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Economic law reform in Vietnam

Before and after WTO accession

Dr. Nguyen Thi Anh Van

Nagoya University
Center for Asian Legal Exchange

ECONOMIC LAW REFORM IN VIETNAM : BEFORE AND AFTER WTO ACCESSION

Dr. *Nguyen Thi Anh Van*

Hanoi Law University, Vietnam

Contents

INTRODUCTION

The last decade witnessed Vietnam's efforts to become a WTO member through a range of legal, economic and administrative reform. Since accession into the WTO, Vietnam has continued its reforms with the aim of implementing its international commitments and creating a better business environment and level playing field for Vietnamese and foreign businesses. This paper discusses part of such an ongoing reforms - economic law reform[1] - in Vietnam before and after obtaining WTO membership. The first section briefly introduces the WTO accession process that Vietnam had gone through. The second section comments on various laws and regulations concerning the economy, such as taxes, banking, investment, corporations, securities and competition. The next section is a short note on the dispute resolution mechanisms in Vietnam. This discussion and commentary on the above-mentioned areas of laws and regulations aims to provide foreign readers with an overview of economic law reform in Vietnam before and after the country's accession into the WTO.

I. VIETNAM'S WTO ACCESSION PROCESS IN BRIEF

Vietnam's WTO accession process is relatively long and can be divided into three phases: the application phase; the negotiation phase; and the admission and ratification phase.

In practice, phase-one, the application phase, commenced on November 11, 1994, when the Politburo entrusted the Vietnamese Government with the task of complying with all necessary formalities in order to enter into to the World

[1] The term "economic law" in the Vietnamese legal system embraces a broad range of laws and regulations regardless of their private or public nature. Those laws and regulations include: commercial law (in a narrow sense, governing commercial transactions such as: sale and purchase of commodities, provision of services between businesspeople), investment law, enterprises law, banking law, securities regulations, competitive law, public financial law (e.g. tax law and state budget law), labor law, land law, and even environment law. This paper will not cover all such areas of economic law rather it concentrates on the discussion of some specific areas within economic law.

Trade Organization (WTO).[2] By the time the birth of the WTO was announced in January 1995, the Government of Vietnam had formally applied for WTO accession.

The WTO General Council established a Working Party at a meeting held on January 31, 1995, to examine the application made by the Government of the Socialist Republic of Vietnam to accede into the WTO under Article XII of the Marrakesh Agreement.

Phase two, the negotiation process, had been conducted in order to achieve two goals. The first was to clarify trade policy and the second was to open Vietnam's market to other WTO members. To achieve these goals, numerous discussions were carried out from 1996 to 2001, to clarify the country's trade policies. Vietnamese representatives had to respond to several thousand questions concerning commercial, economic and investment policies that were raised by the members of the Working Party.

In August 2001, Vietnam officially posed an Initial Offer of Goods and Services in order to enter into a period of negotiation to open the market for country members of the Working Party. Since that date, two types of negotiation - bilateral and multilateral talks - have been carried out. The former was conducted between Vietnam and WTO members to reach better tax and tariff treatments. Bilateral talks with 28 WTO member countries, who requested to negotiate with Vietnam, eventually came to a successful end. On May 31, 2006, the Vietnam and U.S. representatives brought Vietnam's accession to the WTO agreements to a formal conclusion as well. The latter was done to ensure that Vietnam would have policies that would be more transparent and it would be able to enter into macro-economic policy commitments. By October 2006, Vietnam had finalized the remaining pending multilateral deals with a number of WTO members enabling it to complete the negotiation process for Vietnam's WTO accession. By the same time, Vietnam

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[2] See *Official Dispatch No. 1015/CV/VPTW,* dated November 22, 1994.

had also prepared all necessary documentation for WTO Special General Meeting that was held on November 11, 2006.

Phase three - the admission and ratification phase - started in early November 2006. From November 5 - 9, a Vietnamese governmental delegation headed by the Deputy-Prime Minister, also the Foreign Minister Pham Gia Khiem, attended a Ceremony for Vietnam's WTO accession in Geneva, Switzerland. The delegation also participated in a number of foreign relations activities over those five days. On November 7, 2006, the WTO's General Council approved Vietnam's membership.

In its second session held in late 2006, the Vietnam National Assembly approved the Agreement for Vietnam's WTO accession. On December 12, 2006, Vietnam informed the WTO about the Vietnam National Assembly's ratification of its membership agreement. Accordingly, Vietnam became the WTO's 150th member on January 11, 2007.

The negotiation process took more than 11 years with over 200 bilateral and multilateral talks. In comparison to other WTO applicants, the process for Vietnam was the most time-consuming.[3]

II. MAJOR ECONOMIC LAW DEVELOPMENTS IN VIETNAM BEFORE AND AFTER WTO ACCESSION

In the field of economic law, since the date Vietnam applied for WTO membership in 1995, successive reforms have been carried out with taxation law, banking law, enterprise law, investment law, securities law, competitive law and so on. After becoming the 150th WTO member, Vietnam continued displaying its efforts through ongoing economic law reforms to create a more favorable business environment, in line with international commitments.

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[3] For example, it took Vietnam only two years to become a member of ASEAN (1993 - 1995) and APEC (1996 -1998), and four years to conclude the US-Vietnam Bilateral Trade Agreement (1997 - 2001).

1. Taxation Law Reform

Taxation law reform was commenced in 1990, almost five years preceding the year that Vietnam applied for WTO accession. The 1990 taxation law reforms, for the first time, created a unified taxation law system that applied to both state-owned and non-state owned economic sectors.

After applying for WTO membership, the Vietnamese Government took further steps to modernize the taxation system through the passage of the Corporate Income Taxation Law (1997), the Value-Added Taxation Law (1997) and the Excise Taxation Law (1998). These replaced the Profit Taxation Law, the Gross Receipt Taxation Law (or Turnover Tax Law) and the old Excise Taxation Law of 1990, respectively.

By the end of the 20^{th} century, revision of other taxes had also been carried out. For example: the High Income Earners Tax was revised five times, in 1992, 1993, 1994, 1997 and 1999; Import and Export Duties were revised twice, in 1993 and 1998; Tax on the Transfer of Land Use Rights was revised in 1999.

In the new millennium, the Corporate Income Taxation Law and the Law on Import and Export Duties, were again replaced in 2004 and 2006 by the Corporate Income Taxation Law of 2003 and the Law on Import and Export Duties of 2005, respectively. Shortly after obtaining WTO membership, however, the National Assembly, once again, approved two new income taxes levied on individuals and corporations, namely the Law on Personal Income Tax of 2007, and the Law on Corporate Income Tax of 2008. Both Laws were scheduled to come into force on January 1, 2009.

1.1. Corporate income tax

The Corporate Income Taxation Law of 2003 was adopted with a non-discriminatory common tax rate of 28% applied to both domestic and foreign invested enterprises. The Law abolished a statutory provision imposing additional corporate income tax on domestic enterprises; and revoked provision on profit repatriation. Consequently, foreign-invested enterprises are now subject to a higher corporate income tax rate of 28% (compared with 25% under the old Law) but they no longer have to pay tax on profit remitted abroad.

The tax rates range from 28% to 50% and apply to taxable income of enterprises whose businesses are carried out in specific areas including search, exploration and exploitation of oil, gas and rare natural resources. The Prime Minister shall decide the rate applying to an individual case.

The Law adopted a uniform set of criteria for entitlement to tax incentives, applying to both domestic and foreign-invested enterprises that are established in business sectors, or located in geographic areas requiring investment promotion. There are three preferential tax rates of 10%, 15% and 20% that apply to newly established enterprises that meet statutory criteria. Tax holidays of up to 4 years and tax reduction up to 9 years can be enjoyed by domestic and foreign-invested enterprises that the government wishes encourage.

The 2003 Corporate Income Tax Law, firstly, created a level playground for domestic and foreign-invested enterprises and a more attractive business environment to businesses, recently however, it has revealed weaknesses. The tax rate of 28%, was thought reasonable at at the time the 2003 Law had been newly passed. However, the rate became less attractive to foreign investors and less competitive when compared with rates adopted in other countries in the region where one can see a tendency of reducing corporate income tax rates.[4] Furthermore, the tax base (including taxable income, deductible and non-deductible expenses) were found to be unclear and not in conformity with international practice.[5] These were among the reasons that caused the 2003 Law to be considered no longer appropriate for current

[4] For example, countries like Brunei, Malaysia, China, Singapore and Hong Kong adopted corporate income tax rate at 27.5%, 27%, 25%, 18%, and 16.5%, respectively. For further information, see Syed Rory Malai Hassan, Bandar Seri Begawan, *"Government's move to lower Corporate Income Tax lauded"*, The Brunei Times, March 10, 2008, http://www.bt.com.bn/.

[5] See: Government of Vietnam, *"Proposal on Corporate Income Tax Law"*, Proposal No. 35/TTr-CP, debated at the 3rd Session of the 12th National Assembly held in May 2008, at 5.

socio-economic circumstances. Thus in May 2008, the National Assembly passed a new Law on Corporate Income Tax which took effect on January 1, 2009 (the 2008 Law).

The 2008 Law offers lower tax rates compared with those under the 2003 Law by reducing the common tax rate that appliesto domestic and foreign-invested enterprises, from 28% to 25%. Enterprises doing business in some specific areas such as exploitation of oil and rare natural resources shall enjoy tax rates ranging from 32 – 50% compared with 28 – 50% under the 2003 Law. The 2008 Law revokes a preferential tax rate of 15% under the 2003 Law, and accordingly, from January 1, 2009, there will be two preferred rates: 10% and 20%, enjoyed by enterprises that meet statutory criteria.

1.2. Personal Income Tax

The Ordinance on Income tax for High Income Earners was first enacted in 1991. Since that date, there have been successive revisions , the most recent being approved on March 24, 2004.

The revised Ordinance adopts two taxation principles, namely resident and nationality. The tax rates were adopted on a less discriminatory basis compared with the old regime. The gap between the tax rates applied to Vietnamese and resident foreigners and Vietnamese expatriates working abroad (worldwide income) has also been narrowed. Vietnamese and resident foreigners are subject to the same progressive tax rates ranging from 0% to 40%, but to a different taxable income threshold. The monthly taxable income threshold for Vietnamese residents, although having been raised to VND 5 million, is still much lower than that applied to resident foreigners (VND 8 million).[6]

Progressive tariffs for regular income of Vietnamese residents and foreign expatriates in Vietnam:

[6] This threshold remained intact since June 30, 1999.

Level	Monthly Income/Person (VND)	Tax Rate (%)
1	Up to 5.000.000	0
2	5.000.000 to 15.000.000	10
3	15.000.000 to 25.000.000	20
4	25.000.000 to 40.000.000	30
5	More than 40.000.000	40

As for singers; circus performers, dancers, foot ballplayers; and other professional athletes, 25% of their income can be deducted before calculating taxable income.

Progressive tariffs for regular income of resident foreigners and Vietnamese expatriates working abroad:

Level	Monthly Income/Person (VND)	Tax Rate (%)
1	Up to 8.000.000	0
2	8.000.000 to 20.000.000	10
3	20.000.000 to 50.000.000	20
4	50.000.000 to 80.000.000	30
5	More than 80.000.000	40

Total incomes of foreigners that are deemed as not being resident in Vietnam (the total length of stay in Vietnam is less than 183 days/a year) are taxable at a unified rate of 25%.

In November 2007, a new Law on Personal Income Tax was passed to replace the current Ordinance on Income Tax for High Income Earners from January 1st, 2009. Under the new Law, taxpayers fall into two groups: residents (being in Vietnam for 183 days or more over a 12 month period) and non residents (being in Vietnam less than 183 days over a 12 month period). The new Law will not automatically consider all Vietnamese nationals as residents as the current Ordinance does. Accordingly, Vietnamese nationals working abroad will no longer be taxed as residents.

The new Law seems more equal and fairer since it eliminates the discrimination in income tax payment between Vietnamese and resident foreigners. They will both be subject to the same taxable income threshold at four million *dong* and will be eligible to a deduction of 1.6 million *dong* per dependent. A dual rate system applied to Vietnamese and resident foreigners so that foreigners will be subject to lower taxes (tax rates vary from 5% to 35%) but lower minimum taxable income means many more resident foreigners will have to pay personal income tax when the Law becomes effective. Therefore, the new Law, after taking effect, will encourage foreign firms to recruit Vietnamese into key positions whilst the current Ordinance provides a greater incentive to recruit foreigners as firms pay less personal income tax for foreigners than Vietnamese recruited for the same position.

1.3. Import-Export Duties

The international integration process has had certain effects on Vietnam's Import-Export Duties. In July 1995, Vietnam became a member of ASEAN and has since commenced reducing import tax rates between January 1, 1996 and January 1, 2006 with the final tax rates ranging from 0% - 5%. It is expected that by 2015, import tax rates will be eliminated for commodities imported from ASEAN countries.

Vietnam became a member of APEC in 1998 (Asia Pacific Economic Community) and advanced a national activities program in order to implement trade liberalization by 2020 with import tax rate of 0%.

In July 2000, the US-Vietnam Trade Agreement was concluded, committing Vietnam to reduce tax imposed on a number of imported commodities.

After becoming a WTO member, Vietnam will be subject to further commitments concerning the reducing of import tax rates, and the amending of some other taxes in conformity with WTO's rules.

In order to fulfill international commitments, Vietnam must continue reducing indirect tax rates, among which, Import-Export tax rates require the greatest number of amendments. Meanwhile, the old law and its revised version no longer met newly emerging circumstances: Its provisions were no longer in conformity with the international agreements that Vietnam entered into during its integration into the international community; the provisions no longer met the requirements of state administration over activities such as anti-commercial frauds, anti-loss of state budget revenue; they conflicted with the Customs Law and no longer met the requirements of administrative reform concerning taxation and customs. Thus in 2005, the National Assembly passed the new Import-Export Duties Law (the 2005 Law).

Most of the statutory provisions embraced in the *Law on Import-Export Duties* of 1991 and in the *Revised Law* of 1993 and the *Revised Law* of 1998 were altered under the 2005 Law. This means that significant developments were implemented in the new Law in comparison with the old laws. While drafting the new Law, the law-makers paid sufficient attention to ensure the transparency required by WTO principles and other international agreements, enabling Vietnam to negotiate in order to get admitted to the WTO.[7] To achieve this, a new provision on Price for tax calculation was adopted. Under Article 7 (sub-art. 2) of the 1991 Law: the price of imported commodities for tax calculation is the purchased price presented at the border gate for customs clearance, including the transportation fee and insurance policy under relevant contracts. In cases where a commodity is imported in a special way or the contracted price is too low compared with the actual purchase price, then the price for tax calculation would be the price decided by the government (minimum price).

Since mid 2002, under the old Law, the practice of calculating the price of imported commodities for tax has not been applied, rather the price has been determined in conformity with Decree No. 60/2002/ND-CP dated June 06, 2002.[8] Under this Decree, such a price is the trading price, which is also

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[7] See Articles: 8, 9. 11, and 12.

[8] This Decree promulgated the *Regulation of Assessable Price of Imported Commodities Inconformity with Principles of GATT* (General Agreement of Trade and Tariff).

understood as the actual price the importer had to pay after adding and deducting a number of expenses as provided in Article 11 *Decree 60/2002*.

In order to meet WTO transparency requirements, the new Law on Import-Export Duties adopts a new statutory provision concerning the price for tax calculation in conformity with Article VII of GATT.[9] Accordingly, the price of an imported commodity for tax calculation is the amount actually paid for the commodity arrived at the first imported border gate.[10] Such a price shall be calculated in conformity with Vietnam's commitments found in international agreements.

The new law adopts two methods for tax calculation. The old method, based on percentage tax rates, remains intact. In order to introduce a new tax calculation method, the new Law adopts a fixed tax rate system concurrently with a system of percentage tax rates. Under the new method, tax will not be calculated based on percentage tax rates but rather on fixed tax rates applied to an individual unit of commodities.[11] Fixed tax rates were designed to apply to commodities that trigger fraudulent assessable prices. So the new tax assessment method is expected to eliminate fraud in the course of paying and collecting import-export duties.

The new Law also adopts new provisions that promote export activities and at the same time reduce legal loopholes that could be used for the purpose of tax evasion and unpaid tax.[12] For example: the new Law lengthens the tax-payment term from 15 days (under the old law) to 30 days with respect to export commodities; and unifies tax holidays for domestic and overseas investment.

Apart from those new provisions, the new Law on Import-Export Duties also embraces provisions that ensure the unity required for

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[9] See Sub-article 2 Article 9, the Law on Import-Export Duties of 2005.
[10] Ibid, Article 9.
[11] See Point b of Sub-article 2 of Article 8.
[12] See Articles 15 – 18.

administrative reform in taxation and customs areas.[13] For instance: provision concerning tax refunds, and tax-refund obligations and terms; provisions concerning treatment for failures in paying import-export taxes; and provisions on duties of relevant authorities in charge of import-export duties administration.

2. Banking Law Reform

In 1990, two ordinances on banks were passed. For the first time, other economic sectors rather than state-owned sector were able to conduct banking business. After applying for WTO membership, further achievements were made regarding banking laws. In order to strengthen monetary policy and to enhance the efficiency of credit institutions, in 1997, the National Assembly passed the Law on the State Bank of Vietnam and the Law on Credit Institutions.

The Law on the State Bank of Vietnam spells out the goals of monetary policy that should be achieved. Such goals include: stabilizing the value of currency (the Vietnamese *Dong*); curbing inflation; promoting socio-economic development; consolidating national defense and fostering better living standards.[14]

In order to attain such goals, a number of monetary policy instruments have been used by the State Bank of Vietnam such as: refinancing, interest rates, exchange rates, mandatory reserve; open market operations.[15] It can be said that since the date of effectiveness of the *Law on State Bank of Vietnam*, the mechanisms to adjust interest rates have steadily improved towards market economy mechanisms. Instead of announcing the ceiling and floor interest rates, the State Bank provides basic interest rates, based on which credit institutions

[13] See Articles: 12, 13, 19, 20, and 25 – 28.
[14] See *The Law on State Bank of Vietnam*, Article 2.
[15] Ibid. Article 16.

decide borrowing and lending interest rates in order to ensure their safety and soundness.[16]

Along with liberalization of interest rates, exchange rates have also been adjusted, based on the supply and demand of foreign currency in the monetary market. Credit institutions may decide the rates at the counters on their own initiative, relying on the average exchange rates announced by the State Bank in the inter-bank foreign currency market.[17] In other words, the State Bank no longer fixes lending or borrowing interest rates and exchange rates but merely influences those rates using the monetary market and other monetary policy instruments.

The Law on Credit Institutions has also brought significant changes to the credit institutions system and the banking services. Under the new Law, credit institutions fall into two classes: banks and non-banking institutions and the forms of credit institutions have been diversified to include: development banks, investment banks, policies banks, cooperative banks and financial leasing companies.[18] Foreign credit institutions can operate in Vietnam in the form of a banking institution, such as: a joint-venture bank, a 100% foreign-owned bank, a representative office, or a foreign bank branch. Foreign credit institutions may also operate in Vietnam in the form of a non-banking credit institution such as: a joint-venture finance company, a 100% foreign invested-financial company, a joint-venture financial leasing company, or a 100% foreign-invested financial leasing company. The contribution of the foreign party in a joint-venture commercial bank shall not exceed 50% of the bank's registered capital and that amount in a joint-venture non-banking credit institution shall not be less than 30% of the institution's registered capital.[19]

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16 See *Decision No 241/2000/QĐ-NHNN1* dated August 2, 2000 on Changes of Adjusting Mechanism of Lending Interest Rates.

17 See *Decision No 64/1999/QĐ-NHNN7* dated February 25, 1999 on Announcement of the State Bank on Exchange Rate of Foreign Currencies.

18 See Article 20.

19 See the *Law on Credit Institutions*, Article 12; see also *Decree No.22/2006/ND-CP* dated February 28, 2006, Articles: 3 and 46…

Except for a foreign bank branch, all other foreign-invested credit institutions are subject to the same minimum capital requirements as their domestic counterparts.[20]

Banking services have also been broadened. The Law on Credit Institutions adopted a number of services that were unknown under the old law (for example: financial lease, banking guarantee, trust, agency, insurance and discounting papers that can be valued in cash.)[21]

In addition, a number of measures have been employed to enhance the efficiency of banking business. Firstly, shareholding credit institutions have been required to implement an internal audit system and a supervisory board in charge of conducting periodic internal audits and of overseeing their own financial and accounting activities. Secondly, policy lending have been separated from commercial credit activities and entrusted to the Social Policy Bank. [22] Thirdly,the financial capability of state-owned banks has been strengthened. Two state-owned banks have been equitized on an experimental basis, namely the Bank for Foreign Trade of Vietnam (Vietcombank) and the Bank for Cuu Long Delta Housing Development.[23] The equitization process of the two banks has been accomplished in two phases. In the first phase (2006), the banks offered not more than 30% of its charter capital to the public. In the second phase (from 2007 to 2010), the banks shall continue to offer shares to the public, providing that the government shall be a 51% stakeholder of each bank. Total shares held by foreign investors shall not exceed 30% of charter capital of the bank.

Finally, a risk management mechanism has been applied to credit institutions.[24] Debts have been classified into five categories: (1) qualified debt

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[20] See *Decree No. 141/2006/ND-CP* dated November 22, 2006.
[21] See Article 57, 58, 61, 72, 74, 75 and 76.
[22] This Bank was established under *Decision No. 131/2002/QD-TTg* dated 4 October 2002.
[23] See *Decision No. 230/2005/QD-TTg* dated 21 Sep. 2005 and *Decision No. 266/2005/QD-TTg* dated 27 Oct. 2005.
[24] See *Decision No. 493/2005 QD-NHNN* dated 22 April 2005 on Debt Classification, Reserve Funds for Credit Risk Resolution in Banking Activities of Credit Institutions.

(having provisioning ratio of 0%); (2) debt requiring attention (having provisioning ratio of 5%); (3) below-standard debt (having provisioning ratio of 20%); (4) doubted debt (having provisioning ratio of 50%); and (5) possibly lost debt (having provisioning ratio of 100%).[25] Credit institutions having bad debts (one of the last three types of debts) shall be subject to provisioning ratios of 20%, 50% and 100% of each debt, respectively.[26] Credit institutions can use provisioning sources to write off debts or enter them under off-balance sheet items in the case of their borrowers going bankrupt or being dissolved, going missing or dying. Credit institutions have to regularly check debt collection and restructure their bad debts.

In comparison with the old regime, the *Law on Credit Institutions* and its guiding legal normative documents: creates more opportunities for credit institutions in conducting banking business regardless of their ownership; widens business environment for credit institutions; and pays more attention to the safety and soundness of the banking business.

3. Enterprise Law

Enterprise law reform has been carried out since the late 1990s by the passage of the Enterprise Law of 1999, which superseded the Companies Law of 1990 and the Private Enterprises Law of 1990. The 1999 Law came into force in January 1, 2000 and was deemed an important success of the reform. The Law adopted a number of advanced provisions found in company laws of developed countries. However, after the Law come into existence, enterprises in Vietnam continued operating under different legislations: the Enterprises Law of 1999 governed privately-owned enterprises; the State-owned Enterprises Law governed state-owned enterprises; and the Law on Foreign Investment in Vietnam governed foreign-invested enterprises.

[25] Five categories debts are": (1) "qualified debt", (2) "Debt requiring attention", (3) "Below-standard Debts", (4) "Doubted Debts", (5) "Possibly Lost Debts".

[26] See Point 6.2 of Sub-article 6 of Article 7, *Decision No. 493/2005/QD-NHNN*.

In order to unify statutory provisions governing enterprises that belong to different economic sectors, operating in Vietnam, in 2005, the National Assembly passed a new Enterprises Law to replace the 1999 Enterprises Law, the 2003 State-owned Enterprises Law and statutory provisions concerning the management and operation of foreign-invested enterprises found in the 1996 Foreign Investment Law in Vietnam and the Revised Law on Foreign Investment in Vietnam of 2000.

The new Enterprises Law became effective on July 1, 2006, and reflected a non-discrimination policy between domestic and foreign invested enterprises. Domestic and foreign legal persons and individuals in Vietnam are entitled to establish enterprises under one of the following four forms: limited liability companies, shareholding companies, partnerships, and sole proprietorships.

Subject to the business form, the company founders shall file the relevant set of business applications to a Business Registration Office at the provincial or district level. Within 10 days from the date of receipt of the application, the Office shall issue a business certificate. In the case of refusal, the Office shall give a written notice to the applicant. The procedure has been considerably simplified when compared with that under the Company Law of 1999, and the length of time for issuing business certificate has been shorten from 15 days under the Enterprises Law of 1999 to 10 days under the current Law.

Enterprises operating in some specific areas such as banking, insurance and securities will be subject to the requirement of a business license before starting their business. To obtain a business license they are required to meet a number of statutory conditions including: minimum capital requirement, professional license, and professions reserved for partnership.

4. Investment Law

In 2005 the Investment Law was passed to supersede the Foreign Investment Law in Vietnam of 1996, its Revised Law of 2000 and the Domestic Investment Promotion Law. Accordingly, from July 1, 2006, foreign and domestic investors are governed by the same statutory provisions.

The new Investment Law guarantees investors' autonomy in doing business. Foreign investors are free to select the sectors they desire to invest in, the form of investment, capital-raising methods, the geographical location and scale of investment, investment partners and the duration of investment in accordance with Vietnam's laws and commitments under the international treaties.

Direct and indirect investments are two ways that investors can choose to do business. Direct investment can be done in the following six forms: (1) 100% foreign or domestic owned enterprises; (2) joint – venture between domestic and foreign investors; (3) business cooperation contracts (BBC), build-operate and transfer contracts (BOT), build - transfer and operate contract (BTO), and build and transfer contracts (BT); (4) investment for business development; (5) purchase of shares or capital subscription with a view to govern an investment project; (6) investments for company merger and acquisition. Direct investments can be carried out in the following three forms: (1) purchase of shares, bonds, and other papers that can be valued in cash; (2) investment by setting up an investment company or investment fund; (3) investment by establishing other financial intermediaries.

The Law also guarantees investors equal access to sources of capital, foreign exchange, land and natural resources, legal instruments and data on the national economy, investment opportunities and ensures investors' rights to lodge claims, make denunciations or initiate legal proceedings.

Furthermore, the Law eliminates all discrimination in terms of prices and charges applied to foreign investors. Investment incentives are applied equally to domestic and foreign investors, who have investment projects carried out in industrial zones, export processing zones, high-tech zones, and economic zones. Such incentives include: tax incentives, loss carried forward, accelerated depreciation of immovable assets, preferred land use rights and other favorable treatments.

All such things clearly reflect a non-discriminatory policy Vietnam government has pursued on the way to accede the WTO.

In addition, investors enjoy better protection under the Law. Their properties are protected from nationalization and confiscation. A principle of non-retroactivity in the case of changes in policies is also adopted under the Law. According to such a principle, if the laws are amended and new laws are likely to put investors in a disadvantageous position compared with that under the existing laws or under the investment license, investors will be eligible for investment incentives as provided for by the old law or in their investment licenses (investment certificate, under new law). Foreign-invested enterprises are entitled to choose to either re-register under the new Law and to operate under such a law or to continue enjoying incentives found in their investment license. Enterprises that do not re-register under the new Law would be operating within the scope of business license and their own charter.

Investment has partly been liberalized under the new law. The Law does not require all investment projects to be registered before the commencement date. Domestic investment projects whose values are less than VND 15 billion and are not included in the list of conditional investment sectors, are not subject to registration requirements under the Investment Law. However, investment registration at a provincial investment administration office is required for: (1) domestic investment projects whose values range from VND 15 billion to less than VND 300 billion and are not included in the list of conditional investment sectors (no certificate delivered); (2) foreign investment projects whose values are less than VND 300 billion and not included in the list of conditional investment sectors; investment certificate must be obtained.

Investment evaluation followed by investment registration are required for two types of projects: (1) Domestic and foreign investment projects whose values reach VND 300 billion; and (2) Projects that fall into conditional sectors. The evaluation process shall not exceed 30 days from the date of receipt of eligible investment application.

Different authorities are in charge of granting an investment certificate. The Prime Minister shall grant investment certificate to conditional investment projects and projects whose values reach VND 300 billion or more. A Provincial People's committee shall grant such a certificate to unconditional projects whose values range from VND 15 billion to less than 300 billion. Depending on the investment sectors a project falls into, on the scale of the investment projects, and on the geographic areas the projects will be implemented in, the project shall obtain an investment certificate from the Management Board of an industrial zone, or an export-processing zone, or a high-tech zone, or a special economic zone.

An investment certificate shall be issued within 15 days from the date of receipt of eligible investment application. The procedure to obtain investment certificates, namely "one-stop service for investment certificate", has been simplified compared with that under the old law. Previously, investors were required to run to different state authorities in order to get the investment license issued.

5. Securities Law

Securities regulations were revised several times since the first regulation, *Decree 48/1998* was introduced in 1998. In 2006, for the first time, a *Securities Law* was passed by the National Assembly and entered into force on January 1, 2007.

There are a number of new provisions adopted under the Law. The following are the most notable provisions. Firstly, discrimination between foreign and domestic investors has been eliminated under the Securities Law of

2006. The Law adopts no provision to specifically regulate foreign investors in the securities market. The law – makers left such investors to be governed by governmental regulations issued before the effective date of the Law. Therefore, some limitations on the equity capital held by foreign investors still can be found under *Decree 238/2005/QD-TTg*. Pursuant to the Decree, the maximum holdings of foreign investors has been increased to 49% of outstanding shares of a listed company/a listed investment fund (compared with 20% of outstanding shares and 40% of outstanding bonds under the old regime). There is no ceiling on the foreigners' holdings of corporate bonds issued by an issuer. A foreign securities company can maximally hold 49% of the equity capital of a joint-venture conducting business in the area of securities (in contrast to 30% under the old regime).

It is worth noting that the ratio of equity capital of a shareholding bank held by foreign investors is much lower than that held by foreign investors in a joint-venture securities company. Total equity capital held by foreign investors in a shareholding bank shall not exceed 30% of the bank's charter capital.

Secondly, information disclosure regulation and anti-fraud provisions have been strengthened under the Securities Law, which promotes a transparent and fair market.

Four types of information disclosure are clearly provided for in the Law, namely: (1) initial public offering disclosure; (2) periodic disclosure; (3) immediate disclosure; and (4) disclosure at a request of the State Securities Commission or a securities trading center. The discrepancies between different legal normative documents concerning information disclosure were thus eliminated. Types of information and content of financial statement have clearly been provided for under the new *Securities Law* and *Accounting Law*.

Prohibited activities in the securities market that are adopted in the Law are in line with international practices and include: misinformation, omission of material information, insider trading and market manipulation.

Short sales and margin trading are no longer prohibited under the Law and can be done within certain statutory limitations.

6. Competitive Law

On December 3, 2004, for the first time, Vietnam adopted a Competitive Law. The Law came into force in July 2005 and has been equally applied to all types of enterprises regardless of their ownership and their business forms. All enterprises have freedom to compete and they have the right to business competition. The Law gives wholly-owned and partly-owned state enterprises no competitive privileges over non-state-owned enterprises.

Prohibited activities under the Law included: anti-competitive acts, unfair competition, and Government Agencies' actions to: (1) force enterprises or individuals to buy or sale of goods or to provide services to designated enterprises or individuals, or (2) discriminate between enterprises, or (3) force enterprises to align with one another in order to precluding others from competing on market, or (4) prevent lawful business activities of enterprises or of trade associations. Anti-competitive acts prohibited under the Law included: anti-competitive agreements, abuse or dominant and monopoly position, and economic concentration. Unfair competition acts prohibited under the Law are: misleading information, infringement of business secrets, coercion in business, defamation of other enterprises, and disruption of business activities of other enterprises.

7. Disputes resolution

Disputes can be handled in one of the following four ways: negotiation, mediation, arbitration and judicial trial.

To date, Vietnam has no concrete statutory provision concerning negotiation. Hence, parties who choose negotiation as a way of solving their conflicts have mainly relied on traditional methods. That is the disputed parties themselves meet together to negotiate and agree on a solution.

Mediation occurs when negotiation fails or when disputed parties do not choose negotiation to solve their conflict. They then look for a third party to help them to reach an agreed solution. Vietnam does not yet have a unique statutory normative document governing mediation.

Disputes can be brought before the Commercial Arbitrator under the *Ordinance on Commercial Arbitration* of 2003 if such disputes are deemed commercial disputes. A dispute is eligible to bring to the Commercial Arbitrator if it meets three criteria: (1) disputed parties are either organization or individual having a registered business certificate; (2) disputed activity must fall within those listed in Sub-article 3 of Article 2 of the *Ordinance on Commercial Arbitration*; (3) Before or after the occurrence of the dispute, the two parties must agree to use arbitration to solve the problem.

The disputed parties are entitled to choose either the Arbitration Center or an arbitration body set up by the parties themselves to handle the dispute (hereinafter, the Center/body). However, the disputed parties are statutorily encouraged to use mediation during the arbitrating process. If the mediation is successful and the Center/body is requested by the disputed parties, the Center/body shall suspend the arbitration process. Where the disputed parties request for mediation from the Center/body and where the mediation is successful, then the Center/body will issue a successfully mediating decision which is a final judgment, binding the parties.

If the parties do not agree with the decision of the Center/body, they can bring their dispute before the court. In the past, the Vietnam had different procedures to settle civil, economic and labor cases under the *Ordinance on Civil Procedure*, the *Ordinance on Economic Procedure* and the *Ordinance on Labor Procedure*, respectively. However, in many circumstances, it is difficult to distinguish the sophisticated nature of the disputes to define which categories (civil or economic or labor cases) they fall into in order to use an appropriate procedure for trial. The *Civil Procedure Code* of 2004 has done away with such a problem. Accordingly, all the above-mentioned disputes can now be settled by a unique procedure in the court.[27]

The time limit for initiating a lawsuit to resolve a case in a court is two years from the date of infringement of the lawful right and benefits of a party. Judgments of original courts are legally effective if not appealed within 15 days from the date of announcement of a court's judgment or from the date when a copy of the judgment had been delivered to the parties (in case of absence of the concerned parties at the hearing). Within the time limit for appeal, all parties are entitled to appeal against the original court's judgment at the higher court for a second instance trial. The appeal court's judgment will become legally effective upon being announced.

Under the current laws, all companies either from state-owned sector, state-controlled sector or privately owned sector can receive an impartial trial. A number of statutory principles have been laid down to ensure impartial hearings, such as: principle of equality of rights and obligations in civil procedure of all agencies and organizations, regardless of their form of organization or ownership;[28] principle of judicial independence…[29] Judges and People's jurors are not allowed to adjudicate if they are found to be prejudiced in fulfilling their tasks and authority.[30] Judges and People's jurors can be changed to ensure impartial hearings.[31] Such a change can be requested by a

[27] Administrative cases are handled by administrative courts in conformity with administrative procedure provided for in the *Ordinance on Procedure for the Settlement of Administrative Cases* and its *Revised Ordinance* of 2006. The Ordinance allows the parties involved in an administrative dispute to bring the dispute before the court if the settlement of the dispute through administrative proceeding s has been unsatisfactory. The Ordinance provides for detailed and more transparent regulations on the procedures for settlement of administrative cases in order to create more favorable conditions for complainants.
All administrative decisions on WTO related matters (complaints against administrative actions concerning domestic and international trade in goods; and such actions in the sector of State management of intellectual property and technology transfers) could be challenged in administrative courts. The right of administrative complaints is stipulated for in the *Law on Complaints and Denunciations* and its *Revised Law* of 2005.

[28] See Article 8, *Civil Procedure Code* of 2004.

[29] Ibid, Article 12, see also *Ordinance on Judges and People's Jurors*.

[30] Ibid, Article 16.

[31] Ibid, Article 47.

disputed party if the party has evidence showing that the judges/people's jurors are not impartial.[32]

Effective court judgments have to be respected and implemented by relevant individuals and organizations. A party to the dispute is entitled to ask the judgment execution authority to issue a writ of judgment execution if the other party has not voluntarily implement the judgment. In such a case, some mandatory measures against the latter party can be applied under the *Ordinance on Civil Judgment Execution*; or such a party can be criminally prosecuted pursuant to the *Criminal Code*.

It can be said that a mechanism for dispute resolution and enforcement of court judgments is adopted in line with international practices and with WTO principles. All has been carried out to achieve a fair competitive environment in Vietnam and therefore, hopefully, step by step enhancing the confidence of investors.

CONCLUSION

Economic law reform in Vietnam has continued even after Vietnam became WTO's 150th member. This is evidence that Vietnam is strongly determined in revise its laws and regulations with a view to comply with WTO commitments and to attract foreign investment in Vietnam. Trade liberalization and foreign as well as domestic investment promotion are key goals that Vietnam needs to achieve to foster national economic development. For the time being, Vietnam continues to work towards completing the drafting of two banking bills (one governs credit institutions, and the other governs the State Bank of Vietnam) and to revise a number of laws concerning taxes and the securities market in order to bring the country's regulatory regime in line with commonly accepted international practice.

[32] Ibid, Article 58.

Nguyen Thi Anh Van

Ms Nguyen Thi Anh Van successfully completed her Ph.D. dissertation at Nagoya University Graduate School of Law in March 2003. She is now the director of Comparative Law Center, Hanoi Law University, Vietnam. Her research interests include: securities regulations, banking law, tax law, corporate financial law, and comparative law. Her published works covered all of the above-mentioned areas.

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Author Dr. *Nguyen Thi Anh Van*

Published by Center for Asian Legal Exchange (CALE)
Nagoya University
464-8601 Furo-cho, Chikusa-ku, Nagoya, JAPAN
Tel: +81 (0)52-789-2325 Fax: +81 (0)52-789-4902
http://cale.nomolog.nagoya-u.ac.jp/ja/

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