal with.

With the adoption of the proposed new Decree, none of these requirements will be presented in Vietnam. This is unfortunate as Vietnam has good potential for hosting a number of different types of minerals. That the investment required to define and develop these minerals has not been is due entirely to the items listed above not being present in Vietnam.

THE MINING LAW 2010

There is one improvement. The provision to grant exploration title for up to 4 years with ability to renew for 4 years.

It is negated by the rest of the Law.

Actually working out what ground might be available to explore and then trying to determine how an investor might get access to it is likely to discourage most new investors. For exploration for base metals, precious metals, coal who is the actual licensing authority? There seems to be

provision for it to be not only MONRE but also Provincial and even possibly various smaller administrative units.

The concept of organizations contracting to the government to carry out exploration work and then having rights to apply for exploration licenses is unusual. Is this an attempt to give some form of encouragement to carry out low impact exploration work and at the same time deny automatic right to apply for an exploration license if worthwhile targets are generated.

No investor is going to accept a system where having provided high risk funds and identified a potential mining project on an exploration license this success could be auctioned off to another party and the successful explorer is reimbursed their exploration costs.

Apart from these very obvious discouragements to investing it appears that there is going to be a large increase in bureaucracy to manage the new legislation. In view of past performance I cannot see anyone having any reason to expect that this new more complicated and opaque law will be managed any more efficiently.

Note I have not referred to mining. Getting past the exploration stage is going to take so long the Law will change before a new investor gets there.

As a suggestion for at least shortening the law and making it easier to follow why not move the issues regarding small scale mining, particularly for products like sand, gravel, building stone, clay etc. into a separate Law and cross reference to this one where necessary.

COMMENTS ON DRAFT DECREE REGULATING AUCTIONS OF MINERAL MINING RIGHTS

April, 2011

*Prepared by
Jennifer Cook Clark, J.D., LL.M.
Consultant to Mining Working Group
Vietnam Business Forum*

The Draft Decree on Regulations on Auctions of Mineral Mining Rights (hereinafter referred to as “Draft Auction Regulations”) pursuant to the Law on Minerals No. 60/2010/QH12 has been reviewed for consistency with best international practices of successful mineral economies. The conclusions of this review are, in general, that the Draft Auction Regulations fall short of international practice in several major ways. First, the advisability of using auctions for mineral rights remains a serious question. Notwithstanding, comments that have been made previously regarding the reasons auctions of mining rights have not lead to the efficient development of mineral resources and therefore have not been adopted by the most successful mineral economies, will not be repeated here. Unfortunately, the Draft Regulations do not address or ameliorate the reasons that mineral rights auctions are not routinely used internationally.

Probably the most serious problem with the Draft Auctions Regulations is that the auctions involve linking estimated reserves (set by the government) with bidding amounts and the “auction winning amount” (discussed below). There are two types of auctions mentioned—one where exploration has not taken place and one where previous exploration has taken place. In the case of where no exploration has taken place, how will the initial bid price be set as the commodities will not be known, nor the reserves. Even in the case where some exploration has been done, this will not be considered acceptable by most international companies unless the bid prices are so low and the resource so obviously rich that there is no risk involved in recovering the bid amount and ultimately making a profit.

The estimation of reserves is accepted internationally by geologists and mineral economists as probably the most sensitive and difficult area of economic geology. For any major deposit, it requires state-of-the-art geological and geostatistical computer modeling (that constantly evolves as new data and information are obtained). Virtually no reputable international company will consider accepting a reserve estimation (for anything but the most simplistic surface deposit) made by a government or by a process that does not incorporate the company’s own standards. Over and over again, history has demonstrated to the international industry (for example, the Busang scandal in Indonesia) that other peoples’ exploration, data, results and analysis is at best unreliable and at worst easily subject to tampering and fraud. Here, there are no safeguards regarding how reserve estimations are to be made or how to judge accuracy. In fact the vast difference between how reserve estimations are made internationally (based in part on commodity prices that vary constantly) and the way the government here proposes to set reserve estimations (and in turn bidding amounts) virtually guarantees that the reserve estimations will be viewed as incorrect. At bottom, the process of setting reserves and initial bid amounts is inconsistent with international practice for minerals, will seriously discourage investment by international companies and should be reconsidered.

Second, the Draft Auction Regulations are vague and lack basic administrative and substantive guarantees of fairness that will be required to attract world-class international companies.

International auction regulations for oil and gas, for example, which have been used extensively internationally (see previous comments) tend to be very detailed and crafted to ensure that auctions are fair for all companies that participate. As a result, most international companies will view the auction regulations as another method by a government that doesn't understand the international industry seeks revenue rather than a realistic attempt to have reputable world-class companies develop mineral resources and to provide the country with a range of development benefits and environmental protections that only international best-practice companies can hope to provide.

As stated in previous comments, the above concerns are underscored by the issue that major high quality mining projects are virtually all undertaken with international financing. The issues concerning how initial bid prices are set, the arbitrary timing of licenses from bids and requiring bids to be based on other entities' exploration results (or no exploration results) in the Draft Auction Regulations introduces too much risk for international bankers and it will discourage or preclude high quality international industry from bidding in the first place.

Other specific issues that are unclear include the following:

1. In Article 2(1), is it inconsistent for a qualified bidder to be "selected" by the auction committee versus winning the auction by being the highest bidder? See also Article 10(2). Pre-registration screening requirements are very unclear. Will the bidders be required to submit confidential or substantive information about their potential bids prior to the auction—see Articles 15 and 16? This is potentially very problematic. In other centrally planned countries, companies that submit substantive information often find that their applications have been copied by other applicants (for example, Lao PDR, various Central Asian Republics). There are no safeguards against this in the Draft Auctions Regulations.

2. In Article 2(3), when is the price increment set? Prior to bidding? How is it set and on what basis?

3. In Article 3(1), are there regulations on "asset auctions" and how do they relate to mineral rights auctions?

4. In Article 3(2), isn't it the purpose of these regulations to detail how the "disclosure, impartiality, equality and protection of the legitimate rights and interests of the participants" are to be guaranteed?

5. In Article 3(3), shouldn't these be "certified representatives"?

6. In Article 4, please see above comments regarding using reserve estimations set by the government as a basis for the initial ask price. It is not clear how or why the percentages in the Attachment are calculated or whether they are merely arbitrary.

7. In Article 5, what is the purpose of requiring a deposit based upon a percentage of the initial bid price? Why wouldn't a set (nominal) fee be sufficient to demonstrate seriousness and good intent by a bidder? Otherwise, it will have to be set every time.

8. In Article 6, the conditions for not receiving a deposit refund are too strict.

9. In Article 7, the time requirements do not make sense. Wouldn't winning the auction trigger grant of an exploration license? Otherwise, why have pre-certification of bidders? Also, why only six months to apply for a mining license? Presumably, a company would have to do a lot of work after winning an auction to do additional exploration, a feasibility study and to obtain financing. For a large deposit, one year would be too short. This article also begs the important question of how an initial bid price can be set for an area where there hasn't been exploration previously so no reserves are known?

10. In Article 9, the people who may not participate should, at a minimum, be all members of immediate family and spouse's family. Also, what rules apply to Vinacomin, other state agencies or military entities?

11. In Article 11, the members of the Auction Committee do not all appear to be subject specialists with regard to minerals. The concern is that if there are many different people without

minerals backgrounds on the Committee, it will become too politicized and more prone to manipulation.

12. There doesn't appear to be any procedure by which an entity can challenge the fairness of the procedure. The only reference is in Article 12(2)--insufficient oversight for the Committee to investigate complaints on its own activities.

13. Will the Minerals Zoning Plan mentioned in Article 13 be a public document, easily obtained by everyone interested? Otherwise, if auctions are not well publicized or information as to when and how to participate is difficult to obtain, investment will be discouraged.

14. The information that will be available to entities in Article 14 is too vague.

15. In Articles 13 & 14, there is a lack of information as to how and where entities and individuals can obtain information about the auction. Generally, regulations should provide provisions that publication of auctions will be given a set amount of time beforehand and where. The thirty days listed in Article 14 will not be sufficient for auctions of areas with potentially large deposits, especially if a company must register seven days in advance. In addition, the timeline in Article 22 appears inconsistent with the thirty days and is confusing. The provision in Article 16(3) that the notice will provide timing and location of auction seems somewhat after the fact. This information should be publicized before registrations are accepted. What is the difference between notifications and invitations? Are entities that do not register invited?

16. In Article 17, what is the purpose of restricting communication? There is nothing that hasn't been submitted to the auction committee (finances, technical qualifications, etc.) just whether the bid fee can be accommodated? In Article 17(3)(d), the purpose of the regulations is to be constructed in a way that bribery and collusion is made difficult. Given the comments above about problems with pre-registration criteria and selection, it appears that collusion and other problems will be difficult to preclude. The regulations are not sufficiently detailed and clear, there is a lack of sufficient confidentiality safeguards, obvious political influence has not been excluded nor is there independent post-auction administrative remedy to exclude the normal problems that auctions normally entail.

17. In Article 18, will the auctions be recorded? How will bids be accepted? How much time will a bidder have to submit a bid? The "ballot" procedure needs to be spelled out in more detail.

18. In Article 19, when and where is the auction report made public? Is there an administrative procedure that a bidder who believes that the procedure was not according to the rules may object? In Article 19(2) how do the permits relate to licenses? What about other types of permits to operate (water, power, etc.)? Does the auction agency issue these as well as part of the fee that is paid?

19. In Article 20, what exactly is conferred by winning the auction? The language is vague and different terminology is used in various provisions. The formula is unlike any encountered previously for minerals and is extremely problematic. How can an entity be expected to know or understand these variables? For example, how is a mining method ratio be assessed if it hasn't been able to do its own exploration and pilot processing/metallurgy projects? How does it relate to an area where no exploration has been undertaken? How does it relate to the amount that the parties bid to win—which is merely intended to be larger than the next bidder to win? Is the bid amount offset against G? How do these amounts relate to royalties and taxes? Can it be set off against royalties or taxes?

As noted above, there are many issues that are raised by the Draft Auctions Regulations. Unfortunately, the only realistic conclusion an independent observer can reach after review is that its effect on international investment has not been seriously considered because there are too many open questions, too many vague provisions, and too many fees and amounts that are being charged without reference to the impact on the Effective Tax Rate (ETR) (discussed in previous comments) of entities that might wish to undertake mineral activities in Vietnam.

COMMENTS ON DRAFT DECREE ON AUCTION FOR MINERAL EXPLOITATION RIGHTS

April 2011

*Prepared by
Duane Morris Vietnam LLC*

1. Persons prohibited from bidding: scope of prohibition should be extended to cover not only those stipulated under Article 9 but also related/ associated organization(s)/company(ies) in which such persons may be involved.
2. Selection of bidders: Article 36 of Minerals Law only outlines general framework for selection of investor to conduct exploration activities in area not subject to auction for exploitation rights. There are no specific requirement/condition which may help to justify requirement for selection of [auction] bidders; thus Article 36 should be removed from item b Article 16.2 of the draft Decree.

Comments: Under the draft Decree, foreign investors who have not yet established JVC/ 100% FoE in Vietnam are not eligible for selection of bidders. This means that foreign investors must firstly setup JVC/ 100% FoE and use such entities to register for participation. If they fail to win the auction, they run the risk of such newly-established entity being obsolete immediately leading to potentially long and expensive liquidation procedures, in addition to the long and expensive establishment procedures.

At the very least, given the fact that areas subject to auction procedures include both explored and unexplored areas; and the Mineral Law allows foreign investors to conduct mineral exploration **without** establishing legal entities in Vietnam (via representative office/ branches in Vietnam), such foreign investors should be allowed to directly participate in auction for mineral exploitation rights in unexplored area.

3. Timeline for announcement of auction:
 - Article 14 requires such auction be notified/announced 30 days in advance. Article 21.1 requires notification be made no less than 10 days before issuance or receipt of auction invitation.
 - Other timeline:
 - Period for receiving of application file shall not exceed 90 days since notification/announcement date (Art. 21.2);
 - Period for selection of bidders shall not exceed 30 days since expiration date of period for receiving of application file (Art. 21.3);
 - Selected bidder must contribute deposits no less than 07 days prior to auction date (Art. 5.5);
 - Auction must be held no less than 15 days since the completion date of selection of bidders (Art. 21.4).

Comment: There is neither minimum timeline period for receipt of application dossier nor selection of bidders. Therefore, it appears under current draft that investors might only enjoy less than 30 days for preparation and submission of application file for participation in such auction. In addition, given the fact that deposit must be made no less than 07 days prior to auction date, but investors can only place their deposit upon being selected for participation, arguably the actual effective timeline for preparation and submission of application file is limited at 23 days as maximum.

In practice, it is all but impossible for foreign investors to establish JVC/ 100% FoE in mining sector within 23 days. Therefore, the timelines, as well as conditions for selection of bidders, must be revised in order to permit foreign investors a broader right to participate in such auction.

4. Auction proceeding: Auctioning Committee shall determine price increment which is not relevant to the form of auction outlined under the draft:

The draft outlines auction form as “Sealed-bid first price auction” which includes 02 steps in each bidding round: (i) bidders to determine and place their [sealed] bidding price (based on starting price/initial ask price); and (ii) Auctioning Committee to collect all bid placements, verify and announce bidding prices and the highest bid. Where there are at least 02 equal highest bids, next round shall be called with new starting price/ask price to be the last highest bid. In case after 03 consecutive rounds there are equal highest bids, the auction shall be determined by drawing (among highest bidders).

Comment: If price increment is applied where area subject to auction is very attractive, it is very likely that investors/bidders might place the maximum bid outlined by such price increment. Maximum auction rounds are only 03, after that there is a high possibility that auction shall be “converted” into drawing procedure which might be misused in some circumstances.

Therefore, auction/bidding procedure should not apply price increment.

5. Preparation of application file for auction participation

- Should include BRC **OR** Investment Certificate – to clearly allow FIEs to participate in such auction;
- Documents evidencing experience of investor: “look through” principle should be applied to evaluate experience of foreign investor/bidder. (see further comments re draft decree guiding implementation of Minerals Law).

6. Identification paper of representative at auction: should include personal identification OR passport (where FIE/foreign investors may elect to send their representative being foreigner).

7. Inactive project: In case winner fails to comply with its obligations set out under Art. 7.2 and consequently mineral exploration/exploitation project on the auctioned area is kept inactive for long, is there any mechanism to withdraw such exploitation right upon such area for re-auction?

Suggestion: In case winner fails to comply with any of obligation under Art. 7.2 for 12 months, exploitation right granted to such investor must be withdrawn and that area shall be called for auction again.

COMMENTS ON DRAFT DECREE ON REGULATIONS ON AUCTIONS OF MINING RIGHTS (“Draft Auction Regulations”)

*Prepared by
Saigon Invest*

1. We understand that the government encourages corporate investment in initial geological exploration and mineral resource exploitation that is followed up by processing to make high-value products. The intention is shown clearly in Clause 4 and 6, Article 3 of The Law on Minerals 2010 and Clause 3 and 4, Article 14 of the implementation Decree. However, we haven’t been able to find any similar clauses in the draft auction regulations. We believe that the above content must be included in the draft auction regulations in order to realize the government’s favor toward a business investment in the initial mineral exploration and follow-up processing of the minerals.
2. Clause 1 Article 20 Draft Auctions Regulations has rules on Q coefficient - mineral reserves “approved in the exploration area.” Yet, Clause 1(b) (now is wrongly put as 1(c) of the Draft Auctions Regulations also has regulations on mineral exploration auction in “unexplored areas.” Therefore, the draft authors should consider adding ground for the implementation of the situation in Article 7 as mentioned above to accurately calculate Q coefficient.
3. Also under Clause 1, Article 20 of the Draft Auctions Regulations, Q coefficient is determined on the method of payment of the auction winning fee (all at once or on installments). In our opinion, the total amount of money of all financial obligations that an investor has to pay to the government before exercising their mineral exploration rights are realized is quite enormous. Thus, we propose that payment should be made on installments over many years which will encourage investors to participate as mentioned above on the one hand, on the other hand it will help avoid potential problems arising during the auction process (in case there are investors who commit to pay all at once and others who want to pay on installments....)
4. Apart from that, we believe the Draft Auctions Regulations should also include transitory clauses regarding to exploration projects that have applied for exploration license but yet to be approved when the Auctions Decree is in effect, and limiting local governments to issue additional regulations, which differ from the Laws on Minerals 2010 and the Auction Regulations that discourage investors in accessing as well as implementing mining projects (for ex. Local requirements on infrastructure support amount....)

SUMMARY OF MEETING ON THE DRAFT DECREE ON THE IMPLEMENTATION OF THE LAW ON MINERALS & DRAFT DECREE ON AUCTION OF MINERAL MINING RIGHTS

Time: 9:00 ~ 11:30, Thursday, 28/04/2011
Venue: Office of Ministry of Planning and Investment,
6B, Hoang Dieu St., Hanoi
Participants: Annex 1 – List of Participants

AGENDA

- Summary of main contents and issuance schedule of the Draft Decrees on Guiding the Implementation of the Law on Minerals and on Auction of Mineral Mining Rights
- Opinions contributed by the VBF Mining Working Group on the two Draft Decrees
- Government's response and conclusion.

SUMMARY OF MAIN CONTENTS AND ISSUANCE SCHEDULE OF DRAFT DECREE ON GUIDING THE IMPLEMENTATION OF THE LAW ON MINERALS AND DRAFT DECREE ON AUCTION OF MINERAL MINING RIGHTS

Mr. Lai Hong Thanh – Deputy Head of the Office of the Ministry of Natural Resources and Environment (MONRE)

- The Law on Minerals shall be effective from 01/07/2011 and the two draft decrees shall be presented to the Government in May for issuance when the Law on Minerals becomes effective.
- **Draft Decree on Guiding the Implementation of the Law on Minerals**
 - Detailing 17 articles in the Law on Minerals and concretizing other issues under the Law such as toxic minerals, protection of un-exploited sites and mine closures.
 - ***Authorities to develop, submit and approve mineral zoning plans***
 - There are four types of mineral zoning plans. They are zoning plans for the basic geological survey of minerals, the national zoning plan for common minerals, the national zoning plan for mining and consumption of construction materials and the national zoning plan for the exploitation and consumption of minerals other than the above mentioned minerals.
 - The MONRE shall develop the national zoning plan for the basic geological survey of minerals and the national zoning plan for common minerals exploration and mining.
 - The Ministry of Industry and Commerce and the Ministry of Construction shall only develop the zoning plan for the exploitation and consumption of other minerals and minerals for construction materials upon receiving the MONRE-developed national zoning plan. This is a new point in the draft decree.
 - The provincial or municipal zoning plan for the exploration and mining of minerals must be based upon the MONRE-developed common minerals national zoning plan.
 - ***Auction of Mineral Mining Rights:*** Under the new Law on Minerals, all mineral sites (with or without exploration results) shall be subject to auctions for mineral mining rights, except for those identified by the Prime Minister and provincial/municipal People Committees as non-auction sites.
 - ***Mineral Mining Rights Fees:*** This is a significant change. The auction winner granted with mineral mining rights, through or not through an auction, must pay mining right fees.

Mining rights fees shall be based upon several factors, including mineral prices, reserves, exploiting method and mining conditions of the mining site. These factors are reflected through:

- K1 - Mining method coefficient: Open-cast mining has an average mineral recovery coefficient of approximately 10% and pit mining has an average mineral recovery coefficient of 60%. Therefore, the draft decree proposes the K1 for open-cast mining to be no lower than 0.9, and the K1 for pit mining to be no lower than 0.6.
- K2 - Reserve percentage the state will take
- K3 - Mining conditions. The draft proposes 4 levels with the direction that K3 is decreased if investment in more difficult sites is needed to encourage mining businesses.
- **Payment for mineral mining rights fees:** There have been two proposals - payment of the full amount prior to the issuance of a mining rights license or payment by installments. The second proposal has two different approaches - payment in three times or payment upon annual mining output. The Working Group on Minerals is requested to provide opinions on this.

▪ **Draft Decree on Auction of Mineral Mining Rights**

- Main Content: Identification of auction initial price, calculation of auction winning price and payment time.
- **Identification of initial price:** It will be difficult to identify the initial price of a unexplored site without assessing its reserves and quality. However, the principle is the initial price should at least be equal to the mining rights fee calculated in accordance with the Draft Decree on Guiding the Implementation of the Law on Minerals.
- If the initial price cannot be calculated due to no site exploration results, the draft decree proposes to calculate the initial price upon the mineral reserve percentage (5%-10%) value that an auction participant commits to pay to the State. Following that principle, the auction participant who commits to pay the highest reserve percentage during an auction to the State, shall win the auction.
- **Payment time of auction winning amount:**
 - *Auction of mining rights to a site where mineral exploration results are readily available:* The draft decree proposes that after winning the auction, the investor shall submit apply for a mineral mining license and pay the auction-winning amount (full amount or by installments upon mining output) as guided in the draft decree.
 - *Auction of mineral mining rights to a site where mineral exploration results are not available:* An auction winner shall be granted an exploration license without paying the auction-winning amount, except for the auction deposit paid at auction registration. If the auction winner commits to a high reserve percentage, but the actual reserves discovered through actual exploration are lower than the committed reserves, resulting in the investor giving up on mining, the winner shall not pay anything more and the deposit shall be refunded upon its payment of certain statutory fees or charges. The auction-winning amount shall be paid to the State only if the exploration results show that mining shall be carried out. Note: K2 under Art. 34 of Draft Decree on Guiding the Implementation of the Law on Minerals is stipulated by the Government, while K2 in the Draft Decree on Auction of Mineral Mining Rights is what the auction winner voluntarily commits to pay to the State.

Mr. Pham Ngoc Son – Deputy Head of the Legal Department of the MONRE

- The new movement in the draft decree is that the State shall impose mining right fee when granting mineral mining licenses. The calculation of such fee must ensure fairness, a State budget increase and State management of mining activities.
- The mineral mining rights fee shall be imposed on already-licensed mining businesses for remaining reserves and newly licensed businesses.

- The auction-winning amount shall be calculated upon the value of the reserve percentage that the auction winner commits to pay to the State.

COMMENTS FROM THE VBF MINING WORKING GROUP

Mr. Nguyen Xuan Tuong – Director of Phuoc Son Golden Company

The two draft decrees include several new regulations creating favorable conditions for mineral businesses, satisfying businesses' needs and resolving previous shortcomings.

Draft Decree on Guiding the Implementation of the Law on Minerals

- The concept of mineral mining rights needs be clarified. What shall be included in the rights? For example, the mining investor shall have freedom in using any exploiting mode, in deciding to exploit or not to exploit, to exploit more or less without State intervention or instructions from the State.
- Item 2, Article 14 stipulates the condition of “Good experience in mineral-related activities for at least 5 years”, which should be considered as a priority and not a selection principle.
- Regarding the formula for calculating mineral mining rights fees:
 - Article 27, from the Law on Minerals, specifies that a mineral mining rights fee shall be identified upon price, reserve, quality, mineral type or category, and mining conditions. In the formula, there is no mineral quality coefficient. Therefore, there should be coefficient K4: 0.1 to 1 reflecting mineral quality.
 - Ratios and coefficients in the formula are too high. Such high mining rights fees and natural resources taxes are unfavorable towards businesses.
 - The level of reserves, in the formula, should not be based on actual exploration output. Therefore, it is not a correct factor for calculating the fee. Moreover, mining business would be forced to pay a huge amount, equal to 3%-5% of a mine's value, which if paid prior to actual exploitation, would create overly heavy financial obligations.
- How are mineral mining rights protected?

Draft Decree on Auction of Mineral Mining Rights

- Auctions for unexplored sites: If an auction participant proposes auction ratios without counting a breakeven output, it will be difficult to healthily develop the minerals industry. This should be subject to more careful discussions.

Mr. Nguyen Hong Hai – Duane Morris

Draft Decree on Guiding the Implementation of the Law on Minerals

- Article 14: When investing in Vietnam, investors normally establish joint-venture or a 100% foreign-owned company. If the condition of “Good experience in mineral-related activities for at least 5 years” is applied, those entities with foreign capital shall be ruled out. Therefore, the condition should apply only to investors of those entities, not the entities themselves. However, many investors do not directly set up a legal entity in Vietnam under their own names, but establish a special purpose vehicle (SPV) in other countries from which they invest in Vietnam. It is recommended the Drafting Committee consider this situation.
- According to the draft decree, the time for relevant competent authorities to give their opinions shall not be part of the overall time limit for application settlement, which shall be difficult for investors to know what is the timeframe for the appraisal of their application.
- The application can be submitted directly or sent by post. If by post, will the receiving agency issue a receipt of acknowledgement and how will the receipts be managed and monitored? How will the application receipt and the starting of the application settlement timeframe be recognised?

Draft Decree on Auction of Mineral Mining Rights

- Item 2, Article 16 refers to Article 36 of the Law on Minerals, but the later has not clearly specified conditions applicable to auction participants. Therefore, the conditions must be stipulated in the draft decree. Otherwise, it shall be understood that a foreign investor must set up an entity in Vietnam to attend the auction. If an investor fails to win the auction, it will take greater costs and time to dissolve their locally set up entity.

The Law on Minerals permits a foreign investor, who has a branch or representative office in Vietnam, to carry out minerals exploration. However, according to the draft decree, the participation of foreign investors is limited as they need to establish a local entity before attending the auction. The later seems to be inconsistent with the Law on Minerals.

- Auction Procedure: The price increment regulations are not suitable to closed auctions with a best-price pick. If the price increment is fixed in advance for each auctioned site, auction participants shall always propose the highest price within the price increment of that auction round to win the auction. Moreover, the draft decree says that if there is more than one highest price after three consecutive auction rounds, the auction shall be conducted by ballot. The ballot will not ensure the same level of transparency as an auction. The drafting committee should reconsider the relevant price increment regulations or more clearly define the meaning of price increment.
- Underperforming projects: Is there any mechanism permitting the withdrawal of mineral mining rights and reorganization of a new auction if the previous auction winner does not implement the mining project? The Law on Minerals only provides for the withdrawal of a mineral exploration license and mining license. If an investor wins an auction but does not actually implement the mining project, will the auction winner rights be withdrawn?

Mr. Dang Duong Anh –Vilaf Hong Duc

Draft Decree on Guiding the Implementation of the Law on Minerals

- The list of toxicant minerals in the draft decree is still sparse, without reference to the definition of toxicant substances and materials in accordance with the Standard of Vietnam and other relevant regulations.
- There should be confidential protection for reported mineral information and contingent remedy in case of information disclosure. There are no regulations on the rights, procedures, and fees for investors to use mineral reserves information available at State bodies to save mineral exploration costs in certain sites.
- Article 8.6 specifies the mineral zoning plan and auction site zoning. When will the mineral zoning plan and the auction site zoning be finalized and publicized nationwide?
- During the basic geological survey of minerals, investors always want to be granted priority rights to explore sites where they have invested to do geological surveys. If the sites are identified (at that stage or later on) as auctioned sites, Article 11 will not encourage private investors to take part in the basic geological survey of minerals.
- Article 16.3(c) specifies that the time for gathering opinions from relevant competent authorities for the issuance of a mineral exploration license shall not be part of the issuing timeframe of 45 days. Given the fact that the time for the issuing body to collect opinions from relevant bodies is normally prolonged, the Drafting Committee should limit the time for relevant bodies to give their opinions.
- Chapter IV – Procedure for the Issuance of Mineral License
 - There is no regulation dealing with a situation where an investor, granted a mineral license, but does not actually carry out mineral activities as licensed, but just mines in a part of the sites licensed.
 - There is no regulation answering the question if investor must enter a lease agreement for the whole land area where mining is licensed as specified in the mineral mining license or

just the area where the mine and processing manufacturing base are located. How will the land leasing price of each site granted a mineral mining license be regulated?

- A foreign-invested enterprise, on one hand, must apply for an investment certificate from a Provincial People's Committee and apply for mineral mining license from the MONRE. This complicates and makes the licensing process for foreign-invested enterprises more time consuming. The draft decree should unify the two procedures and place them under the same issuing authority.
- Article 34 – Formula for the calculation of mineral mining rights fees
 - G (Commercial mineral price): How to identify or calculate this price?
 - Q: What happens if the estimated mineral reserve is much higher than the actual exploited reserve or higher than human exploiting capacity?
 - K: Has it reflected the coefficient of advanced technologies or mineral mining measures friendly to the environment of which investor's application should be encouraged?
- Priority given to mineral mining investors
 - The draft decree is silent on whether an investor with an exploration license shall be given priority in applying for an exploitation license in certain sites, particularly auctioned and non-auctioned sites.
 - The draft decree has not addressed whether priority is given to an investor who is exploiting a particular mineral at a particular site during the course of exploring or mining other minerals at the same site?
- Approval of the design of mineral mine and mine construction license: The draft decree has not provided obligations and procedures that mining businesses need to meet and undertake for mine design approval. The draft decree should specify which Ministry is the focal point for an investor to apply for the approval of mine design and mineral mining manufacturer design and whether the approvals substitute for a construction license.
- The draft decree should specify if an environment recovery fund should be formed. How much should mining businesses contribute to the fund and how should the fund be used for environment recovery operations?
- There is no regulation on a scenario where the mineral mining license is evaluated as a possible capital contribution to a joint venture.
- The draft decree has not provided for the authority, ground, scope, procedure and schedule of the *ad hoc* inspection of the competent authority.

Draft Decree on Auction of Mineral Mining Rights

- The auction deposit rate is quite wide, from 1% to 5%. It is proposed that it be narrowed to 2% or 3%.

Response by Mr. Pham Ngoc Son – Deputy Head of the Legal Department of the MORNE

Draft Decree on Guiding the Implementation of the Law on Minerals

- The draft decree shall not repeat what are already stipulated by the Law on Minerals and when studying draft decree, the reader should make reference to the Law on Minerals.
- The formula for calculating the mineral mining rights fee is applied in the State authority's calculations for mining license issuance. This is not a type of mineral royalty tax.
- The Drafting Committee acknowledges the opinion about the condition of 5 years' experience in minerals activities and shall consider imposing the condition on the investor (entity owner) rather than on the entity.
- Time limit for application submission: The draft decree shall not specify this issue, leaving it for the coming circular.
- Priority in basic surveys: The Law on Minerals only provides that the investor of the survey be given priority in using documentation. Therefore, expanding the priority in the draft decree is very difficult.

- Mine design, environment recovery fund and capital contributions by mining license: The Law on Minerals shall not cover all aspects, but must refer to other special, relevant laws. For instance, the environment deposit issue is specified in the Law on Environment and the Prime Minister's Decision, while the mining design is specified in the Law on Construction.

Draft Decree on Auction of Mineral Mining Rights

- Mining rights auctions should not be confused with mineral mine auctions. Therefore, in being the auction winner for mineral mining rights, the investor is entitled to exploit minerals but must also follow other regulations under the Law on Minerals.
- Rates in the formula: Indeed it is high and the Drafting Committee shall reconsider it.

FREE DISCUSSION

Mr. Vu Tu Thanh – US & ASEAN Council

- The Drafting Committee should cooperate and agree with VBF to mutually reach an information exchange schedule between the Drafting Committee and the business community, which shall allow relevant parties to continue contributing to the draft decree.

Mr. Pham Ngoc Nam – Saigon Invest Group

- Article 3.2b: Information on minerals, belonging to individual/organizational ownership, should be negotiable and in case of a failure in negotiations, the information shall be valued upon the State statutory price. However, this is a purely commercial issue and should be subject to parties' negotiations and should not be subject to the State statutory price since the State price normally does not reflect the market price.

Ms. Tran Dong Anh – Tender Management Dept., the Ministry of Planning and Investment

Draft Decree on Auction for Mineral Mining Rights

- Article 5 – the deposit: It can be in cash or a financial institution guarantee bond. Article 6 specifies deposit refunds and non-refunds to an auction participant. How can the deposit be refunded if it is in the form of a guarantee bond issued by a financial institution?
- The effective period and template of the financial institution guarantee bond should be stipulated. Otherwise, each financial institution may issue a different bond, resulting in different committed obligations. What is the guaranteeing bank's scope of responsibility if an auction participant violates auction rules and is not refunded the deposit? How long is the guarantee bond effective?
- Auction Invitation: After auction announcement, shall the auction organizer issue an auction invitation to auction participants? Article 16 specifies that the application for auction participation must be qualified for the applicant to attend the auction. However, no qualification specified is specified.
- Article 15.3 stipulates the MONRE's responsibility in issuing the template for the application for auction participation. To avoid a scenario where the template is only available upon the circular's issuance, the template should be included in an appendix of this draft decree.
- Complaint procedure for auction applicants: There should be regulation giving auction applicants the right to complain against an auction evaluating body's decision, which concludes that the applicant is unqualified to be an auction participant. The complaint settlement and relevant time limit should also be stipulated.
- The terms "not less than" and "not more than" should be replaced by "at minimum" and "at maximum" respectively.

Mr. Nguyen Huy Hoang – Legal Director – Quy Nhon Mineral Company

- Rights of mineral survey investor: It is unfair to encourage investors to invest in mineral surveys, but only grant them the right to use information. There should be a regulation for a mineral survey to be an evaluation factor to prioritize granting exploitation rights.

- Encouragement should be offered to businesses that either carry out a mineral survey or commit to significant processing. The draft decree has touched on this issue, but the formula does not reflect this. A new K coefficient is needed to reflect the priority.
- Granting of Exploration Rights: How is Q calculated without exploration results?
- Mining rights fee payment - the full amount or annual installment?: If the full amount at the mining rights license issuance is required, it is too big for miner to pay in one time. It can take quite a long time for the mining license to be issued after the mining right is granted via auction, and investment costs can significantly increase during this time. It is proposed that the payment be made in installments and details can be decided by the Drafting Committee. Under the current draft decree, there are two different approaches - full amount or annual payment. If the payment is made annually, the amount is easily confused with a type of mineral royalty tax which is calculated based annual output.
- The draft decree has not dealt with the cases of ongoing exploration projects or those whose licensing process is currently underway. Whether they have to participate in auction? What if auction participation is not needed? Will they be granted a mining license?
- Once the mining rights are recognized, a market for the transfer of the rights will exist. The draft decree is still silent on whether mining rights are transferable. If the answer is yes, under which procedure is it?
- There should be a regulation prohibiting local governments from imposing further financial obligations on an investor before it recommends an investor for auction participation.

Answer by Mr. Lai Hong Thanh, Deputy Head of the Office of the MONRE

- Auctions at sites where exploration results have not been available: It is proposed that the starting price shall be counted upon the percentage of the reserve committed to pay to the State by the auction winner, not upon the reserve basis. The auction-winning amount shall be paid to the State when the auction winner has explored the site, the reserves have been approved and the mineral license has been issued. By that time Q can only be calculated.
- Transition for exploration projects which are underway: As stipulated in Article 13 of the draft decree on the auction. One issue which should be studied further is whether projects whose applications for exploration license or for mining license have been submitted before the new Law's effective date and are under appraisal process, should be auctioned.
- The government agenda for passing this decree: This draft decree has been sent to a number of ministries, localities and published on websites for comment. The Draft Committee shall review such comments to consider possible revisions, which shall be presented to the government. During May, the two draft decrees will be presented to the government. Moreover, the Drafting Committee must finish its evaluation report on the impacts of the two decrees and collect comments from the Governmental Office's Department of Administrative Procedure Supervision. Upon the completion of the work, the draft decrees shall be sent to the Ministry of Justice for its appraisal. Therefore, opinions contributed after this meeting must be sent directly to the Drafting Committee and there shall be no more meetings. The Drafting Committee will upload the new draft decrees to MONRE website for further contributions from the business community.

Annex 1 – Meeting Participants

<i>Sqt</i>	<i>Full Name</i>	<i>Title</i>	<i>Org</i>
Drafting Team (MONRE)			
1	Pham Ngoc Son	Director	Legal Department
2	Lai Hong Thanh	Deputy Head	MONRE Office
3	Le Ai Thu	Manager of Legal Division	Dept. of Geology and Minerals
4	Dao Chi Ben	Officer	Dept. of Geology and Minerals
Ministry of Planning & Investment (MPI)			
5	Nguyen Noi	Deputy Director	Foreign Investment Agency
6	Le Thuy Trung	Deputy Director	Industrial Economy Department
7	Quach Ngoc Tuan	Officer - Legal Dept.	MPI
8	Nguyen Hong Van	Officer - Legal Dept.	MPI
9	Do Hong Bich	Officer-Finance & Monetary Dept.	MPI
10	Nguyen Dieu Trinh	Officer - Science, Education, Resources & Environment Dept.	MPI
11	Vu Xuan Thuyen	Deputy Manager - General Issues & Policy Division	Agency for SME Development
12	Tran Dong Anh	Officer	Public Procurement Management Agency
13	Le Nguyet Anh	Deputy Manager - Policy Dept.	Foreign Investment Agency
VBF Business Community			
14	Daizo Koda	Director	Caterpillar Asia Pte Ltd
15	Bill Howell	Director	Triple Plate Junction Ltd
16	James Hamilton	Vice Chairman	Olympus Pacific Minerals
17	Nguyen Xuan Tuong	Vice Chairman	Phuoc Son Company Ltd.
18	Nguyen Ngoc Quynh	Vice Chairman	Bong Mieu Gold Mining Co.
19	Nguyen Huy Hoang	Director of Legal Issues	Quy Nhon Minerals Company
20	Le Bich Lien	Legal & Compliance Director	Ban Phuc Nickel Mines Ltd
21	Dominic Heaton	Director General	Masan Resources
22	Alexandre Legendre	Vice President	Canadian Chamber of Commerce in Vietnam
23	Nguyen Quynh Hoa	Senior Business Development Manager	Austrade
24	Vu Tu Thanh	Chief Representative	US-ASEAN Business Council
25	Nguyen Hong Hai	Lawyer	Duane Morris LLC
26	Dang Duong Anh	Lawyer	Vilaf Hong Duc
27	Mark H Runge	Director	ACC Consulting International
28	Pham Ngoc Nam	Deputy Chief Legal Counsel	Sai Gon Invest
29	Pham Lien Anh	Coordinator	Vietnam Business Forum

Tourism

VIETNAM'S TRAVEL AND TOURISM INDUSTRY

*Presented by
Baron Ah Moo
Head of Tourism Working Group*

Dear Minister, distinguished guests, and colleagues, on behalf of the Tourism Working Group, it is my pleasure to address topics related to Vietnam's travel and tourism industry.

The travel and tourism industry in Vietnam has rapidly regained momentum with foreign arrivals rebounding 34% year-over-year, in 2010. This trend has continued through 2011, as total international arrivals reached nearly 2 million through April, which is a 10.5% increase year-over-year. The increase in foreign arrivals is primarily attributed to a stabilization of the global economy, resulting in a rebound in long-haul leisure travel.

Against the backdrop of rising foreign arrivals, the travel and tourism industry continues to exert its influence on Vietnam's socio-economic development. In 2010, hotels, tourism and restaurants generated VND 187,710 billion (USD 9.4 billion) in revenue, which represents approximately 9.5% of gross domestic product for the year, according to the General Statistics Office. In addition, the travel and tourism industry is a significant source of employment and is expected to generate 1.4 million jobs directly in 2011 and upwards of 3.8 million jobs indirectly, according to the World Travel and Tourism Council.

While we recognize positive momentum, the Tourism Working Group asserts that Vietnam's tourism industry has yet to reach its full potential and that increases in the supply of hotel rooms in key markets will present a challenge to investors and operators in the near-term. According to Savills Vietnam, approximately 2,500 hotel rooms will be added to the market in 2011 throughout HCM City, Hanoi, Nhatrang and Danang, and an additional 3,700 rooms are forecasted to come online in these key markets in 2012. This represents an increase in supply across all grades of 15% in HCM City, 32% in Hanoi, 18% in Nhatrang, and an astonishing 70% in Danang.

As such, we believe the Ministry of Culture, Sports and Tourism (MCST) and the Vietnam National Administration of Tourism (VNAT) must continue to support the industry's growth and would like to focus on three recommendations for the interim report.

- 1. Tourism Advisory Board:** We recommend that the ministry approve the establishment of the Tourism Advisory Board, as proposed in April 2010. Envisioned as public-private partnership, the Tourism Advisory Board would be comprised of industry leaders and governmental officials and would enable MCST and VNAT to leverage financial, human and technical resources from the private industry.
- 2. Destination Marketing:** In light of recent efforts to re-launch Vietnam's national tourism campaign, we recommend that MCST and VNAT work with a reputable agency and committee of industry leaders to devise a comprehensive destination marketing campaign.
- 3. VISA Initiatives:** We remain firm in our view that Vietnam's visa requirements are a hindrance to the growth of the industry and recommend further analysis into the implementation of a true "visa-on-arrival system."

TOURISM ADVISORY BOARD

In April 2010, the Tourism Working Group submitted a proposal for the development of a Tourism Advisory Board (TAB), a public-private partnership which would serve as an advisory board to MCST and VNAT and would function as a vehicle for the systematic exchange of information between government agencies and the private industry. The main focus of the TAB is to increase Vietnam's competitive advantage as a leisure and MICE (Meetings, Incentives, Conventions and Exhibitions) destination by allowing government and industry leaders to pool their resources—financial, human and technical—in order to benefit the travel and tourism industry at large.

Through the framework of a public-private partnership, industry leaders and governmental officials will be able to leverage the resources of all stakeholders, enhancing Vietnam's competitive advantage as a tourism destination. With vested interests in the travel and tourism industry, all stakeholders are interdependent and must share a common vision for improving Vietnam's ability to attract international visitors and MICE business, develop unique products and services, increase infrastructure, and effectively promote the country as a destination.

As it concerns Vietnam's travel and tourism industry, the duties of TAB would be to contribute and support policy decisions correlating to functions of VNAT and MCST. An independent advisory board would enable MCST and VNAT to benefit from the expertise of industry representatives, leverage financial and human resources, and ensure that the government's administrative framework is aligned with the strategies and objectives of the industry at large.

In addition to wide industry support, the TAB initiative has also received recognition from multilateral organizations such as the European Union and is a component of its Environmentally and Socially Responsible Tourism Capacity Development Programme (ESRT). The ESRT is a EUR 11 million program aimed at building the capacity of MCST and VNAT, as it relates to responsible tourism policy making, planning and management. The ESRT program commenced in the first half of 2011 and has prioritized the establishment of TAB as a national forum for all tourism stakeholders to participate in policy dialogue and related initiatives, as it concerns Vietnam's tourism industry.

We understand that the ministry has received TWG's proposal for TAB and are requesting that MCST authorize its establishment. We believe that an organization such as TAB will foster the long-term growth and sustainability of the tourism industry and will assist MCST and related agencies in administrative functions.

DESTINATION MARKETING

The TWG has continuously called for a more relevant, cohesive and structured approach to the promotion of Vietnam as a tourist destination. In January 2011, the TWG conducted a destination marketing survey, with the aim to gather information from industry stakeholders as it concerns the strategic positioning of Vietnam's tourism industry. The sample of questions ranged from identifying Vietnam's unique selling points and its key competitors to ranking the effectiveness of various marketing channels and the current marketing campaign.

The full survey is included as a supplement to this report, and the key findings are compelling. First and foremost, the survey highlighted that a majority of the respondents were dissatisfied with current marketing initiatives sponsored by the government. Furthermore, the results of the survey support TWG's conviction that an effective destination marketing campaign is more reliant on well-defined target markets and research than a campaign built solely around a logo and slogan.

We illustrated this position in the last forum and would like to reiterate that developing a comprehensive destination marketing campaign should follow a formulaic process. Below is an

outline that we have previously submitted to officials at VNAT, detailing the process and procedure for formulating a national marketing campaign for the tourism industry.

Step 1: Situation Analysis

- Assess the destination brand's current situation
- Conduct interviews with internal and external stakeholders
- Conduct focus group studies with 7-10 source markets
- Identify travellers' perceptions of Vietnam as a leisure destination
- Identify drivers of choice and preference – Why Vietnam?
- Identify core values and key assets

Step 2: Brand Strategy and Identity

- Consumer and stakeholder perspectives gathered in Step 1 will inform the brand strategy
- Develop a brand identity and promise
- Create a positioning statement to be supported by a well defined brand
- Develop tangible creatives: logo, slogan, brand guidelines, etc.
- Create a framework for targeting key source markets (identifying 7-10 target markets)

Step 3: Communications & Marketing

- Using the framework developed in Step 2, devise a comprehensive marketing strategy
- Redesign VNAT's communication platform (website, brochures, advertisements, etc.) in line with new brand strategy
- Develop a coordinated media campaign to include advertising, events, PR and FAM trips targeting 7-10 key source markets
- Launch campaign

Step 4: Impact Measurement (ongoing with annual and semi-annual review)

- After launching the campaign, it is critical to evaluate the brand's performance in the marketplace
- Create a set of measurements to determine the effectiveness of the campaign, focusing on the identified source markets
- Establish goals and performance results; and continually evolve, remaining consistent with the core brand strategy/identity

Revisiting the Logo/Slogan Competition

In December 2010, a representative of the TWG participated in the judging committee to select a new logo/slogan for the 2011-2015 period, and we are appreciative of the government's effort to include the group in this process. The public competition sponsored by VNAT generated over 400 submissions from approximately 200 organizations. However, there has been considerable criticism pointed at the selected finalists following the public announcement earlier this year.

The high degree of public criticism is indicative of both the tourism industry's significance in Vietnam and complexity associated with branding a country. We understand that devising a comprehensive national marketing campaign is a challenging feat, made even more difficult when budgetary means are limited. However, we believe that VNAT and MCST would be best served by forgoing with public competitions in this regard and rather contract professional agencies that are experienced brand developers with international credibility and familiar with the Vietnamese tourism market.

We understand that one such agency has materialized at the culmination of the logo/slogan competition and strongly advocate MCST and VNAT to engage them or an alternate agency with comparable capabilities, in their endeavour to launch a new destination marketing campaign.

Additionally, it is our recommendation that VNAT and MCST look towards an organization like TAB—or a similar committee of industry leaders—in order to develop a branding strategy for Vietnam’s travel and tourism industry. By involving industry leaders in the early stages of the process, VNAT ensures that the implementation of the branding strategy will be much more successful and that the campaign will be aligned with industry objectives.

VISA INITIATIVES

Removing visa restrictions for international travellers remains a cornerstone issue for the Tourism Working Group. This is not a new issue—nor is it waning in importance despite the fact that we are addressing it last. We acknowledge that progress has been made in this area but at the same time continue to see necessary improvements.

In a previous session of the Vietnam Business Forum, the Tourism Working Group commented on a media release announcing the World Bank’s funding of an e-visa initiative in Vietnam. We would like to request an update on the status of this program and would encourage the Government and the relevant Ministries to push their full weight behind this initiative.

In the aforementioned survey conducted by the Tourism Working Group, we polled industry stakeholders as to their view on Vietnam’s visa requirements, and 98% of the respondents stated that the current system is an obstacle for potential visitors.

We believe Vietnam’s current visa restrictions are hindering its ability to attract foreign arrivals, particularly repeat visitors. It is worth noting that in the mid to late 1980s Thailand attracted between 5-6 million foreign visitors a year. Thirty years on, international arrivals into Thailand has now reached almost 15 million a year, despite the country’s political turmoil. Thailand’s success at attracting international arrivals, many of whom are returning visitors from within Asia and long haul markets, is a result of its accommodating entry requirements. It is our opinion that Vietnam could achieve the same level of success by implementing a true “visa-on-arrival” system.

CLOSING

In closing, we would like to present one recent example of a missed opportunity relating to Vietnam’s lack of tourism infrastructure. This year, Universal Studios inquired about producing and filming the 4th instalment of one of their most successful movie franchises, the Bourne Identity Series, which features Matt Damon. Lengthy negotiations with several of the Ministries here today ensued but due to the difficulties Universal experienced with the cultural permit applications, challenging logistics, and lack of hospitality towards the project, they have decided to move the location of the set to another Southeast Asian country. Ironically, the movie calls for the story to be set in Vietnam and had an estimated budget of USD 150 million.

Our assertion is that VNAT and the other departments should be empowered by the Ministry of Culture, Sports and Tourism to make decisions in extraordinary or time sensitive cases where the benefits, such as in the case of Universal Studios, are in the best interest of the industry, government and people of Vietnam.

Thank you for your attention and we look forward to addressing the key issues raised.

DESTINATION MARKETING SURVEY

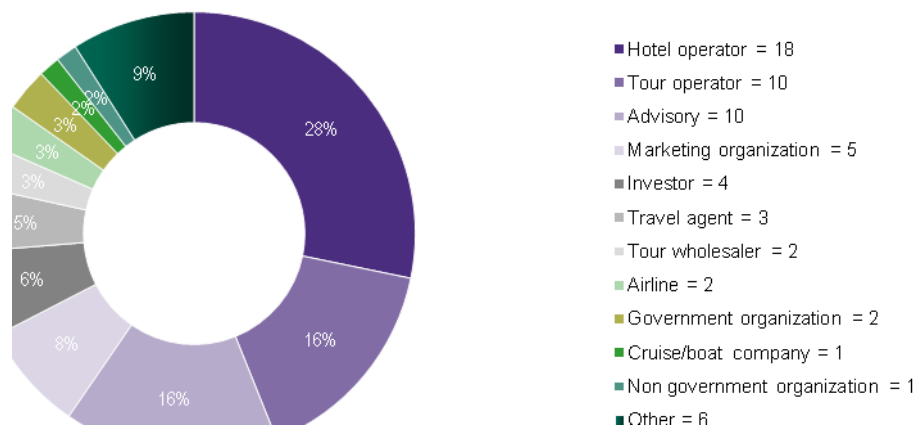
In January 2011, Grant Thornton Vietnam conducted a survey on behalf of the Tourism Working Group (TWG) of the Vietnam Business Forum. The purpose of this survey was to gather opinions and comments from industry participants regarding marketing and branding strategies for Vietnam's tourism industry.

The ultimate aim of the survey was to gather information from industry stakeholders as it concerns the strategic positioning of Vietnam's tourism industry. The sample of questions ranged from identifying Vietnam's unique selling points and its key competitors to ranking the effectiveness of various marketing channels and the current marketing campaign.

Methodology

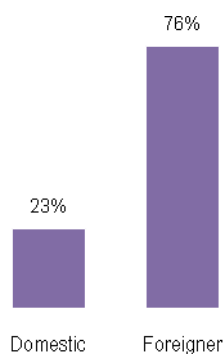
The survey was disseminated to constituents of the TWG, representing a wide selection of industry participants. Special acknowledgement is given to the European Chamber of Commerce's Tourism Committee for soliciting input from its members. The survey was conducted online via a platform established by Grant Thornton Vietnam, who offered their services to collect and analyze respondents' answers. In total, there were 64 respondents, representing a range of industry stakeholders.

Number of Survey Respondents per Category

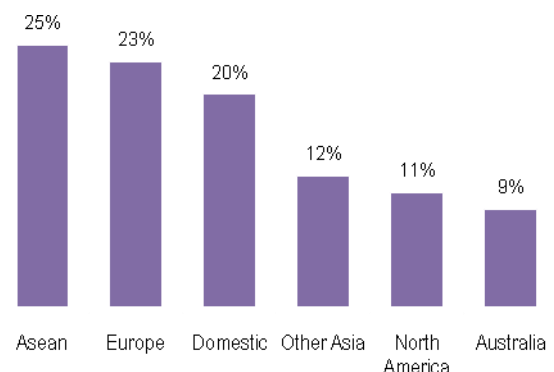


Source: VBF Tourism Working Group; Grant Thornton Vietnam

Respondents' Origin of Business

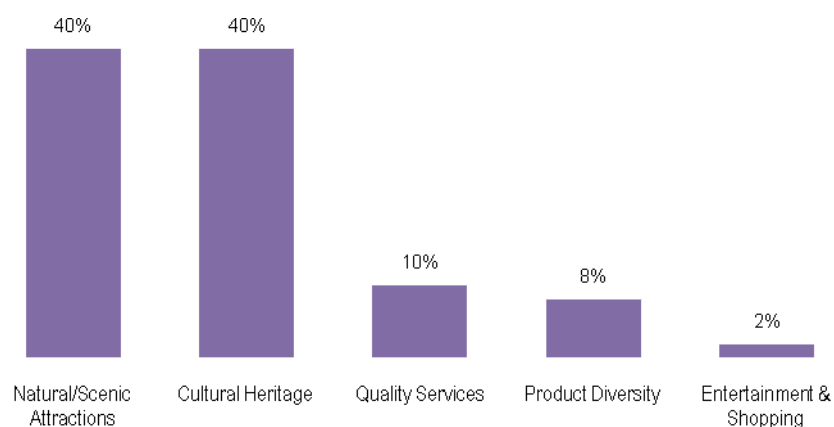


For your business, what are your key target markets in terms of geographic region?



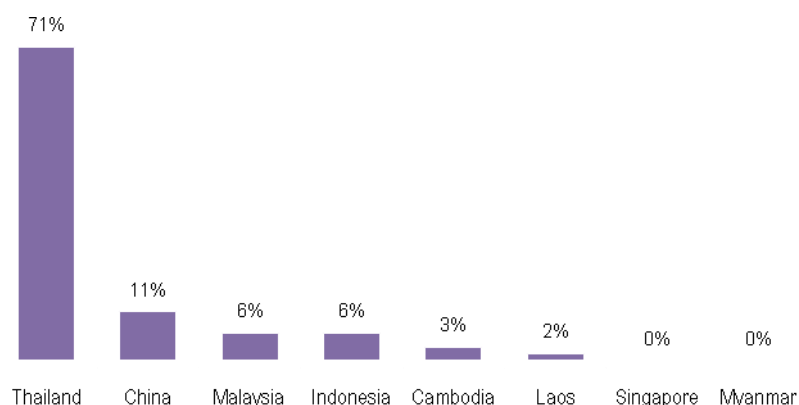
Source: VBF Tourism Working Group; Grant Thornton Vietnam

From a tourism perspective, what are Vietnam's unique selling points to foreign visitors?



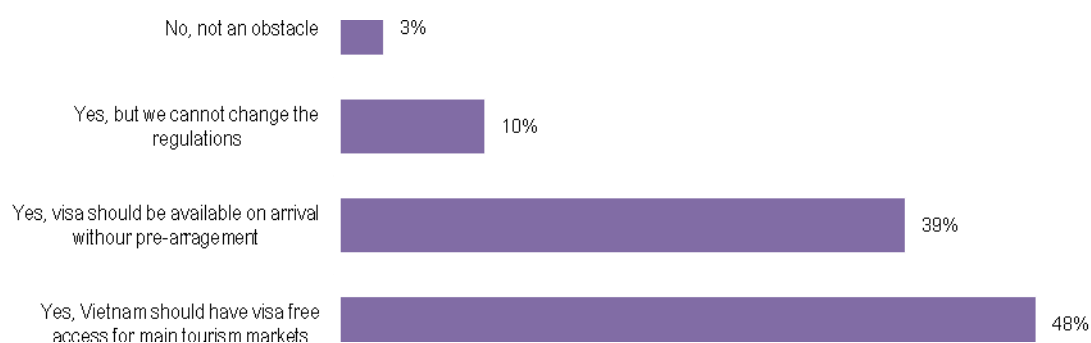
Source: VBF Tourism Working Group; Grant Thornton Vietnam

Which country do you feel is Vietnam's biggest direct competitor for tourism arrivals in the region?



Source: VBF Tourism Working Group; Grant Thornton Vietnam

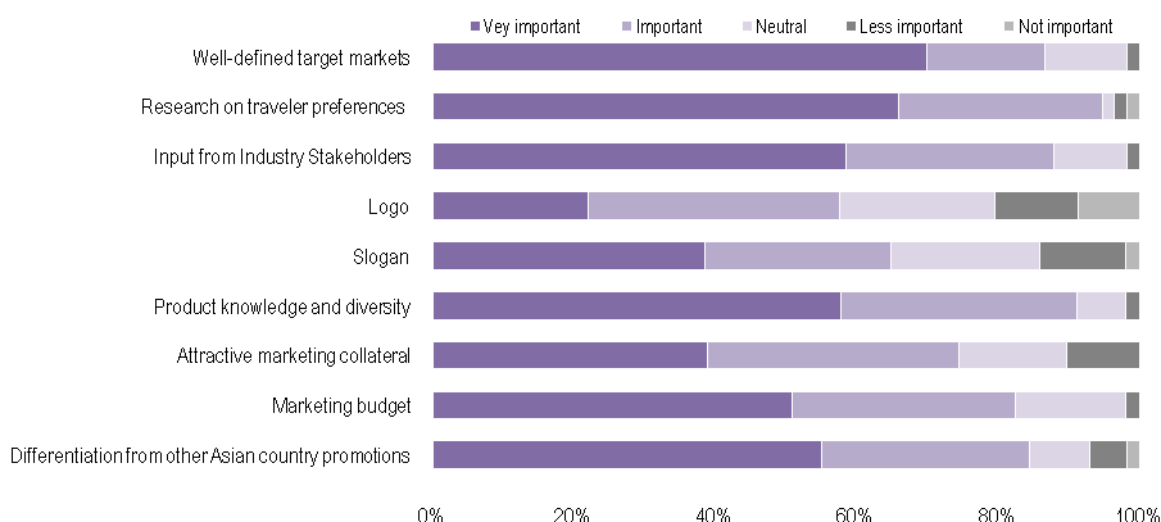
Nearly all of the countries listed above have either no visa requirements or easy Visa on Arrival procedures. Do you feel Vietnam's current visa requirements for many European countries as well as Australia and the USA for example are an obstacle for potential visitors?



Source: VBF Tourism Working Group; Grant Thornton Vietnam

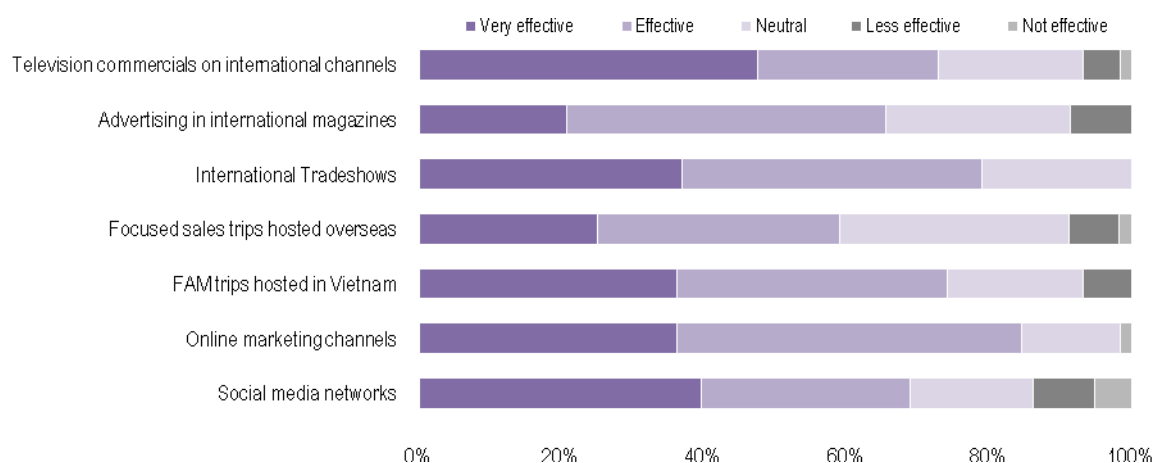
The Vietnam National Administration of Tourism is preparing to launch a new brand identity for Vietnam's

tourism industry. How important are the following for a marketing strategy to be competitive?



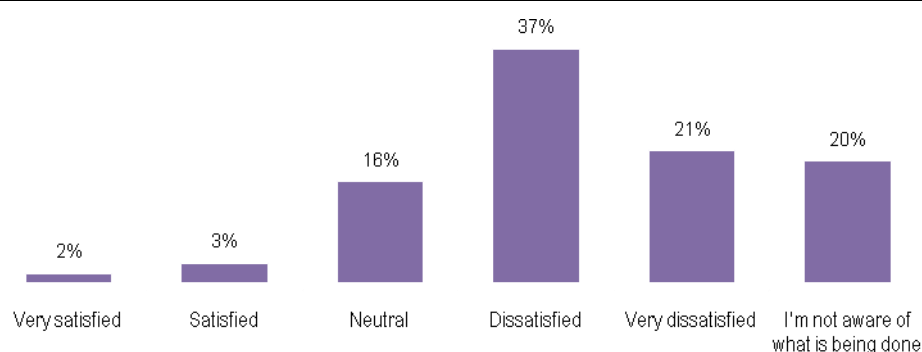
Source: VBF Tourism Working Group; Grant Thornton Vietnam

How effective are the following marketing channels for tourism destination marketing campaigns?



Source: VBF Tourism Working Group; Grant Thornton Vietnam

Please rank your satisfaction with current overseas marketing programs conducted by the Vietnamese government.



Source: VBF Tourism Working Group; Grant Thornton Vietnam

JOINT EUROCHAM AND VBF WORKING GROUP POSITION PAPER ON TOURISM AND HOSPITALITY

*Prepared by
EuroCham & VBF Tourism Working Group*

I. Overview

The tourism industry currently accounts for nearly 5% of the country's GDP and is employing approximately 10% of the labor force in the service sector, thus making the tourism industry one of the country's key employment industries. After the global economic downturn, Vietnam's travel and tourism industry has strongly rebounded in 2010, with tourist arrivals in Vietnam rising more than 30% in 2010. Foreign visitors are up partly thanks to the recovery of global tourism but also thanks to the government's good efforts in tourism-promotion campaigns, including television advertisements on CNN, BBC, Chinese national television and other networks as well as government-led efforts to cut hotel prices and airline fares. The citadel in Hanoi has been declared a UNESCO World Heritage site, meaning a total of 7 World Heritage sites, and some major new hotels and attractions such as Bana Mountain Cable Car have opened.

However the recovery should not lead to complacency, but to continued strong action to improve the quality of tourism in Vietnam by focusing on environmentally and socially responsible tourism respecting the Vietnamese culture and ensuring ethical behavior of all stakeholders in tourism. The European Union will launch a major project in 2011 for 11 million EUR to work with the Vietnamese National Administration of Tourism to promote responsible tourism services through public private dialogue, improved tourism planning and regional tourism product development. The Vietnam Tourism Occupational Skills Standards System will be expanded to cover more professions and make it available throughout the country. The tourism- and hospitality businesses within EuroCham are committed to join the government's efforts in this project to make Vietnam one of the best tourism destinations in South East Asia. We have some specific recommendations as follows:

II. Promoting Vietnam as an attractive tourist destination

Within the ASEAN region, Vietnam competes with similarly attractive tourist destinations like e.g. Thailand, Malaysia, Indonesia, the Philippines and Cambodia. Vietnam's perception as a tourist destination has improved over the last year, but mostly by the general economic recovery and weaknesses of other ASEAN destinations, in particular security concerns over Thailand. Structural issues in the sector remain: In particular, poor service and customer care. However these other destinations have invested and continue to invest in destination marketing and all run advertisements on International TV Channels. Whilst we congratulate the authorities on organizing the competition for a new slogan and tag line for the promotion of Tourism and on the selection of Cowan Design and the "Vietnam – A Different Orient" we are concerned that the slogan has now not been selected. This decision has been based on input from government agencies and the public. However it seems that as this slogan is aimed at foreign tourists that maybe the feedback should have been sought from experts overseas not from experts in Vietnam.

We believe that one of the most efficient ways to address this negative service perception of Vietnam as a tourist destination is to continue a concerted promotion campaign on a national level and International level using the "Vietnam – A Different Orient" slogan and tag line. Such promotion campaign should highlight Vietnam's continuous attractiveness because of its rich cultural heritage, its outstanding natural beauty including beaches and its friendly people. Whilst good progress has already been made in this area nationally and to a limited extent Internationally,

we note again that minimal further investments could tremendously improve the passenger's introduction and perception of Vietnam: For example, improving the travel experience with measures such as improved flight-videos showing the natural beauty of Vietnam, highlighting it's culture and people that are played on all arriving international flights, or the creation of a welcome video played in the immigration area identifying the logistics of immigration, customs and transport.

We also note that Tourism thrives where it is considered a priority over other investments such as residential real estate development and modern agriculture. Heritage preservation is often not considered a priority in urban development despite an abundance of land in new urban areas. Tourists stay relatively short in Vietnam and the repeat rate of visitors is low as there are too few entertainment or sightseeing options available at key tourist destinations. Information about tourist sites is often limited on the internet and sites are sometimes difficult to find.

It is worth noting that in the mid to late 1980's Thailand attracted between 5 and 6 million foreign visitors a year a figure which has now reached almost 15 million even with Thailand's current somewhat tarnished image. It is my personal opinion that Vietnam could surpass Thailand's 15 million by 2030 if much greater resources are devoted to tourism development. It is also worth noting that a high percentage of Thailand's foreign visitors are regular returnee visitors coming for family and golfing holidays both from within Asia and long haul.

Recommendations

We recommend the adoption of the "Vietnam – A Different Orient" slogan and tag line both Nationally and Internationally to compete with our ASEAN neighbors who are all running successful campaigns. If the government wishes to get further input before making the final decision then input should be sought from overseas experts and interested parties not just locally.

- We believe that in addition to existing campaigns, a "smile campaign" at the immigration could be a further step to create a positive first impression and reduce the notion of many tourists that they are not genuinely welcome. In a country full of welcoming and friendly people, immigration staff should display a positive and welcoming attitude at all times.
- EuroCham also suggests that the Vietnamese government allocates more funds towards such tourism promotion campaigns and operates in close co-operation with the foreign private tourism/travel providers to make best use of such additional funding.
- EuroCham suggests incentivizing environmentally and socially responsible tourism. At the same time, we believe that promoting such high-quality tourism, value could be added to the industry as a whole, resulting in higher-paid and better jobs for Vietnamese seeking employment in the hospitality industry.
- EuroCham suggest improving tourism planning and tourism products: In particular, a regional approach to tourism going beyond provincial borders and allowing joint product development will allow tourists to stay longer and encourage return visits to visit different parts of the country.
- Public private dialogue in planning and creation of new tourist attractions is crucial for the success of local/regional tourism strategies. The focus should be to develop new attractions such as more cultural attractions, more sports facilities or even more adventure tourism. Information about the local and regional attractions should be made available on the internet for easy planning and as a promotional tool.

III. Expanding Visa exemptions and improving the "Visa-on-Arrival"

Currently, only ASEAN passport holders are Visa-exempted for stays of 30 days or less, and only passport holders from Denmark, Norway, Finland, Sweden, Japan, Korea and Russia are allowed to enter the country for a period of 15 days without a Visa. Accordingly, most tourists need to apply

for a visa. However, obtaining such visa for Vietnam is often a problem for many tourists: Sometimes, there is insufficient information by the embassies/consulates on the matter and processing is difficult and time-consuming. We are aware of situations where the local embassies take weeks to reply to email requests for information. Overall, visa requirements remain a huge obstacle particularly for last-minute travelers: Due to formalistic and bureaucratic visa requirements and unpredictable processing times, last minute travel to Vietnam is not an option and has been replaced by weekend trips to Phuket, Bali, Boracay, Macao and Singapore.

We believe there is still some serious misunderstandings on what the real objective is: The people that are deterred are the short-term last minute travelers who want to get away for the weekend or for a few days relaxation or golf and who are deterred by having to apply for a visa. In particular this applies to expats living and working in place like Hong Kong, Singapore, Thailand and Malaysia and who by and large are high end high spending visitors. Whilst we would prefer that there were no visa fee we do understand that there are financial reasons for the collection of visa fees and therefore a system similar to Cambodia could be considered where visas are issued on arrival and visa fees collected at the arrival airport.

We note that the present “Visa-On-Arrival” in Vietnam system could easily be simplified: In fact, a “Visa-On-Arrival” can only be issued if certain documentation is provided before arrival, making it a misnomer. Currently, only Myanmar and Vietnam still use the pre-approved Visa-on-Arrival system. Myanmar has recently introduced a real visa free entry for people traveling to Myanmar on Myanmar Airways International from Siem Reap and Guangzhou. In Vietnam, the processing of Visa-on-Arrival documentation can take anywhere from a few hours to several days and often requires the intervention of 3rd party agents as the system is not well documented or explained. We note that upon arrival at the airport, the “Visa-on-Arrival” area provides no clear information on the necessary forms, policies, or fees. Little English is spoken, there is no explanation of procedures and no number system in place.

Recommendations

- AS FIRST STEP ... EuroCham recommends that a real “Visa-on-Arrival” procedure should be established, such as in Cambodia or Laos, without pre-submitted documentation. Such Visa-on-Arrival should enable qualifying passport holders to enter Vietnam for a period of **at least fourteen (14) days** without any documentation other than their passport. “Visa-on-Arrival” procedures and policies should be transparent and consistent, including an explanation of the process, a set fee schedule and the equal enforcement of these policies and procedures at the airports. We believe that such improved “Visa-on-Arrival” could attract last-minute expat business travelers in the region and ease logistics for tour operators and travel agencies.
- We recommend AS 2ND STEP FURTHER ON that Visa-exemptions are expanded to countries that can potentially account for significant tourism revenue, such as the EU member states, the United States and Canada, Australia, Hong Kong and Taiwan. Visa-exemptions to these countries should generally be granted for stays of up to **thirty (30) days**.

IV. Training of staff / Licensing of tourist-related services / foreign operators

We note that the tourism industry in Vietnam is still experiencing a shortage of well-trained staff. Tourists are often confronted with employees not familiar with the service industry, resulting in many tourists leaving with a bad image of Vietnam. Tour-guides are often not knowledgeable about Vietnamese culture and history, and not proficient in English or other foreign languages. Many of these tour-guides because of their lack of training are not well paid and seek additional income from other sources related to their work.. Taxi drivers at the airport and elsewhere massively over-charge unsuspecting first-time visitors. Whilst the damage to the image of the country is immeasurable it

often puts off returnee visitors which ultimately are the people that drive tourism growth. At the same time, some of the world's best travel service providers are prohibited from setting up simple representative offices to support the development of tourism arrivals to Vietnam.

Recommendations

- We recommend that licenses to tourist-related services are only granted to well-trained personnel with a formal education/qualification relating to the service-industry. We believe that creating a favorable image of Vietnam and thus contributing to a growth of foreign arrivals is more important than “protecting” Vietnamese businesses. As we have seen in the hotel industry well run foreign firms help raise the standard of the sector and the standards of local hotels and operators.
- We recommend reviewing and updating official guide training programs and curricula at tourism educational programs/courses. In particular, all programs could include some foreign experts teaching what foreign tourists really expect and understand as good service standards.
- Accordingly, additional restrictions for foreigners to work as tour operators in the tourist-industry should be lifted to improve overall-quality of tourist-services in Vietnam. In particular, the Implementation of the Circular for Decree 92 on the Representative Offices of Foreign Travel Service Providers is more than two (2) years overdue and could be helping promote the industry and boost revenues and standards.

V. Better Protection of Cultural Heritage

Many of our European member companies and European visitors have raised their concerns about cultural heritage destruction in the country's major towns: As a matter of fact, some major towns are conducting rapid and major construction works on places with cultural heritage protection (or places which deserve such protection). In particular, Ho Chi Minh City's District 1 is losing many relics of its old “*charme*” and “*grandeur*”: For example, the Vincom Tower was recently completed; destroying testimonials of French colonial architecture; and another whole block is now under construction. So far, only a few building owners resist the lucrative new projects, which ruin the beautiful image of towns in Vietnam. In fact, many things that tourism authorities are promoting in their campaigns are lost to big construction projects. Ho Chi Minh City is not the only case: The first high-rise buildings are in construction in Hue and Danang. It appears that only official UNESCO World Heritage sites such as Hoi An Ancient Town and Hue Citadel are safe from any cultural heritage destruction.

Recommendation

- We encourage Vietnamese authorities to develop and implement guidelines to efficiently preserve the cultural heritage in Vietnam. In particular, cultural heritage rules should be strictly followed in lucrative high-rise construction projects. A comprehensive strategy of what should be protected should be implemented nation-wide. Special attention should be directed to Hanoi Old Quarter, which is unique in Asia.
- We encourage clear guidelines on hotel/hospitality projects with regards to both cultural heritage and environmental standards. In particular, proper waste water treatment should be mandatory, and building codes respected and not ‘arranged’. An overall strategy must be applied.

VI. Improvements of Tourist Police

Cases of thefts continue to be a problem, both in the street and even in hotels. Harassment of tourists is not uncommon. Reporting of thefts and other crimes and misbehaviors is often a problem, due to the language-barrier and the time consuming procedures. Most thefts therefore remain unreported and thereby not revealing the real situation.

Recommendation: We recommend that the existing Tourist Police be more active and present, with better recognizable uniforms. The Tourist Police should cover all major tourist destinations in Vietnam, and patrol at least the city centers and places of interest frequently. Officers in such Tourist Police should speak basic English and have a welcoming and polite attitude. At least one Tourist Police station AND PHONE HOTLINE should be set up in city centers and be open 24 hours, where visitors can report crimes and misbehaviors, regardless of where they happened.

Section VI

APPENDIX

VIETNAM BUSINESS FORUM (VBF)
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Vietnam Business Forum - Hanoi, December 2nd, 2010

REPORT TO THE CG MEETING

Hanoi, December 7, 2010

The Vietnam Business Forum met on December 2, 2010 in Hanoi. Discussion focused on how Vietnam can build long-term economic competitiveness and development and continue to improve as a global investment destination.

Forum participants congratulated the government on Vietnam's progress towards middle income economy status. Participants also looked to the upcoming Party Congress to make the necessary resolutions and decisions to shape Vietnam's political, social, and economic development strategies for the coming decade.

Businesses stressed the need for more focus on Vietnam to shift from low added-value production to more sophisticated, high added-value industries in order to be competitive over the long term. It was likewise recommended that more attention be paid to the quality of investment; resources and priority should go to projects which create higher value-added and consume fewer natural resources and energy. Also discussed was the importance of transparency and clarity in government decision-making and the corresponding implementation processes. It was noted that a lack of legal and regulatory clarity and unclear and time consuming decision-making processes will deter investors.

Businesses noted a clear slowdown in recent years on state-owned enterprise reform and expect tangible evidence of Government willingness to continue to reform this sector. A level playing field, improved corporate governance, and stricter supervision were cited as keys to the SOE reform process that would also help improve resource allocation at a time when the country urgently needs to improve the quality and effectiveness of its capital outlays.

Businesses also urged the government to be consistent and clear in its economic stabilization and monetary policies in order to help maintain investor confidence in the currency and macroeconomic policy.

The following are highlights of the main themes addressed in the Forum:

Banking

In 2010, Vietnam made significant progress by enacting the Law on State Bank of Vietnam and the Law on Credit Institutions. Critical next steps will be to develop a detailed law implementing guidelines. The guidelines should be transparent, open for innovation, in line with international best practice and aim to reduce bureaucracy and remove administrative constraints - particularly in licensing and corporate governance.

Sector representatives urged the Government to address the current inefficiency of the FX markets to improve the confidence in VND and increase liquidity in the FX market. The transparency of the

government bond market needs to be enhanced, particularly in the bond issuance process so that the market can set fair prices for debt issuances.

For facilitation of consumer lending, it is important to establish clear guiding principles and remove major impediments to developing the consumer Banking and the Consumer Finance Industry. Legal framework allowing commercial banks to offer wealth management products to their customers should be established and a full and complete credit bureau reporting and infrastructure need to be further developed.

Capital markets

The Government deserves credit for strengthening the legal framework of securities activities, improving information disclosure, and enhancing market supervision. These measures would build a solid foundation for the recovery of the stock market in the coming time.

In order to accelerate the restoration of Vietnam's investment attractiveness, measures such as improving the size and liquidity of the bond market through creating a benchmark bond, and opening the market to new trading activities and new types of institutional investors must be carried out. Better exchange of information between the government and businesses on fiscal and monetary policies will also positively impact market performance. Furthermore, a unified taxation regulation system separating securities activities should be considered, given the rapid and complex development of securities activities.

The market would also benefit from acceleration of the SOE equitization process to provide new quality products to the market. A new equitization road map with a clear time line needs to be defined. Adjustment of the valuation mechanism for SOE IPOs should reflect a more accurate offering price relevant to market conditions.

Manufacturing and distribution

While recognizing the Government's need and desire to keep inflation in check, it should nevertheless be noted that the newly issued price controlling rule creates significant administrative burdens on enterprises. Consideration should be given to liberalizing supply chains for distribution to increase efficiency and product affordability.

Regarding the new labor code draft, the law should maintain mandatory protection for industrial labor while allowing more flexibility in dealing with managerial level staff. Furthermore, careful consideration should be taken before introducing any new financial costs to enterprises at this particular time.

Improvements in the implementing rules for Clean Development Mechanism (CDM) projects for developing environmentally friendly industries in Vietnam were recognized, with praise for more detailed and transparent procedures. However, such projects still face considerable red tape and remain difficult to implement.

Ports

Improvements in port infrastructure over the last year, including the deep sea ports in Cai Mep coming into operation, and the near completion of the dredging program are encouraging. However, for ports to operate more efficiently, several issues must be addressed. The timeline of major approved ports and landside infrastructure projects should be updated for shippers and port operators to better plan their business. Transparency and clarity of the customs process should be enhanced and power supplies secured to avoid cargo and ship delays. Furthermore, to accommodate the increasing industrial development in the north, the northern Vietnam seaport development program must be expedited, including the infrastructure connecting the ports to the industrial areas.

Mining

Investing in mining requires substantial long-term capital. It is therefore critical that the Government displays a clear investment policy, with appropriate mid- and long-term development plans and a roadmap for taxation and related financial policy changes. Recent and frequent changes in sector policies and fiscal regime have put many mining companies in a difficult position.

Mining companies acknowledge progress in the recently passed Mineral Law but are concerned about potential problems in implementation. Representatives urged the Government to actively consult businesses in drafting the law implementing documents to make sure they are clear, fair, and applicable. Businesses also urged the Government to reconsider the export limit/banning policy to make it relevant to the needs of the domestic industries. Banning export or imposing high export duties on a number of minerals that local industries cannot consume is unproductive.

Tourism

In order to increase repeat visitor numbers, several key issues need to be addressed. The Visa on Arrival process needs to be handled in a more transparent and efficient manner, in line with international practice. Also, training and development of tourism human resources needs to ensure high and consistent service quality throughout the service chain, from hotel to transportation and guides. In addition, destination marketing needs to be designed and implemented in a more relevant, cohesive and structured manner to truly make Vietnam a destination of choice.

Conclusion

Forum participants believe that the open and constructive dialogue that has been the hallmark of the VBF will help the Government with the long-term solutions for competitive and sustainable development. The business community continues to offer its support and willingness to collaborate with the Government and is confident that this collaboration, which has contributed to the remarkable economic growth and poverty reduction of the past years, will continue to be a key ingredient to future successes.

VIETNAM BUSINESS FORUM

**Hanoi
December 2nd 2010**

OPENING REMARKS

The Government of Vietnam – Minister of Planning & Investment – H.E Vo Hong Phuc

Vietnam's economy was expected to achieve a growth **rate** of 6.7%-6.8% in 2010. However, the economy faced many challenges, including macroeconomic instability, high inflation, a rising consumer price index and volatile exchange rates. The Government was preparing to submit its five-year and 10-year economic development strategies to the National Assembly in January, 2011, eyeing an ambitious growth rate target of 7.5%. To achieve this target, Vietnam needs to tackle challenges in infrastructure, human resources development and further fine-tune its market economy mechanism. The Minister called on domestic and foreign businesses to join hands with the Government to strengthen economic development. The Minister is upbeat on the private sector's future role in Vietnam's economic development.

The World Bank in Vietnam – Ms. Victoria Kwakwa, Director

The private sector plays a particularly vital role in Vietnam's efforts to become a middle-income country. To assist the private sector's development, both hardware and software infrastructure need to be developed. Software infrastructure includes policies and a regulatory system applicable to business activities that need to be ratified and adopted in a consistent, unequivocal and simple way. Vietnam recently achieved higher ratings in the Doing Business 2011 Report, which is a welcome outcome. Nevertheless, the Government needs to keep working closely with the private sector to achieve targeted rapid and sustainable economic development. By open and constructive dialogue with the private sector, it is expected that productive solutions will be found to safeguard mutual interests. Vietnam Business Forum discussions are part of that open dialogue process.

International Finance Corporation (IFC) – Mr. Simon Andrews, Regional Manager

Vietnam becoming a low middle-income country is welcome progress, but it also means that more challenges are faced in improving the quality of economic growth and efficacy to increase the competitiveness of various industries. That is also the underlying reason for the theme of the Vietnam Business Forum's talk: "Competition and sustainable growth".

Mr. Andrews shared the overall results of the Business Sentiment Survey 2010 in Vietnam completed by the Vietnam Business Forum's Secretariat. The survey collected private sector feedback on the investment climate in Vietnam and highlighted important problems to be solved. Some 75% of the surveyed companies planned to expand business operations in Vietnam in the next three years. The survey's results also revealed that the business community expected more changes in governance, the supply of skilled labor and infrastructure. More than 50% of the respondents believed that the shortage of quality human resources was the main factor that prevented them from expanding operations in Vietnam. Also, to ensure sustainable development, the quality of development, production and utilization of available natural resources needed to be focused on. In addition, the survey results also suggested the spotlight fall on governance and further reforms in this area.

PART 1: OVERVIEW OF INVESTMENT ENVIRONMENT

European Chamber of Commerce in Vietnam (EuroCham) – Mr. Alain Cany, President

The year 2010 was a successful time for Vietnam as the country moved forward from a low-income to middle-income country. This was achieved because Vietnam possesses advantages such as a low-cost, hardworking labor force, a stable political situation, bountiful natural resources, plus robust increases in ODA and foreign investment funds. Macroeconomic issues, however, need to be addressed in the long run to maintain sustainable development.

Exports

Exports need to have more value-added. Concerted efforts need to be leveraged to address major challenges, including pressures from inflation, domestic currency devaluations and the budget deficit.

Investment Licensing

Applying for an investment license remains complicated and time-consuming, as inconsistencies and varied interpretations exist among regulators. The recent integration of business registrations with tax coding is a welcome change. In the near future, business registration needs to be incorporated with investment licensing in a single process to create a ‘one-stop shop’, similar to the on-going practices in Indonesia, Singapore and Thailand which have proven to be efficient.

Protection of Intellectual Property Rights

Mass education is needed on the benefits of intellectual property rights protection, particularly in respect to new products as well as improvements to existing products. The amendment of the Law on Intellectual Property and Criminal Code related to intellectual property offences is an appreciated step.

Infrastructure Development

Vietnam needs to develop a national seaport strategy, highlighting the need for about four to five major ports in the south, two to three major ports in the north and one to two major ports in the central region, instead of 40-50 smaller, scattered ports in different provinces. Attention should also be paid to the comprehensiveness of infrastructure systems, meaning connecting roads need to be built at the same time alongside ports and wharves.

Development of the public-private partnership (PPP) model is the key to infrastructure development in Vietnam and the Government's recent release of PPP regulations is a step forward in mobilizing resources for infrastructure development. However, it needs to make sure that projects are economically efficient, bankable and viable.

Public Administration Reform

The Government released Decree 25/ND-CP, approving the simplification of 258 administrative procedures in various areas and Decree 63, putting in place a “post-Project 30 framework” to keep watch on emerging procedures and form an agency regulating administrative procedures. Nevertheless, while Project 30 is still underway, some new administrative procedures have appeared, which is a step back from what has been achieved. For example, Circular 24 on automated import licensing requires that companies importing large volumes of commodities present an automated import license.

In addition, the adoption of Circular 122 on stabilizing the prices of a number of commodities, which requires companies to make import, purchase, wholesale and retail prices public, has placed a greater administrative burden on businesses and is contrary to the approach of Project 30. A principle of price stabilization is to allow the market to operate a market mechanism to make sure Vietnam reaches “market economy” status over time.

American Chamber of Commerce (AmCham) – Mr. Hank Tomlinson, President

Macroeconomy Stabilization

Recent macroeconomic instability in Vietnam has adversely affected domestic and foreign investors' sentiment. A cheaper VND has badly hurt businesses operating in Vietnam, amid higher inflation and the lack of effective inflation controls from the Government. The Government needs to put in place clear, transparent and publicly pronounced monetary policies to build trust in the macroeconomic environment.

Infrastructure Development

The importance of infrastructure development has been articulated by AmCham and other chambers of commerce during the past five years. Yet, various gaps and delays remain in the development of major infrastructure systems, particularly inter-provincial connecting systems, inner-city railroads, electricity and seaport projects. A large number of investors from the US believe that poor infrastructure and transport systems are a barrier to investment in Vietnam.

Human resources Development

Vietnam needs to improve and enhance the skills of its workforce. Higher education system reforms are a challenge amid the globalization process.

In addition, the lack of international standard educational facilities in Hanoi is one of the factors impairing Vietnam's ability to draw foreign investment. International school projects, however, are encountering a myriad of challenges in acquiring an operating license.

Overly complicated procedures and requirements in applying for a work permit also hinder investors. The Government needs to work out effective and friendlier alternatives to achieve its targets.

Price Controls and Trade Barriers

Businesses are very disappointed in the Government's endorsement of the price control Circular. Apart from adding an administrative burden to the production and distribution of goods, the fact that these regulations mostly focus on imported products is against the spirit of the WTO and Vietnam's commitments to it.

Besides, the Government also recently introduced unnecessary and cumbersome import licensing procedures which have increased the administrative burden on businesses.

Transparency and Governance

The existing controls are insufficient to deter corrupt officials from stealing from public projects, particularly in infrastructure development. Transparency, governance and corruption continue to be some of the toughest challenges to Vietnam's progress.

Public Administration Reform

Three years into the implementation of Project 30, a few renovations have been made in relation to 4,700 procedures for which the Government Office has given specific guidelines to various ministries and agencies for their simplification or removal.

Australian Chamber of Commerce (AusCham) - Mr. Brian O'Reilly, Vice President

Education and Training

Draft Decree on foreign educational entities: Clarity and transparency needs to be added to the drafting process and the timing of the Decree's issuance since it is a particularly important piece of legislation for soon-to-be-established educational entities and other active entities in Vietnam. The

new draft Decree also seems to go into too much detail on such issues as space and equipment requirements per student, years of experience and work permits for foreign teachers.

Meanwhile, start-up international schools have to wait a long time for a license, sometimes up to three years.

Work Permits

Educational entities with a good history of compliance with work permit regulations should be granted “temporary work permits” for new foreign staff members. This would help new employees start work sooner. The temporary work permit privilege may be revoked for any entity failing to apply for an employee’s work permit within three months of an employee’s arrival.

Skills Development

More than a million people join the workforce each year in Vietnam, but many lack the necessary skills to do their jobs effectively. Despite Vietnam’s economic crisis, skilled labor remains very scarce. The Government needs to work closely with the business community to make sure that educational and occupational systems are in step with the demands of the nation’s economy.

Infrastructure

Vietnam’s economic development has placed massive pressure on infrastructure. To facilitate infrastructure development, it is necessary to attack the problem administrative reforms, especially for infrastructure projects and contracts.

Contract Enforcement

Companies with foreign investment are experiencing difficulties in enforcing contracts. Many contracts have been terminated prematurely without legitimate reasons given. The Government needs stronger statutory mechanisms to make sure contract enforcement and cases of misconduct are accounted for.

Administrative Measures and Price Controls

The recent introduction of price controls has limited trade activities and damaged investors’ trust. Such price control/price listing measures have created pressure on businesses. Similarly, a large amount of commodities recently becoming subject to the “automated import licensing” program has increased businesses’ costs and disrupted commodity flows at ports. Other administrative action on fruit, meat and seafood imported from Australia has significantly increased costs to businesses and consumers. AusCham hopes to engage the Government on discussion to find better administration measures to avoid additional costs to businesses.

Mining

Reforms in Vietnam’s mining industry are taking place more slowly than in other industries. The revised draft Law on Minerals has been disseminated for feedback, but a few parts of the law, if endorsed, will likely limit investment in this field. Typically, the requirement of owner’s equity at 30% and 50% for minerals mining and exploration projects respectively is a concern. This will negatively affect the industry’s competitiveness and may go against the principles of the Investment Law. More dialogue is needed between the Government and mining industry businesses to arrive at workable solutions and decisions to take the sector forward.

HCMC Young Business Association – Mr. Phung Anh Tuan, Executive Board Member

The draft statement of the 11th Party Plenary Meeting still places the public sector in the pivotal position in Vietnam’s economy. Nevertheless, it appears that this strategic goal and measures to continue maintaining its dominant role are contradictory when taking into account the following perspectives:

- The policy of fairness to all economic players is not implementable if one of these players stands outside or above the desired effects of the respective economic policies.
- The dominant economic sector often receives priority access to capital, resources, major infrastructure and is allowed to do business in crucial areas.
- The private sector, which is not considered to have a pivotal role, faces disadvantages in securing access to capital, national resources and falls victim to discrimination by the State.

HCMC Young Business Association has proposed to introduce an equitable approach that takes into account the respective roles of different economic sectors through efficacy and actual contributions instead of relying on an economic sector that is not ready to assume such a leading role. The association's specific recommendations include:

- Making one economic sector or type of business the "leader" and thus qualify for preferential Government treatment is not recommended.
- Having the domestic economic sector as the leader and putting in place bonus or incentive policies based on practical performances and contributions is advisable.
- The leading role of different companies and economic sectors can be determined through actual performances and contributions to national coffers, the ability to create jobs and other specific social values.

In the world today, the model for maintaining the Government's control in core economic areas through state-owned business groups is no longer effective since it may result in serious distortions to market competition and missallocation of resources. If these state-owned groups incur losses, debts or go bankrupt, there could be huge economic impacts for the Government to address.

The HCMC Young Business Association recommends putting an end to State's direct operational management of state-owned business groups, while increasing the equitization-privatization of state-owned enterprises, including state-owned business groups and giving the private sector more room to participate in economic development. State-owned enterprises should instead get involved in public service sectors, for non-profitable and social efficacy purposes.

Brief Socio-Economic Development Situation in 2010 – Mr. Dang Huy Dong, Vice Minister of Planning and Investment

Vietnam has basically achieved its overall annual targets for 2010. The country's economy has begun to recover and achieved high growth rates, with GDP growing 6.7%, agriculture gaining 2.6%, industry and construction gaining 7.6% and services growing 7.5%. Investment increased 13% against 2009 as many major infrastructure projects were finished. The total budget income increased 18% and overspending dropped to below 6%. Meanwhile, total export turnover reached more than 19%, more than triple the set target and trade deficit fell below 20% of total export turnover. Per capita income increased 8.9%. Registered technological patents doubled. The national action plan for climate change strongly got underway. Administrative reform and anti-corruption efforts also achieved progress. International integration has been actively pursued, with practical results.

In 2011, the Government will focus on increasing macroeconomic stability and inflation controls in parallel to growth pattern renovation and economic structural changes, to secure a higher growth rate than 2010.

- Key economic targets for 2011: GDP growth to achieve 7.0-7.5%, total export turnover to increase by 10%, a trade deficit not in excess of 18% of the total export turnover, state budget over expenditure equal to 5.3% of GDP, total development investment equal to 40% of GDP and the consumer price index to sit below 7.0%.
- Social targets: College and junior college recruits to increase by 6.5%, professional intermediate school recruits to increase by 10%, occupational junior college and intermediate school recruits to increase by 16.5%, jobs created for 1.6 million workers, poor households to drop below 2.0%.
- Environmental targets: Some 86% of rural and 78% of urban area dwellers to have access to safe water, 69% of serious polluters handled, 82% of medical solid waste to be treated, 55% of industrial park and export processing zones to be equipped with standard concentrated waste water treatment systems, 83% of municipal solid waste to be collected and forestation to reach 40%.

PART 2. MAIN TOPICS FOR DISCUSSION WITH THE GOVERNMENT

1. Banking

Banking Working Group – Mr. Brett Krause, Head of the Group

Progress Made in 2010

- The Law on Credit Institutions (“LCI”) and Law on State Bank were enforced allowing the State Bank and credit institutions to work better in a more reliable legal framework.
- The interest rate cap for corporate loans was removed, allowing banks to be more flexible in their credit activities.

Areas for Improvement in the Immediate Future

Pillar 1 – Roadmap

- ***Law on Credit Institutions (LCI)***: Implementing documents related to the LCI need to be more comprehensive, transparent and consistent with international practices, as well as being more open as bureaucracy is reduced and importunate procedures are removed, especially in licensing, corporate governance and reporting.
- ***Single Customer Lending Limit***: The calculation of the lending limit based on the amount of capital of each foreign bank branch, and not the parent bank’s total capital as specified by the LCI, will significantly affect the operation of foreign bank branches in Vietnam. To alleviate the negative impacts and allow for a smooth transition from previous regulations to the new law, the Banking Working Group proposed some specific solutions as provided in the VBF 2010 position paper that was disseminated among Forum participants.
- ***Consolidation in the Banking Industry***: The Banking Working Group presented some ideas to support this initiative, including its recommendations on merger and consolidation regulations applicable to credit institutions, its views on minimum capital levels and foreign shareholdings in local banks.
- ***Banking Infrastructure***: Establishing a highly reliable and efficient settlement and clearing system is a key component of financial infrastructure to ensure foundations are in place to support further economic growth.

Pillar 2 - Market Efficiency

- ***Foreign Exchange Policies and Regulations***: Implementing documents to Decree 160 need to be expressly released to provide banks with a platform for foreign exchange activities. The State Bank needs to consider action to reinstate trust in the VND and increase foreign exchange

market liquidity to help investors counter risks and allow for the ability to convert funds into foreign currencies if investors want to take profits out of the country in the future.

- **Government Bond Market:** Having in place a high-liquidity Government bond market is vital and will support the market's liquidity and efficacy. The Government bond market needs to be as transparent as possible in providing information on issuing schedules, volumes and terms of issues. The market needs an effective pricing mechanism for issues pertaining to specific issuing schedules.
- **Credit Rating:** The Government needs to encourage the formation of at least one or two independent rating agencies in Vietnam and allow these entities to progressively participate in the bond and commercial paper markets with "rated instruments" to increase the efficacy and transparency of the corporate bond market.
- **Foreign Loans:** The Government needs to continue negotiations and entering into agreements to avoid double taxation with other countries, while making sure that the tax deduction process under the provisions of the agreements remains smooth. The Government needs to consider the abolishment of the withholding tax for loan interest payments to banks not operating in Vietnam for loans with terms of one year and above to encourage borrowers' access to these long term financial resources.

Pillar 3 – Consumer Banking

- **Assets Management Products:** These are main products provided by many banks in the world to personal customers. Vietnam may consider introducing legislation to allow commercial banks to provide customers with investment products and protect investors by requesting transparency in the price/profit and risk profile of such products.
- **Credit Bureaus:** Credit institutions need to be allowed to use services from different credit bureaus and the State Bank needs to work closely with credit institutions to promote the rapid development of a credit reporting system and credit infrastructure.

Response by the State Bank – Mr. Nguyen Van Binh, Deputy Governor

- The five issues of concern related to Article 128 of the LCI raised by Banking Working Group in the BWG position paper for VBF 2010 are: Loans committed prior to the LCI coming into effect, foreign guarantees, standby letters of credit and loans guaranteed by the Government or an export credit support agency, adding up foreign bank branches' capital in case of over-limit lending and applying to the Prime Minister for over-limit lending. All of the above mentioned issues have been responded to by the LCI drafting team and the State Bank will continue to listen to more comments and input to produce the most relevant implementing documents for the LCI.
- Merger and acquisition of credit institutions shall be disclosed and implemented in a transparent manner as defined in Circular 04 of the State Bank. The roadmap for charter capital increases by credit institutions in future is still under discussion and needs more inputs.
- The equity share of a foreign investor in a Vietnamese credit institution shall be subject to the provisions of Decree 69/2007/ND-CP. The development process of implementing documents to the LCI shall take into account this issue for further discussion.
- The State Bank will, in the near future, renew the regulatory package for foreign exchange management to align with the new law. Deposit and credit activities between credit institutions have been clearly defined in Articles 108, 112 and 118, of the LCI.

- Loan interest rates between credit institutions have been defined in the law to not exceed the maximum interest rate for a customer of the subject credit institution.
- The State Bank supports the creation of independent credit rating agencies in Vietnam and this issue has been referred to the Government.
- The State Bank has reported to the Government for regulations to help credit institutions make more assets management products available to customers.

2. Capital Markets

Capital Markets Working Group – Mr. Dominic Scriven, Head of the Group

Progress Made in 2010

- The equity market in Vietnam has reached its 10th anniversary and achieved significant success with the bond market valued at USD\$15 billion in capitalization or 15% of GDP, the stock market valued at USD\$30 billion or 30% of GDP and more than 600 listed companies and more than one million investors. About 20% of the total investment capital in the country has been mobilized through bond and securities channels.
- Businesses have welcomed recent changes to the revised Securities Law, which allows for increased flexibility in market development. The efficacy in equity market oversight has been increased with the active involvement of the police in cracking down on securities-related infractions. In the future, capital mobilizing instruments will be more diversified as many new types of funds are added, new regulations streamlining secondary market transactions will be issued, Decree 46 on the issuance of Government bonds will be reviewed and the quality and coverage of information disclosure will be improved.
- The group examined the 50 top public companies in the market and found they were being well run, with after-tax profits in the first nine months of the year increasing by 35% on average against 2009. The financial structure of these companies also remains relatively secured with loans accounting for only 20% of total capital.

Issues That Need More Focused Attention

- Some issues raised by the Capital Market Working Group are beyond the authorities of the State Securities Commission (“SSC”) and Ministry of Finance (“MoF”), hence it is recommended the Government encourage other agencies to participate in dialogue with the Capital Market Working Group.
- The bond market has limited liquidity and this may affect the Government’s ambition of raising VND100,000 billion in the next year. The securities market is rated as attractive to investors given stock’s low price, but the CDS ratio measuring the risk level of Vietnam's stock market is higher than other countries in the region such as Indonesia, Thailand and the Philippines.
- The working group expects the MoF to share the maturity plan of two-thirds of all Government bonds in the next three years, that changes in the equitization process of state-owned enterprises will accelerate the process and increase the efficiency of public funds, there will be a regular disclosure of information from important economic indices covering production, trade, national reserves ratio, employment and GDP, the adoption of international accounting standards and fair value accounting and a uniform tax policy with incentives for deserving entities and individuals.

Response by the Ministry of Finance – Mr. Tran Xuan Ha, Vice Minister

- To increase liquidity for Government bonds, the MoF has released an implementing Circular for large-lot bond issuances and is restructuring previously issued bonds, including buybacks if necessary. The MoF is reviewing amendments to Decree 109 for state-owned enterprises to go public and laying the foundations for selling state-owned equity in some companies.
- The MoF has issued Circular 09 with amendments on disclosure in the stock market and will develop a standard legal framework for information disclosure. Last year, the MoF also issued guidelines on how to structure a financial statement related to derivative products and is considering adoption of international accounting standards. With comments from the Capital Market Working Group noted, the MoF will review respective tax rates, especially bond-related taxes.

Response by SSC – Mr. Nguyen Doan Hung, Vice Chair

The MoF and SSC have requested stock exchanges, depository centers and securities companies develop appropriate infrastructure to accommodate new products. The SSC is currently working with securities companies to enforce financial safety regulations to prepare for the introduction of new products. The SSC is also developing draft codes and regulations for a derivatives market and open-ended funds to be submitted to the MoF.

3. Manufacturing and Distribution (M&D)

M&D Working Group – Mr. Seck Yee Chung, Representative

• *Revised Labor Code and Labor-related Regulations*

- The revised Labor Code needs to distinguish between managerial staff with unskilled workers regarding self-representation.
- Legislation regulating labor outsourcing and secondment should be issued, and workers' representatives should be allowed to negotiate Collective Labor Agreements.
- One of Vietnam's advantages is relatively low labor costs, though recent increases in the base pay grade are narrowing this comparative advantage. Increases in the base pay grade, social security and health insurance premiums and new unemployment and health insurance mechanisms for foreign employees are placing more burdens on manufacturing companies.

• *Circular 122 on Price Stabilization*

Circular 122 requires that companies list and register sales prices for a variety of products.

Price Registration and Listing

- Sales price registration, a common practice at state-owned enterprises, now applies to private companies. Businesses are required to clearly account for sales price adjustments, to register production costs, sales costs, overheads, expected profits, taxes and changes in percentages of each type of price compared to previously registered levels. This is an overwhelmingly demanding and ambiguous request, whereas it is unclear whether the collected information is of any value to public administration purposes.
- Price registration regulations require that businesses elaborate on the reasons for adjusting registered prices, while not mentioning what specific information is needed in such a report.

Price Stabilization

- Circular 122 does not provide specific triggers for price stabilization measures to kick-in. This results in the spontaneous adoption of the price stabilization mechanism, leaving businesses unsure about when to react to changes in price and when regulators will intervene.
- The Government's need and wish to control inflation is justifiable. But, price stabilization regulations may also backfire. Investors will lose interest in areas subject to the restrictions

and cut investment in these areas. This in turn, will cause supply shortages, ultimately resulting in higher market prices.

Implementing Circular 122

- The MoF has issued a list of 150 companies subject to price listing and registration with the MoF. This list mostly centers on imported products and foreign brand names. This is a form of discrimination that goes against WTO rules.
- Typically, the MoF also requests that the companies that fall under this list must register any new products and price changes for existing products, as well as account for any price increases (with retrospective validity) from January 1, 2010 (where applicable).

The M&D Working Group suggests either voiding all the above price stabilization measures or narrowing the scope of such measures, while maintaining transparency and equality.

• ***Draft Decree on Retailing***

National and Local Plans for Retail Outlets

The Draft Decree requests that businesses applying to establish large-scale retail facilities await the national and local master retail outlet plans (“ROP”) to be approved. The preparation and approval of such ROPs may take a year or longer, meaning the issuance of large-scale retail facility permits may be delayed. The Draft Decree has not introduced an optional licensing mechanism, pending approval of the master plans.

Economic Needs Test (ENT)

Existing regulations do not include guidelines on what criteria should be met regarding the set ENT for domestic investors to set up multiple retail facilities or for foreign investors to open a second retail facility. The Draft Decree has introduced the formation of an ENT committee. What is the organizational structure, authority, operational arrangements, decision making mechanism of this committee? Are there appropriately qualified human resources and a suitable framework for the establishment and operation of this committee?

• ***Import of Pharmaceutical Products by Companies with Foreign-Invested Capital***

In accordance with Vietnam’s WTO commitments, from January 1, 2009, foreign-invested enterprises (“FIEs”) have been allowed to import a number of pharmaceutical products. However, some existing regulations, which were enacted prior to the above-mentioned WTO commitments, continue to hinder the import of medicines by FIEs. These regulations need to be revised and replaced to conform with Vietnam’s WTO commitments.

• ***Automated Import License***

From September 2008, the Government put a cap on specific imported products through the automated imported licensing procedure (“AIL”). The scope of the AIL, however, has been recently widened causing a serious impasse for many types of imported products, especially those transported by air.

• ***Decree 102 – Implementing the Enterprise Law***

Enterprises instituted in Vietnam with foreign investors’ equity of no more than 49% of charter capital are subject to similar investment and business conditions and requirements as domestic investors. In practice, it is still unclear whether this regulation is enforceable at all enterprises and how. This regulation also depends on specific laws according to which, FIEs encompass firms with foreign investors owning no more than 49% of equity still being subject to other discrete restrictions different from those applicable to domestic companies, for example ENT regulations under Decree 23.

Also in line with this Decree, foreign investors setting up a new entity in Vietnam regardless of the percentage of foreign-invested equity, shall be subject to investment procedures applicable to foreign investors and granted Investment Certificates. It is recommended that companies with foreign investors' equity not exceeding 49% be recognized by means of the Business Registration Certificate.

- ***Traffic Congestion in Urban Areas and Infrastructure***

Traffic congestion concerns are becoming increasingly serious in major cities, making the free movement of residents, commodities and services more difficult than ever.

It is recommended the Government take such action as developing underground parking areas and railroad systems, and redirect development to outlying areas. Continued infrastructure and real estate development in these new areas is essential.

- ***Clean Development Mechanism (CDM)***

There has been some progress in regulatory provisions related to CDM projects in Vietnam. Circular 12 released by the Ministry of Natural Resources and Environment on July 26, 2010 provides guiding procedures for certification and approval of CDM projects under the Kyoto Protocol.

It should, however, be noted that the Approval Letter is currently only valid for 24 months. If the investor does not acquire UNFCCC approval during that period, he/she will have to go through the procedures again in the country where they operate.

- ***Project 30***

Members of the M&D Working Group have been significant participants in the Government's Project 30 on public administration reform. Nearly 4,700 administrative procedures have been addressed in the Government Office's detailed guidelines and reform proposals have been submitted to relevant ministries for review. If the ministries' feedback is positive, there will be significant and comprehensive implications for the administrative environment in coming months.

Responses by Various State Bodies

Ministry of Industry and Trade (MOIT)– Mr. Tran Tuan Anh, Vice Director

- The draft retailing Decree is being developed and reviewed by a group of experts in consultation with the M&D Working Group, but this is not the draft version prepared and submitted to the Government for approval by MoIT.
- Licensing and locating foreign investors' distribution and retailing projects in municipalities must be based on international best practices and Vietnam's practical needs. The drafting team is considering a licensing process for these projects based on assessment of the ENT on three criteria, namely the number of retail facilities, stability of the market and population density. The drafting team will find ways to insure this economic needs assessment remains public and transparent to safeguard the interests of investors, consumers and municipalities.
- In respect to FIEs importing pharmaceutical products, regulatory documents issued by the Government and various ministries and agencies may be contradictory and overlap. To solve this problem, the Ministry of Health is developing an implementation Circular on the rights of FIEs to import pharmaceutical products into Vietnam. The Circular's development process will benefit from continued business community contributions.

- The regulation on automated licensing for specific import products issued by the MoIT is not intended to restrict the volumes of imported products, but instead serves the ministry's statistical and managerial purposes. Businesses are free to decide how many products to import and waiting times have been cut to seven days. The MoIT will reconsider more flexible and appropriate regulations on imported fresh food products. Postal automated import licensing also aims to avoid licensing congestion. This new regulation will also be fully reported by Vietnam to the WTO.
- The recent electricity supply shortages to the Cai Mep-Thi Vai port complex was a case of *force majeure* and had nothing to do with Government power supply and utility infrastructure policies. In 2011, the Ba Ria-Vung Tau area port system will be guaranteed a full, stable and privileged power supply as the standby electricity grid is upgraded.

Ministry of Labor, Invalids & Social Affairs – Mr. Pham Minh Huan, Vice Minister

- Vietnam is revising the Labor Code with a view to allowing more freedom to workers, more flexibility to the market and further international integration. The revision process welcomes contributions from international organizations, experts and the business community. The Government will unite the minimum pay grade between domestic and foreign enterprises by 2012.
- The social security premiums will slowly increase every two years to maintain a reasonable balance as employers pay 22% and employees pay 10.5% of the tariff.
- Despite considerable efforts, the training and upgrade of quality of the workforce in Vietnam still falls short of businesses' expectations. This process needs stronger involvement and contributions from the business community and also cooperation with international organizations.

Ministry of Finance – Mr. Tran Xuan Ha, Vice Minister

The MoF's Circular 122 on the implementation of the pricing Ordinance seeks to ensure equity and transparency in prices, consumers' interests and producers' reputations. Specific quantitative criteria are provided in the MoF's Circular 154. In the future, a law on pricing drafted by the MoF will supersede this pricing Ordinance.

4. SeaPort

Port Sub Working Group – Mr. Peter Smidt -Nielsen, Representative

- Transport costs in Vietnam as a percentage of GDP remain much higher than neighboring countries. These costs account for 13% of GDP in Indonesia and Malaysia, 18% in China, 19% in Thailand, compared to 25% in Vietnam. Poor infrastructure, congestion, protracted waiting times, a lack of transparency and predictability in the supply chain, an aged, inefficient, dangerous road transport network and non-compliance with transport weight limits also result in higher operational costs and a lack of safety.
- The progress in developing seaports and connecting transport facilities in the southern economic hub, especially the Cai Mep-Thi Vai area, has a vital role to play in the business operations of major exporters and shipping companies. We propose quarterly public information updates for all approved key ports and inland infrastructure projects.
- Northern ports suffer from poor efficiency and are only able to accommodate very small payloads and low deck container ships. In addition, these ports are frequently congested. Seaports in northern Vietnam need immediate infrastructure development projects connecting the ports with industrial parks.

- It is recommended that the electronic customs project, the national customs system and the customs clearing processes between provinces and districts should be transparent and unambiguous to increase Vietnam's competitiveness. Electronic customs declarations are recommended for commodities. Shipping companies often find themselves in a predicament where their containers are stuck at port and goods are left forgotten about for months and even years. We recommend that liquidation of forgotten goods takes place at least four times a year so that containers can be returned to carriers.
- A container ship has very specific and tight schedules at each port and any port delay may result in serious consequences for the entire journey. If large container gantry cranes do not operate effectively, export goods and vessels may suffer from delays.

Response by the Ministry of Transport – Mr. Truong Tan Vien, Vice Minister

- The actual development of the southern seaport system has far exceeded the forecast level 10 years ago. In 2009, the Government endorsed the revised strategy for transport infrastructure development, especially the seaport system. The Prime Minister's Decision 412 declares a list of major and vital projects to address goods and transport congestion and ensure safety for key economic hubs by 2020. By 2015, many major infrastructure facilities will be completed and help solve much of the aforementioned hardship, including that experienced by the seaport system.
- The highway 51 project is expected to be completed by August, 2012 and the link roads between highway 51 and Thi Vai-Cai Mep port complex will have four lanes cleared during 2011. Work on the Bien Hoa-Vung Tau expressway will start in 2012 and be completed by 2015 and the Ho Chi Minh City-Long Thanh-Dau Giay route will also be completed by 2012.
- Haiphong port is overloaded. Dinh Vu port has six wharves capable of serving 2,000-ton vessels completed and work on the remaining four is underway. The Lach Huyen port project has had its phase one completed and will commence phase two in QII 2012, to be completed by 2015. Work on Cai Lan port's wharves No. 2, 3 and 4 is well underway. To ease the burden on the northern ports system, a plan to share commodity loads with Nghi Son-Thanh Hoa port is being considered.

5. Mining

Mining Working Group - Mr. Le Minh Kha, Representative

- The MoF has increased mineral royalties and export duties, and introduced many new types of fees and charges in the same period. These changes have had a hugely adverse impact on the performance and development plans of companies in this field. Only a few recommendations from the Mining Working Group in the past few years have translated into the enactment of regulatory documents.
- As investment in mining is characterized by high risk, sizable and long-term investment, the Government needs to have clearly defined and consistent investment protective policies in place with specific roadmaps for changes in related taxation and financial policies.
- The enforcement of the new Minerals Law, including its auction process and production licensing, greatly concerns businesses. Typically, irrational changes in taxation policies have left many businesses on the verge of bankruptcy or in a state of entire or partial closedown, resulting in grave socio-economic consequences. Foreign investors are very worried about current policies deterring foreign businesses' involvement in minerals mining through the Government's financial restrictions.

- The Mining Working Group recommends that taxation policies be harmonized between a companies' capacity and budget income needs. Tax levels need to be set on a case-by-case basis for projects and on-going projects should enjoy the same tax rates as at the time an investment license is granted. In addition, companies are facing multiple challenges in applying for VAT reimbursement due to the ambiguity of related regulatory provisions. The working group wishes to consult the MoF and General Tax Administration on the above-mentioned issues in more detail.
- The export restrictions or ban on a number of minerals needs to be in-step with the development of local supporting industries for product consumption.
- For businesses to participate more effectively in the mining industry policy-making process, the Mining Working Group recommends the formation of the Mining Association of Vietnam as an independent organization that includes local and foreign mining firms operating in Vietnam.

Response by the Geology and Minerals Administration – Mr. Nguyen Van Thuan, Director

- The new Minerals Law does not discriminate between domestic and foreign mining firms. The new law contains specific provisions to allow for investment through the rights of entities and individuals permitted for exploration in Article 42 and mining in Article 55 to facilitate investors operating in minerals mining. The exploration and production rights may be transferred based on the provisions of Articles 43 and 66. Mining right auctioning specified in Article 78 is a new regulation in the Minerals Law of 2010.

Response by the Ministry of Finance – Mr. Tran Xuan Ha, Vice Minister

- Minerals are non-recycled resources and financial frameworks should encourage in-depth processing and the application of advanced technologies to improve efficiency and protect the environment.
- The new mineral royalty framework passed by the National Assembly is broader and specific tax rates are set by the National Assembly's Standing Committee without distinction between domestic and foreign investors. As the Investment Law and Tax Law do not state that tax rates to be specified in the investment license or investment certificate, tax liabilities shall be met under the prevailing rules at the time of payment. Import duty and mineral royalty rates are indirect taxes set at particular points in time, as is the case in some other countries.

6. Tourism

The Tourism Working Group – Mr. Matthew Lourey, Representative

Vietnam is known on the international tourism as a one-time destination, with extremely low return rates. The following recommendations and comments are designed to increase tourist return rates in Vietnam.

Visas

- Issues related to the granting of visas to enter Vietnam are often misinterpreted as only a question of procedures and costs. However, the psychological impact of tourists wishing to enter Vietnam having to send off their passports, come in person to Vietnamese embassies or apply for visas through an anonymous service provider, is enormous.
- A real “on-arrival visa” granting system, that allows tourists who have decided to visit Vietnam to not change their mind only because they recognize the underlying hardship of visa application, is a precondition to maintain the country's competitiveness in the region.

- The cost of a visa needs to be commensurate with the services that the revenue supports and national budget interests. Fees also need to be transparent, as does the process. There needs to be a fee schedule published and accessible to visitors so they understand what they must pay and what documents they need to provide.
- The World Bank is currently supporting the electronic visa granting initiative in Vietnam. The Tourism Working Group specifically endorses rolling out such an electronic visa system.

Destination Marketing Strategy

A destination marketing strategy is an organized approach to really launch Vietnam as a destination of choice. This includes:

- Development of a unique and identified brand name
- Selection of a market locating strategy
- Development of products/promotion activities around specific themes
- Appropriate and consistent advertising and promotion methods
- Careful protection of the built brand name.

Successful tourism nations have all introduced advertising programs with this approach such as “Malaysia – Truly Asia”, “Incredible India” and “Amazing Thailand”. These are not just symbols, taglines or commercials, but fully-fledged strategies.

Education and Training

- The local tourism industry’s lack of standards, quality and training are reasons for Vietnam being a “one-time destination” for tourists.
- Tourism service standards need to be uniform and consistent in the entire service chain, from hotels to transport and travel guiding.
- More attention should be paid to the training and development of tourist guides, with good remuneration offered to them. There is a need for better and more comprehensive minimum standards for tourist guides, focusing on testing their real competence including foreign language proficiency. Independent audit centers need to be developed to evaluate tourist guides’ capabilities.

Tourism Advisory Board

In November, 2009, the Tourism Working Group submitted a proposal of the formation of a Tourism Advisory Board. The PPP approach recommended in the above proposal allows the Government, Vietnam National Administration of Tourism (VNAT) and companies operating in the tourism industry to participate directly in industry development policies where the interests of all stakeholders are guaranteed.

Response by VNAT – Ms. Hoang Thi Diep, Vice Director

- We agree with the Tourism Working Group that the removal of the white card for foreign tourists, while being a good idea, has caused emerging problems, including the deprivation of information that serves immigration authorities’ statistical and analytical purposes and allows the VNAT to direct the industry’s development.
- We welcome the Tourism Working Group’s comments on visa granting to reduce inconveniences in the visa granting process. However, it will be an uphill task to make the process smoother.

- The tourism industry's allocated budget is insufficient for a destination marketing and promotion campaign. VNAT expects contributions and inputs from the Tourism Working Group and propose the Ministry of Planning and Investment and MoF increase advertising and promotion budget lines.
- Tourism industry human resources training remains insufficient. VNAT is currently adopting the issuance of magnetic cards to tourist guides as part of its efforts to standardize this part of the workforce.
- The formulation of a Tourism Advisory Board has been submitted by VNAT to the Ministry of Culture, Sport and Tourism and is awaiting approval.

Closing Remarks

Mr. Vo Hong Phuc, Minister of Planning and Investment

The discussions in this Forum are all vital to the development of Vietnam's economy. Government representatives have responded to the working groups in multiple areas, including those representing the banking, capital market, manufacturing and distribution, seaport, mining and tourism sectors. Contributions to the regulatory system are welcomed as always by the Government to help improve Vietnam's market economy mechanism. With regards to the mining sector, the new Minerals Law is developed based on a perspective that minerals are property of the Vietnamese people and thus contains many new policies unique to Vietnam.

On behalf of the Government, the Minister thanked the business community, individual participants and organizations for their constructive contributions.