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VIETNAM'S LEGAL REGULATION OF FOREIGN TRADE AND INVESTMENT

*John Quigley**

As part of its industrialization strategy,¹ Vietnam has launched an active program to promote foreign investment. A 1977 decree, Regulations on Foreign Investment in the Socialist Republic of Vietnam,² represents the first overture to foreign investors by the Hanoi-based government since its independence from France. That decree complements a set of legal enactments adopted since the 1950s that regulate export and import.

Since enactment of the 1977 Regulations, Vietnam has signed contracts with Italian, French, West German and Canadian firms for investment in offshore oil and other industries. Discussions with leading U.S. firms have also taken place.³ Vietnam views import of western technology as critical to

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1. "Our Party affirms that in our direct advance from . . . small production to socialism we must consider the scientific and technological revolution to be the kingpin and the socialist industrialization the central task." Speech by Le Duan, General Secretary of the Central Committee of the Communist Party of Vietnam, Fourth National Congress of Vietnamese Trade Unions, Hanoi (May 8, 1978, p. 9 of unofficial English translation). *See also*, the Resolutions of the Fourth National Congress of the Vietnam Communist Party [hereinafter Resolutions]:

The method of building the socialist economy in our country to a new level is the following: To promote the socialist industrialization of the country, to build the material and technical base of socialism, to make our economy pass from small production to large-scale socialist production. To give priority rational development to heavy industry on the base of development of agriculture and light industry. . . .

Parti Communiste du Viet Nam, IV^e Congrès National: Documents 216 (Hanoi, 1977); The Congress was held in Hanoi, Dec. 14-20, 1976.

2. GOVERNMENT COUNCIL OF THE SOCIALIST REPUBLIC OF VIET NAM, DECREE NO. 115/CP, REGULATIONS ON FOREIGN INVESTMENT IN THE SOCIALIST REPUBLIC OF VIET NAM [hereinafter Regulations] (April 18, 1977). For analysis, *see* Tang Thi Thanh Trai Le, *The Foreign Investment Code of the Socialist Republic of Vietnam*, 13 INT'L LAW. 329-344 (1979).

3. A U.S.-Vietnam Trade Council was established in 1978 in Washington, D.C., with eighteen firms as members. Many are firms that operated in South Vietnam prior to the 1975 change of government. *See* Morrow, *Vietnam's Embargoed Economy: In the U.S. Interest?*, 3 INDOCHINA ISSUES 1, 10 (1979). A group of U.S. concerns operating under the auspices of the American Chambers of Commerce in Hong Kong has also

its industrialization⁴ and is promoting its export to finance that import.⁵ Vietnam's 1978 decision to join the socialist-country economic organization, the Council for Mutual Economic Assistance (COMECON), has apparently not diminished its interest in Western investment.⁶

These developments raise the need for an examination of the legal bases of Vietnam's foreign economic relations, and particularly its Regulations on

been exploring trade with Vietnam. Several delegations of U.S. executives have visited Vietnam for trade talks since 1978. *See e.g.*, a dispatch concerning a group of eight U.S. businessmen, members of the American Chambers of Commerce, who visited Hanoi in July, 1979. *Asia Record*, Aug. 1980, at 15.

4. Resolution II, *supra* note 1, at 230.

5. Interview with Dang Viet Chau, Minister of Foreign Trade, in Chamber of Commerce of the Socialist Republic of Vietnam, *reprinted in* VIETNAM FOREIGN TRADE 1958-1978 at 7 (Hanoi, 1978). *See also*, comments of Pham Hung, Deputy Prime Minister, at the National Conference on Development of Production and Stepping Up Export for Socialist Industrialization, 1977: "By taking part in increasing our exports, the various branches, regions and production bases will help to step up the country's socialist industrialization and, at the same time, to meet import requirements of equipment, technology, raw and other materials necessary for production expansion." *Id.* at 4; Prime Minister Pham Van Dong, in a Report on the Orientation, Tasks and Main Objectives of the Five-Year Plan (1976-1980): "In order to be able to import the equipment and materials needed for expanding our production and stepping up the pace of construction, we must take the initiative in working out suitable plans, policies and organizational schemes aimed at increasing the volume and value of our exports. . . ." *Id.* at 3; Secretary-General Le Duan, Comments from a political report to the Fourth National Congress:

Particularly for our country, which is advancing from small-scale production to large-scale socialist production, the strengthening of the division of labour, cooperating and mutual assistance in the economic and technical fields with fraternal socialist countries and the development of economic relations with other countries assume great importance. For this reason, export and import constitute a very important part in the whole of our country's economic activity.

Id. at 2. On February 27, 1980, the Vietnamese government announced new regulations to promote exports. According to the Vietnam News Agency, the government said that it would (1) raise the prices it pays to producers for goods destined for export; (2) give these producers special subsidies and bonuses; (3) exempt them from commodity taxes; (4) give both producing enterprises and foreign trade organizations loans in foreign currencies to aid in expanding their production. *Southeast Asia Record*, Feb. 22-28, 1980, at 9. These measures are apparently in implementation of far-reaching decisions made by the Central Committee of the Vietnamese Communist Party in July, 1979, to stimulate the private sector and to boost productivity. For a review of these developments, *see* Spragens, *Vietnam Revises Economic Plans to Hasten Recovery*, *In These Times*, Feb. 27-Mar. 4, 1980, at 9.

6. The Ministry of Foreign Trade indicates that it seeks economic collaboration without discrimination based on type of social system. Interview by author of Luu Van Dat, Vice-Minister of Foreign Trade, in Hanoi (Dec. 12, 1978).

Foreign Investment. With a population equal to England's⁷ and more than double England's land area,⁸ reunified Vietnam is a potentially significant trade partner. Discovery in recent years of offshore oil and natural gas has added a new dimension to Vietnam's exports, which traditionally have featured agricultural products, handicrafts, and minerals.⁹

Vietnam's foreign trade is conducted as a state monopoly,¹⁰ as in other socialist countries.¹¹ This means that designated state-sponsored agencies have the exclusive right to import and export given categories of goods. Other Vietnamese companies, even though they may be state-owned, are not permitted to trade directly with foreign parties.

The purpose of this close control over foreign trade is to ensure that export and import are carried out in conformity with the state economic plans, formulated and executed by the National Planning Committee.¹² Currently, twelve entities conduct Vietnam's export and import industry.¹³

7. Estimated January 1, 1978, population of England and Wales is 49,151,000; of Vietnam 48,475,000. *PREMIER WORLD ATLAS* at 128, 131 (Rand McNally ed. 1978).

8. England and Wales, 58,348 square miles; Vietnam, 128,402 square miles. *Id.*

9. Interview with Foreign Trade Minister Dang Viet Chau, *supra* note 5, at 7.

10. "The state holds a monopoly on foreign trade and all other economic relations with foreign countries." Art. 21, Constitution of the Socialist Republic of Vietnam (1980). *THE DEMOCRATIC REPUBLIC OF VIETNAM* 95 (Hanoi, 1975). Statutes effectuating a monopoly on foreign trade include Directive No. 454 of the Ministry of Industry and Commerce (March 15, 1955) setting up state commercial enterprises; Decree No. 508-TTg (April 6, 1955) establishing a customs service; Decree No. 463-TTg (April 18, 1955) on foreign exchange, *AN OUTLINE OF INSTITUTIONS OF THE DEMOCRATIC REPUBLIC OF VIETNAM* 116 [hereinafter *AN OUTLINE OF INSTITUTIONS*] (Hanoi, 1974). These Democratic Republic of Vietnam [hereinafter DRV] enactments and those cited subsequently are currently applicable in the Socialist Republic of Vietnam [hereinafter SRV], formed in 1976 through the re-unification of the north and south segments of Vietnam. On the re-unification, see *THE SOCIALIST REPUBLIC OF VIETNAM: STRUCTURES AND FUNDAMENTALS, DOCUMENTS OF THE FIRST SESSION OF THE NATIONAL ASSEMBLY OF REUNIFIED VIETNAM* (June-July, 1976). Several hundred of the more important DRV enactments have been made applicable throughout the SRV pending the drafting of new codes and other legislation. *Le, supra* note 2, at 342.

LEY, *THE SOVIET FOREIGN TRADE MONOPOLY: INSTITUTIONS AND LAWS* (1973).

12. The National Planning Committee was established by Circular No. 603-TTg of the Prime Minister of the DRV, October 14, 1955, *AN OUTLINE OF INSTITUTIONS, supra* note 10, at 117.

13. Vietnam National Agricultural Produce and Foodstuffs Export-Import Corporation (Agrexport), Vietnam National Vegetables and Fruit Export-Import Corporation (Vegetexco), Vietnam National Marine and Animal Products Export-Import Corporation (Meranimex), Vietnam National Forest and Native Produce Export-Import Corporation (Naforimex), Vietnam National Minerals Export-Import Corporation (Minexport), Vietnam National Textiles Export-Import Corporation (Textimex), Vietnam National Sundries Export-Import Corporation (Tocontap), Vietnam National Art

In addition, a number of state-owned agencies provide subsidiary services for foreign trade: Vietnam Foreign Trade Transportation Corporation (Vietfrachet), Bank for Foreign Trade (Vietcombank), Vietnam National Foreign Trade Forwarding and Warehousing Corporation (Vietrans), Vietnam Insurance Company (Baoviet), and the Chamber of Commerce (Vietcochamber). The Chamber advises foreigners on how to deal with the Vietnamese foreign trade companies.

The Vietnam Chamber of Commerce has also organized the Vietnam National Export-Import Goods Control Company (Vinacontrol), which conducts quality checks of export and import goods, and two arbitration bodies for foreign trade disputes — the Foreign Trade Arbitration Committee and the Maritime Arbitration Committee.¹⁴

Overall direction of foreign trade is the function of the Ministry of Foreign Trade, to which the export-import companies are subordinate.¹⁵ The Ministry issues licenses to the companies for export and import transactions. It also gives permits for foreign investment proposals developed between foreign and Vietnamese parties.¹⁶

For export and import, foreign parties contract with the appropriate Vietnamese export-import company. Contract terms are similar to those customarily found in international transactions.

The Vietnamese export-import companies are legal entities separate from the state. While a statute regulating the status of legal entities has not yet been drafted in Vietnam,¹⁷ the company is responsible for its own debts and does not answer for debts of the Vietnamese state. Nor does the state answer for debts of the company.

Experience with contract performance by the Vietnamese companies has been good.¹⁸ Contracts normally provide for arbitration, either in Vietnam or

and Handicraft Products Export-Import Corporation (Artexport), Vietnam National Bamboo and Rattan Export Corporation (Barotex), Vietnam National Foreign Trade Company (Transaf—exchange of cooperative-produced goods), Vietnam National Machinery Export-Import Corporation (Machinoimport), and Vietnam National Corporation for Import of Complete Equipment and Technical Exchange (Technoimport).

14. For a listing of the above-mentioned entities, including the goods in which each of the export-import companies deals, see VIETNAM FOREIGN TRADE 1958-1978, *supra* note 5, at 42-67.

15. The Ministry of Foreign Trade was established April 29, 1958. Prior to that time foreign trade was conducted by a ministry responsible for both domestic and foreign trade and industry.

16. Regulations, *supra* note 2, Arts. 17-19.

17. AN OUTLINE OF INSTITUTIONS, *supra* note 10, at 131.

18. Prime Minister Pham Van Dong noted to the Fourth National Congress the importance of carrying out contract obligations: "We must strictly carry out the econo-

in a third country. Since 1963, Vietnam has had an arbitration panel to which the parties may choose to refer a dispute. The above-mentioned Foreign Trade Arbitration Committee,¹⁹ located in Hanoi, hears cases referred by the parties either in their sale contract or after the dispute arises.²⁰

The Committee has fifteen panelists, selected for three-year terms by the Executive Committee of the Chamber of Commerce from among specialists in commercial law.²¹ A panel to hear a dispute is formed, per international custom, by the plaintiff choosing one panelist in its application for arbitration.²² The Committee then informs the defendant of the filing and asks it to file a response²³ and to appoint another panelist from among the remaining fourteen.²⁴ If the defendant fails to appoint an arbiter within thirty days, the chairperson of the Committee makes the appointment.²⁵ The two arbiters then select a third panelist to serve as umpire, if they are unable to do so within fifteen days, the chairperson of the Committee appoints an umpire.²⁶ As an alternative procedure, the parties may choose a single arbiter to hear and decide their case.²⁷

The chairperson of the Committee has the right to take protective measures to safeguard the interests of the parties pending final decision.²⁸ The chairperson sets a case for a hearing in Hanoi.²⁹ The arbiters may hear witnesses and consult experts.³⁰ They hear the case in open session, unless the parties request an *in camera* proceeding.³¹ The parties may appear personally or by counsel, who may be Vietnamese or of foreign nationality.³²

mic agreements and contracts concluded between our country and other countries." VIETNAM FOREIGN TRADE 1958-1978, *supra* note 5, at 3. No complaints by foreign firms have been publicized about Vietnam's contract performance.

19. FOREIGN TRADE ARBITRATION COMMITTEE ACT OF APR. 30, 1963 (FTACA), Decision No. 59/CP of the Council of Government of the DRV.

20. FOREIGN TRADE ARBITRATION COMMITTEE RULES OF PROCEDURE (FTAC R.P.), approved by the Executive Committee of the Chamber of Commerce of the DRV, May 3, 1963, Article 3. Decisions are not published in readily accessible form.

21. FTACA, *supra* note 19, Article 3.

22. FTAC R.P., *supra* note 20, Article 4.

23. *Id.*, Art. 7.

24. *Id.*, Art. 8.

25. *Id.*, Art. 9.

26. *Id.*, Art. 10.

27. *Id.*, Art. 11.

28. *Id.*, Art. 13.

29. *Id.*, Art. 15.

30. *Id.*, Art. 17.

31. *Id.*, Art. 18.

32. *Id.*, Art. 19.

No appeal is provided from an arbitration decision,³³ though a party may apply to a Vietnamese court if the other party fails to execute the award.³⁴ The parties are encouraged to settle their dispute short of a hearing.³⁵ The current chairperson indicates that he exerts considerable effort to effect a pre-hearing settlement.³⁶

In addition to the Foreign Trade Arbitration Committee, the Chamber of Commerce maintains a Maritime Arbitration Committee for disputes concerning ocean carriage of goods. Also founded in 1963 and likewise consisting of fifteen panelists, the Maritime Arbitration Committee hears disputes referred to it by parties to ocean carriage contracts. It operates on rules of procedure similar to those of the Foreign Trade Arbitration Committee.³⁷

In resolving disputes, the two committees apply Vietnamese law as well as international commercial custom.³⁸ The applicable Vietnamese law consists in the first instance of Vietnamese civil legislation, which involves a variety of decrees on civil-law relations.³⁹ A civil code is currently being drafted, as are codes in maritime law and other fields.⁴⁰

The 1977 Regulations on Foreign Investment⁴¹ are the key enactment affecting foreigners who invest in Vietnam. A policy document of major importance, the Regulations open the way for economic collaboration between Vietnam and the industrialized West. While Vietnam views technical contributions by firms of industrialized countries as important to its development, it also seeks protection against exploitative practices. The Regulations strike a balance to permit advantageous investment but to protect Vietnam. Article 1 states that Vietnam "welcomes foreign investment . . . on the principles of respect for the independence and sovereignty of Viet Nam and of mutual benefit."⁴²

The Regulations are general in content, providing only a basis for negotiations between the Vietnamese party and the foreign company. Article

33. *Id.*, Art. 14.

34. *Id.*, Art. 25.

35. *Id.*, Art. 28.

36. Interview by author with Duong Van Dam, chairperson of the FTAC, in Hanoi (Dec. 11, 1978).

37. *Id.*

38. Interview with Luu Van Dat, *supra* note 6.

39. AN OUTLINE OF THE INSTITUTIONS, *supra* note 10, at 150-153.

40. Interview with Duong Van Dam, *supra* note 36. In addition to chairing the FTAC, Dam heads the drafting commission for the new legislation. *Id.* The commission was appointed by the Sixth National Assembly in July, 1976. *Le, supra* note 2, at 342.

41. Regulations, *supra* note 2.

42. *Id.*, Art. 1.

26 is explicit in permitting derogation from the Regulations to the benefit (though not to the detriment) of the foreign party.⁴³

The Regulations permit foreign investment across a broad range of industrial and agricultural spheres. Under Article 4, "The foreign party may invest in the exploitation of natural resources, in agriculture, industry, building, transportation, etc., with the exception of those fields and branches which the Government of the Socialist Republic of Viet Nam reserves for itself."⁴⁴

While no rules have been adopted to define which fields and branches are reserved, Vice-Minister Luu Van Dat lists as examples defense industries and basic public services. As examples of permitted activities, he lists mining of oil, gas, and other minerals; processing of fruits and other tropical products; timber processing; operation of fish hatcheries for shrimp, lobster, or other species; and construction of tourist hotels.⁴⁵

The Vietnamese Foreign Trade Ministry's decision to agree to a particular proposal is based on the government's plans for economic development,⁴⁶ as indicated in resolutions of the most recent Congress of the Vietnam Communist Party and implementing documents.⁴⁷ Since foreign investment in Vietnam is aimed at export production, the government's plan for export is the most relevant. The 1976-1980 five-year plan calls for export of agricultural⁴⁸ and tropical produce, and products of light industry. It calls for intensified export of ocean fish and other ocean products, as well as minerals. Export of products of heavy industry is seen as something for the future.⁴⁹ So far, apparently no investment proposal made by a potential

43. The Regulations are intentionally imprecise, to afford flexibility in achieving appropriate contract terms. They are seen only as a framework for negotiations. Interview with Luu Van Dat, *supra* note 6. Dat indicated, by way of example, that under a number of oil exploration contracts the Vietnamese side has taken advantage of the flexibility permitted by Article 26 to grant exploration rights of twenty and twenty-five years. This is in derogation of Article 10 of the Regulations, which states that rights are to be granted for a maximum of fifteen years. Dat also said that a number of foreign oil and gas firms have been exempted from paying Vietnamese income tax, otherwise required under Article 15 of the Regulations.

44. Regulations, *supra* note 2, Art. 4.

45. Interview with Luu Van Dat, *supra* note 6.

46. SRV CONST. art. 33: "The state guides the national economy according to a unified plan." The 1959 Constitution is *reprinted in* CONSTITUTIONS OF THE COMMUNIST PARTY-STATES 197-214 (1968).

47. Resolutions, *supra* note 1.

48. Processed fruits and vegetables are high priority export items. See Morrow, *supra* note 3, at 6.

49. Fourth National Congress, *supra* note 1, at 230. For statistics on Vietnam's export and import 1974-1978, see Morrow, *supra* note 3, at 5.

investor has been turned down by the prospective Vietnamese partner or by the Foreign Trade Ministry.⁵⁰

Three types of foreign investment are foreseen by the Regulations. "Cooperation in production with sharing of products between the Vietnamese and foreign parties"⁵¹ involves contribution of capital and technical facilities by a foreign firm in conjunction with a Vietnamese company. Products manufactured are shared in an agreed proportion. The foreign firm's share of products may not be sold in Vietnam unless requested by the Vietnamese company. Some investment of this type has been made by French companies, primarily in mining of Vietnam's high-quality coal,⁵² currently the nation's most valuable export commodity.⁵³

A second and more ambitious form of collaboration is operation of a joint enterprise by a foreign and a Vietnamese company (joint venture). Article 7 foresees creation of a joint venture enterprise that becomes a limited liability corporation under Vietnamese law to produce goods for export. The foreign firm contributes not less than 30 percent, nor more than 49 percent, of the capital. The foreign firm is expected to contribute equipment, while the Vietnamese company contributes land, buildings, and raw materials. The joint venture's articles of incorporation must be registered with the Ministries of Foreign Trade and Finance, and its assets must be deposited in the Foreign Trade Bank of Vietnam.

Any Vietnamese company is eligible to form a joint venture enterprise. One of the earliest examples of a joint venture is Helivifa, established in 1978 to provide helicopter transport for offshore oil rigs set up by other foreign investors.⁵⁴ Helivifa is owned 49 percent by the French helicopter company Heliunion and 51 percent by the Helicopter Transportation Company of Vietnam.⁵⁵ In 1979 the French pharmaceutical manufacturer Rhone Poulenc signed a joint venture agreement with Vietnam's Pharmaceutical Products Company for pharmaceutical production, with 49 percent ownership by Rhone Poulenc and 51 percent by Pharmaceutical Products Company.⁵⁶ Other Vietnamese companies participating in joint ventures include Petro-Vietnam and the Post and Telecommunications Company of Vietnam.⁵⁷

50. Interview with Luu Van Dat, *supra* note 6.

51. Regulations, *supra* note 2, Art. 6.

52. Interview by author at Ministry of Foreign Affairs, in Hanoi (Dec. 11, 1978).

53. See Morrow, *supra* note 3, at 6. Most of Vietnam's coal exports go to Southeast Asian countries. *Id.*

54. Interview at Ministry of Foreign Affairs, *supra* note 52.

55. *Id.* See also Morrow, *supra* note 3.

56. See Morrow, *supra* note 3.

57. Interview with Luu Van Dat, *supra* note 6.

A third possibility is that a foreign firm may set up its own Vietnamese company without a local partner.⁵⁸ Article 8 permits a foreign firm to set up operations to produce for export. It foresees provision of raw materials, fuel, and equipment by the foreign firm⁵⁹ which would hire Vietnamese workers to staff its plant.⁶⁰

Foreign technical personnel could also be used, with approval of the Foreign Trade Ministry.⁶¹ The firm would pay no duty on raw materials and other production-related items brought into Vietnam.⁶² Nor would it pay export duty when taking a finished product out of Vietnam.⁶³

The enterprise would incorporate under Vietnamese law and register its articles of incorporation with the Ministries of Foreign Trade and Finance.⁶⁴ This corporation would be entitled to deal directly with Vietnamese and non-Vietnamese companies, subject to Vietnamese foreign trade and foreign exchange regulations.⁶⁵ The Regulations permit remission of profit, subject to an obligation to pay income tax and to allocate a share of profit for a reserve fund.⁶⁶

A foreign investor establishing a joint venture pays income tax at a rate of 50 percent,⁶⁷ unless the investment is in a branch of the economy requiring "an advanced technical standard and large capital investment," in which case the tax is reduced to 40 percent.⁶⁸ Curiously, income tax is only 30 percent for a foreign firm producing for export.⁶⁹ The Regulations do not indicate how a determination is made as to whether a firm qualifies for the 40 percent tax rate. An investor establishing a joint venture may be given a tax holiday for a given number of years.⁷⁰ This is granted by the Minister of Finance to encourage investment in a joint enterprise, as opposed to a wholly-owned company, for which the Regulations do not provide the possibility of a tax holiday.⁷¹ Tax exemptions have in fact been negotiated for a number of mixed

58. As of December, 1978, no such firms had been established, though a number were being negotiated. Interview at Ministry of Foreign Affairs, *supra* note 52.

59. Regulations, *supra* note 2, Art. 8(1).

60. *Id.*, Art. 8(4).

61. *Id.*, Art. 12(2).

62. *Id.*, Art. 12(3).

63. *Id.*, Art. 12(4).

64. *Id.*, Art. 8(5).

65. *Id.*, Art. 12(5).

66. *Id.*, Arts. 10(4), 15.

67. *Id.*, Art. 15(2).

68. *Id.*

69. *Id.*

70. *Id.*, Art. 11(1).

71. It should be recalled, however, that Article 26 of the Regulations permits delegation to the advantage of the investor. Thus it would be possible for a tax exemption to be negotiated for a wholly-owned company.

companies.⁷² In addition, an investor in a joint enterprise may request an income tax reduction in case the enterprise faces an "unforeseeable and unavoidable risk."⁷³

A foreign firm investing either in a joint enterprise or in a wholly-owned export-producing company must also set aside a portion of profit as a "reserve fund."⁷⁴ Each year, 5 percent of profit must go into this fund until an amount equal to 25 percent of the total invested capital has been deposited.⁷⁵ At that point, no further allocations to the fund need be made.

The Regulations encourage re-investment by granting an "exemption or reduction of income tax, depending on the amount of re-investment and field of investment."⁷⁶ Since the Regulations aim at encouraging investment in advanced technical processes, the definition of foreign investment includes industrial property ("licenses and patents, technological processes, know-how, trade marks, etc.").⁷⁷ The Regulations indicate that protection for industrial property is to be provided in the foreign investment contract.⁷⁸ They do not require that technological processes be turned over to the Vietnamese partner. One of Vietnam's export-import companies, Technoimport, specializes in the purchase of licenses.

A joint venture or wholly-owned enterprise is governed by Vietnam's labor legislation in relations with its Vietnamese workers.⁷⁹ Wages are paid at normal Vietnamese levels but in a convertible currency.⁸⁰ An average factory worker makes about eighty dong per month,⁸¹ figured on a piece-rate basis.⁸² One dong is the equivalent of U.S. thirty-eight cents, making an average annual salary with the equivalent of only three hundred sixty-five dollars. The typical work schedule is an eight-hour day for six days a week.⁸³ Workers' conditions of employment are based on statute (work-day length

72. Interview with Luu Van Dat, *supra* note 6.

73. Regulations, *supra* note 2, Art. 11(4).

74. *Id.*, Art. 10(4).

75. *Id.*, Art. 7(5). The money must be deposited in the Foreign Trade Bank of Vietnam.

76. *Id.*, Art. 10(5).

77. *Id.*, Art. 2.

78. *Id.*, Art. 13.

79. *Id.*, Art. 12(1).

80. *Id.*, Art. 8(4). While Article 8(4) applies by its terms only to wholly-owned firms, joint ventures are also presumably required to pay workers in convertible currency.

81. Interviews by author with two factory managers, in Da Nang (Dec. 8, 1978). An official of the Vietnam Information Ministry puts the average monthly income at "less than one hundred dong." Asia Record, Sept., 1980, at 14, col. 2.

82. Interviews, *supra* note 81.

83. *Id.*

and vacations,⁸⁴ disability and old-age pensions,⁸⁵ sex equality,⁸⁶ health and safety,⁸⁷ hiring and firing,⁸⁸ trade unions,⁸⁹ and paid pregnancy leave⁹⁰). In addition, workers, represented by their trade union committee, sign each year with a factory's management a "collective contract" to regulate production levels, work safety, and work conditions.⁹¹ The Regulations require a foreign-owned firm to conclude such a contract with the trade union committee.⁹² To help provide fringe benefits, a joint venture is required by the Regulations to contribute to a social insurance fund.⁹³ While the Regulations do not indicate a similar duty for wholly-owned firms, presumably it applies to them as well.

A dispute between management and a Vietnamese worker would be referred initially to the trade union organization at the plant and then might go to a local labor office under the Ministry of Labor or to a local people's court.⁹⁴ In dealings with any Vietnamese companies (e.g., for provision of supplies), disputes would be under the jurisdiction of a local economic arbitration council.⁹⁵ These councils serve as commercial courts to settle disputes between Vietnamese companies.⁹⁶

84. SRV CONST. art. 59, *supra* note 46: "Working people are entitled to rest. The State regulates the conditions relating to work, rest and recreation for workers and office employees."

85. *Id.*, art. 59: "Working people are entitled to social insurance benefits in retirement, old age, sickness, or disability."

86. *Id.*, art. 63: "Women and men have equal rights in all respects — in political, economic, cultural, social, and family life. . . . Women and men receive equal pay for equal work."

87. Decree No. 181-CP, Dec. 18, 1964, in addition to regulations on safety in quarries; handling of chemicals; boilers; high-pressure tanks; electrical apparatus. AN OUTLINE OF THE INSTITUTIONS, *supra* note 10, at 142.

88. Decree No. 24-CP, March 13, 1963. *Id.* at 141.

89. TRADE UNIONS ACT, No. 108/SL-LIO, adopted by National Assembly, Nov. 5, 1957; supplemented by Decree No. 188/TTg of the Prime Minister Defining Details for the Application of the Trade Unions Act, April 9, 1958.

90. SRV CONST. art. 63, *supra* note 46; "Women are entitled to pre- and post-natal paid leave if they are workers or office employees, or to maternity allowances if they are cooperative members."

91. Decree No. 172-CP, Nov. 21, 1963, AN OUTLINE OF THE INSTITUTIONS, *supra* note 10, at 142.

92. Regulations, *supra* note 2, Art. 12(1).

93. *Id.*, Art. 7(7). There is a substantial labor surplus in the southern portion of Vietnam, caused largely by the 1975 pullout of the U.S. military. The resolutions of the Fourth National Congress call for measures to reduce unemployment there, *supra* note 1, at 230.

94. Regulations, *supra* note 2, Art. 24.

95. *Id.*

96. Decree No. 65-CP, May 15, 1963, regulating litigation between state-owned enterprises, AN OUTLINE OF THE INSTITUTIONS, *supra* note 10, at 125.

Litigation between the firm and a Vietnamese citizen (e.g., a tort action against the firm for injury caused) would go to a people's court.⁹⁷ This is a court of general jurisdiction,⁹⁸ in which cases are heard by a professional judge⁹⁹ along with two lay persons called "people's assessors."¹⁰⁰ The trial court is typically at the territorial level known as a district,¹⁰¹ with an appeal as of right to the people's court of the province,¹⁰² and discretionary review by the Supreme People's Court in Hanoi.¹⁰³

Disputes between a foreign firm and the Vietnamese party to the investment contract are under the jurisdiction of the Foreign Trade Arbitration Committee,¹⁰⁴ unless the parties have in the contract agreed on some other dispute resolution mechanism.¹⁰⁵ Most contracts concluded so far provide for *ad hoc* arbitration, each side appointing one arbiter, with the two choosing a third as umpire. The contracts usually provide a method for choosing an umpire if the two arbiters fail to agree on one, typically selection of an umpire by internationally recognized arbitration tribunals in Paris or the Hague.¹⁰⁶

The Vietnamese government insists that Vietnamese law be applied to construe the investment contract, founding that position on the fact that the contract is carried out in Vietnam. A Vietnamese party is not permitted by the government to stipulate to application of any other country's legal system. This is seen as a way of protecting Vietnamese sovereignty.¹⁰⁷ In case of any gaps in Vietnamese law, the Vietnamese party would propose using international commercial custom.¹⁰⁸

Dispute settlement mechanisms are relevant as well to the possibility of nationalization of the foreign-owned firm by the Vietnamese government. The Regulations foresee the possibility of nationalization in Article 10, which

97. Regulations, *supra* note 2, Art. 24. Liability is limited to the assets of the entity established to operate in Vietnam.

98. SRV CONST. art. 128, *supra* note 46.

99. *Id.*, art. 129.

100. *Id.*, art. 130. See also, Art. 11, Organization of People's Courts Act (OPCA), Decree No. 19-LCT, July 26, 1960; and Art. 15, Decree-Law on Organization of the Supreme People's Court and Local People's Courts, March 23, 1961.

101. Art. 2, OPCA and Arts. 17-20, Decree-Law on Organization of the Supreme People's Court and Local People's Courts, March 23, 1961.

102. Art. 9, OPCA.

103. *Id.*, Art. 10.

104. Text accompanying notes 19-35, *supra*.

105. Regulations, *supra* note 2, Art. 25.

106. Interview with Luu Van Dat, *supra* note 6.

107. *Id.*

108. *Id.*

states that the Vietnamese government agrees to protect the invested capital, but that "If, as required by the national economy, the enterprise should be nationalized, it would be purchased by the Vietnamese Government at a reasonable price agreed upon by the two sides. The payment will be made in the investment currency and completed within an appropriate period of time."¹⁰⁹

That provision, which has yet to be invoked by the Vietnamese government,¹¹⁰ is based on the now generally recognized right of a state to nationalize foreign-owned property for a public purpose. The Foreign Trade Ministry cites Article 2 of the December 12, 1974, United Nations General Assembly Resolution, "Charter of Economic Rights and Duties of States," which gives a host country broad powers over foreign investment within its borders and permits nationalization with payment of appropriate compensation.¹¹¹ While insisting on its right to nationalize, the Foreign Trade Ministry stresses that the Vietnamese government would nationalize only if nationalization were very important for the Vietnamese economy.¹¹² "Appropriate compensation" is defined by the Ministry to mean the amount of invested capital plus appropriate interest.¹¹³ If the settlement were unsatisfactory to the investor, it could be taken to arbitration in accordance with the terms of the contract, which would likely indicate arbitration outside Vietnam.¹¹⁴

The Vietnamese government guarantees the right to carry on one's business in Vietnam for a period of ten to fifteen years from the date of issuance of the investment license.¹¹⁵ An investor who did not consider this an adequate period could try to negotiate a longer one, utilizing Article 26, which permits terms more advantageous to the investor than those provided by the Regulations.¹¹⁶

109. Regulations, *supra* note 2, Art. 10.

110. Interview with Luu Van Dat, *supra* note 6.

111. G. A. Res. 3281, U. N. DOC. A/RES/3281 (1975); reprinted in INT'L LEGAL MATS. 251 (1975).

112. Interview with Luu Van Dat, *supra* note 6. Dat notes: "If we nationalize, it would discourage investments."

113. *Id.*

114. *Id.*

115. Regulations, *supra* note 2, Art. 10(1). This guarantee period applies only to a joint venture or a private enterprise specializing in export production. The Regulations do not indicate a guarantee period for cooperative production with sharing of production. *Id.*, Art. 9. The joint venture of Rhône Poulenc and Pharmaceutical Products Company, *supra* note 52, was contracted for a fifteen-year period. Morrow, *supra* note 3, at 3.

116. Regulations, *supra* note 2, Art. 26. For examples of negotiated longer periods, see *supra* note 41.

It is the Minister of Foreign Trade who grants the investor a license to engage in business in Vietnam, after a contract has been concluded with the appropriate Vietnamese party.¹¹⁷ Under Article 18, the Minister is required to act on the license application within three months from the date of receipt.¹¹⁸ Typically, the Ministry is involved in discussions from an early stage, so it does not take it three months to approve the license application.¹¹⁹ So far, the Minister has not refused to grant a license for an investment for which a contract has been signed.¹²⁰

The Minister of Foreign Trade, exercising a supervisory role over the investment, has the power to impose fines or to retract certain rights if a foreign investor "commits any fraud or breach of faith."¹²¹ "In the case of grave infringements, such as unjustified interruption of the execution of the contract, the investment license may be withdrawn without compensation to the defaulting party."¹²² Vice-Minister Luu Van Dat indicates that Article 16 has not yet been invoked to revoke a license. He states that the Ministry would proceed very cautiously before revocation.¹²³ Since most contracts provide for arbitration outside Vietnam, the investor would have the protection of that mechanism.¹²⁴

Western business representatives in Hanoi to negotiate seem optimistic. The quest for oil has been the motivation for many of them. They report that the Vietnamese have established a reputation of driving a hard bargain,¹²⁵ but on the other hand, notes one, trading in Vietnam is simplified by the fact that one needs to deal with only a single office.¹²⁶

The current obstacle to U.S. trade with Vietnam is the trade embargo maintained by the U.S. government. That policy, which seems antiquated at a time when the United States is actively seeking markets in the People's

117. Regulations, *supra* note 2, Art. 18.

118. *Id.*

119. Interview with Luu Van Dat, *supra* note 6.

120. *Id.*

121. Regulations, *supra* note 2, Art. 16.

122. *Id.*

123. Interview with Luu Van Dat, *supra* note 6.

124. *Id.*

125. Vietnamese success in bargaining is confirmed by the noted oil economist, Michael Tanzer, who reports that whereas the pre-1975 government in the south of Vietnam was getting about 55 percent of the profits in oil concession agreements with foreign oil companies, the post-1975 government is getting upwards of 90 percent, well above percentages achieved by other developing nations. *Toward Third World Oil Independence*, 1 MULTINATIONAL MONITOR 14 (1980).

126. Interviews by the author with European business representatives, in Hanoi (Dec. 1978). See also Morrow, *supra* note 3, at 3, wherein other business representatives indicate that the Vietnamese bargain hard.

Republic of China,¹²⁷ is not likely to continue indefinitely.¹²⁸ When the embargo ends, it seems certain that U.S. firms will follow actively in the wake of the West Europeans who have opened trade with post-war Vietnam.¹²⁹

SUMMARY

Vietnam possesses a legal infrastructure adequate for both investment and trade. Its Regulations on Foreign Investment provide a workable system for the establishment of either mixed foreign-Vietnamese or exclusively foreign-owned undertakings. These Regulations leave room for great flexibility in the negotiation of terms. While they foresee the possibility of nationalization of foreign-owned property, investment contracts can stipulate arbitration by an international tribunal in case of a dispute over adequacy of post-nationalization compensation.

In addition to a foreign trade regime, the Vietnamese legal system provides appropriate institutions and rules to deal with employment relations and tort liability. Trade contracts are concluded on terms customary in international commerce, with arbitration of disputes in either the Hanoi Foreign Trade Arbitration Committee or in a tribunal of some other nation. New civil legislation is currently being drafted, as are codes in other areas of the law which should serve to complete the country's establishment of a legal system.

127. The Vietnamese foreign investment law offers more varied forms of private investment than the People's Republic of China's 1979 investment law, which provides for joint ventures only. See *Law on Joint Ventures*, Xinhua New Agency, July 8, 1979.

128. The United States cut off trade with South Vietnam in April 1975, when the government changed. This represented an extension to the south of Vietnam of an embargo imposed by the United States against the DRV (North Vietnam) in 1964. Negotiations between the two countries have been conducted since 1977 to establish diplomatic relations and end the U.S. trade embargo, currently maintained by joint action of Congress and the President. According to a June 13, 1979, statement by Richard C. Holbrooke, Assistant Secretary of State for East Asian and Pacific Affairs, before the House Subcommittee on Asian and Pacific Affairs of the Foreign Affairs Committee, the Vietnamese government is encouraging the United States to end the embargo prior to establishment of diplomatic relations, while the United States wants to accomplish both simultaneously. After discussing the current state of Vietnam-U.S. relations, Holbrooke stated: "It is hard to envision progress toward normalization under existing circumstances, although we do not preclude continuing informal discussions from time to time in which we exchange views on regional and bilateral matters." U.S. DEPT STATE, BUREAU OF PUBLIC AFFAIRS, CURRENT SITUATION IN INDOCHINA: CURRENT POLICY No. 71 (June, 1979).

129. Howard McClellan, President of the U.S.-Vietnam Trade Council, writes: "The trade embargo discriminates against American business while foreign firms establish business relationships denied Americans." Morrow *supra* note 3, at 10.