Law on Foreign Investment

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LAW ON FOREIGN INVESTMENT

IN VIETNAM

In order to expand economic co-operation with foreign countries and to make contribution to the modernization, industrialization and development of the national economy on the basis of the efficient exploitation and utilization of national resources;

In accordance with the 1992 Constitution of the Socialist Republic of Vietnam;

This Law makes provisions for foreign direct investment in the Socialist Republic of Vietnam.

Chapter I

GENERAL PROVISIONS

Article 1

The State of the Socialist Republic of Vietnam encourages foreign investors to invest in Vietnam on the basis of respect for the independence and sovereignty of Vietnam, observance of its law, equality and mutual benefit.

The State of Vietnam protects the ownership of invested capital and other legal rights of foreign investors, provides favourable conditions and formulates simple and prompt procedures for foreign investors investing in Vietnam.

Article 2

In this Law, the following terms shall have the meanings ascribed to them hereunder:

1.Foreign direct investment means the bringing of capital into Vietnam in the form of money or any assets by foreign investors for the purpose of carrying on investment activities in accordance with the provisions of this Law.

2. Foreign investor means a foreign economic organization or individual investing in Vietnam.

3. Foreign party means one party comprising one or more foreign investors.

4. Vietnamese party means one party comprising one or more Vietnamese enterprises from any economic sector.

5. Two parties means the Vietnamese party and the foreign party. *Multi-party* means a Vietnamese party and more than one foreign party, or a foreign party and more than one Vietnamese party, or more than one Vietnamese party and more than one foreign party.

*6. An enterprise with foreign owned capit*al includes a joint venture enterprise and an enterprise with one hundred (100) percent foreign owned capital.

7. A joint venture enterprise means an enterprise established in Vietnam by two or more parties on the basis of a joint venture contract or an agreement between the Government of the Socialist Republic of Vietnam and a foreign government, or an enterprise established on the basis of a joint venture contract between an enterprise with foreign owned capital and a Vietnamese enterprise or between a joint venture enterprise and a foreign investor.

*8. An enterprise with one hundred (100) per cent foreign owned capit*al means an enterprise in Vietnam the capital of which is one hundred (100) per cent invested by foreign investor(s).

9. A business co-operation contract means a written document signed by two or more parties for the purpose of carrying on investment activities without creating a legal entity.

10. A joint venture contract means a written document signed by the parties referred to in item 7 of this article for the establishment of a joint venture enterprise in Vietnam.

11. A Build-Operate-Transfer contract means a written document signed by an authorized State body of Vietnam and a foreign investor(s) for the construction and commercial operation of an infrastructure facility for a fixed duration; upon expiry of the duration, the foreign investor(s) shall, without compensation, transfer the facility to the State of Vietnam.

12. A Build-Transfer- Operate contract means a written document signed by an authorized State body of Vietnam and a foreign investor(s) for the construction of an infrastructure facility; upon completion of construction, the foreign investor shall transfer the facility to the State of Vietnam and the Government of Vietnam shall grant the investor the right to operate commercially the facility for a fixed duration in order to recover the invested capital and gain reasonable profits.

13. A Build-Transfer contract means a written document signed by an authorized State body of Vietnam and a foreign investor(s) for the construction of an infrastructure facility; upon completion of construction, the foreign investor shall transfer the facility to the State of Vietnam and the Government of Vietnam shall create conditions for the foreign investor to implement other investment projects in order to recover the invested capital and gain reasonable profits.

14.An Export Processing Zone means an industrial zone specializing in the production of exports and the provision of services for the production of exports and export activities with specified boundaries established, or permitted to be established, by the Government.

15. An Export Processing Enterprise means an enterprise which specializes in the production of exports and the provision of services for the production of exports and export activities and which is established and operated in accordance with the regulations of the Government on export processing enterprises.

16. An Industrial Zone means a zone which specializes in the production of industrial goods and the provision of services for industrial production established, or permitted to be established, by the Government of Vietnam.

17. An Industrial Zone Enterprise means an enterprise established and operated within an Industrial Zone.

18. Invested Capital means the capital required to implement an investment project, including legal capital and loan capital.

19. Legal capital of an enterprise with foreign owned capital means the capital required to establish the enterprise as stated in its charter.

20. Capital contribution means the capital contributed by a party to the legal capital of an enterprise.

21. Reinvestment means using profits and other lawful earnings from investment activities in Vietnam to invest in projects which are being implemented or to make new investments in Vietnam under any of the forms stipulated in this Law.

Article 3

Foreign investors may invest in Vietnam in sectors of its national economy.

The State of Vietnam encourages foreign investors to invest in the following sectors and regions :

1. Sectors :
a. Production of exports;
b. Husbandry, farming and processing of agricultural produce, forestry, and aquaculture;
c. Utilization of high technology and modern techniques, protection of ecological environment and investment in research and development;
d. Labour intensive activities, processing of raw materials and efficient utilization of natural resources in Vietnam;
e. Construction of infrastructure facilities and important industrial production establishments.

2. Regions :

(a) Mountainous and remote regions;

(b) Regions with difficult economic and social conditions;

The State of Vietnam will not license any foreign investment project in sectors or regions which may have adverse effects on national defence, national security, cultural and historical heritage, fine custom and tradition, or the ecological environment.

Based on the development planning and orientation for each period, the Government shall stipulate the regions in which investment is encouraged and shall issue lists of encouraged investment projects and

specially encouraged investment projects, lists of sectors in which licensing of investment is conditional, and lists of sectors in which investment will not be licensed.

Private Vietnamese economic organizations shall be permitted to co-operate with foreign investors in sectors, subject to conditions stipulated by the Government.

Chapter II

FORMS OF INVESTMENT

Article 4

Foreign investors may invest in Vietnam in any of the following forms :

1. Business co-operation on the basis of a business co-operation contract;
2. Joint venture enterprise;
3. Enterprise with one hundred (100) per cent foreign owned capital.

Article 5

Two or more parties may, on the basis of a business co-operation contract, enter into a business co-operation, such as profit sharing production, product sharing co-operation, or other business co-operation.

The parties shall agree on, and expressly state in the business co-operation contract, the objects, nature and duration of the business, their respective rights, obligations and responsibilities, and the relationship between them.

Article 6

Two or more parties may, on the basis of a joint venture contract, co-operate to establish a joint venture enterprise in Vietnam.

A joint venture enterprise may co-operate with foreign investor(s) or Vietnamese enterprises to establish a new joint venture enterprise in Vietnam.

A joint venture enterprise shall be established in the form of a limited liability company and shall be a legal entity in accordance with the law of Vietnam.

Article 7

1. The foreign party to a joint venture enterprise may make its contribution to the legal capital in :

a. Foreign currency or Vietnamese currency originating from investments in Vietnam;
b. Equipment, machinery, plant and other construction works;

c. The value of industrial property rights, technical know-how, technological processes and technical services.

2. The Vietnamese party to a joint venture enterprise may make its contribution to the legal capital in :

a. Vietnamese currency or foreign currency;
b. The value of the right to use land in accordance with the law on land;
c. Resources, the value of the right to use water and sea surfaces in accordance with the law;
d. Equipment, machinery, plant and other construction works;
e. The value of industrial property rights, technical know-how, technological processes and technical services.

3. Capital contribution made by the parties in forms other than those stipulated in clauses 1 and 2 of this article must be approved by the Government.

Article 8

Capital contribution of a foreign party or foreign parties to the legal capital of a joint venture enterprise shall be agreed by the parties and shall not be limited provided that the contribution is not less than thirty (30) per cent of the legal capital, except in cases stipulated by the Government.

In the case of a multi-party joint venture enterprise, the minimum capital contribution to be made by each Vietnamese party shall be determined by the Government.

With respect to important economic establishments as determined by the Government, the parties shall agree to increase gradually the proportion of the Vietnamese party's contribution to the legal capital of the joint venture enterprise.

Article 9

The value of the capital contribution made by each party to a joint venture enterprise shall be calculated by reference to the market price at the time of contribution. The capital contribution schedule shall be agreed by the parties, stated in the joint venture contract and approved by the body in charge of State management of foreign investment.

The value of equipment and machinery contributed as capital must be certified by an independent inspection organization.

The parties shall be responsible for the truth and accuracy of the value of their respective capital contributions. Where necessary, the body in charge of State management of foreign investment has the right to appoint an inspection organization to revalue the capital contribution of each party.

Article 10

The parties shall share the profits and bear the risks associated with a joint venture enterprise in proportion to their respective capital contributions, except where it is otherwise agreed by the parties as

stated in the joint venture contract.

Article 11

The board of management shall be the body in charge of the management of the joint venture enterprise and shall comprise representatives of the parties to the joint venture enterprise.

Each party to a joint venture enterprise shall appoint members to the board of management in proportion to its capital contribution to the legal capital of the joint venture enterprise.

In the case of a two-party joint venture enterprise, each party shall have at least two members on the board of management.

In the case of a multi-party joint venture, each party shall have at least one member on the board of management.

If a joint venture enterprise has one Vietnamese party and more than one foreign party, or one foreign party and more than one Vietnamese party, the Vietnamese or foreign party concerned shall have the right to appoint at least two members to the board of management.

In respect of a joint venture enterprise established by an existing joint venture enterprise in Vietnam and a foreign investor or a Vietnamese enterprise, the existing joint venture enterprise shall have at least two members on board of management, one of whom must be appointed by the Vietnamese party.

Article 12

The chairman of the board of management shall be appointed by the parties to the joint venture enterprise. The chairman of the board of management shall be responsible for convening and chairing meetings of the board of management and for monitoring the execution of any resolutions of the board of management.

The general director and deputy general directors shall be appointed and dismissed by the board of management. They shall be responsible before the board of management and the law of Vietnam for the management and running of the operations of the joint venture enterprise.

The general director or the first deputy general director shall be a Vietnamese citizen.

The duties and powers of the chairman of the board of management, the general director and the first deputy general director shall be stated in the charter of the joint venture enterprise.

Article 13

The board of management shall decide on regular meetings. Extra-ordinary meetings of the board of management may be convened at the request of the chairman of the board of management, two thirds of the board members, the general director or the first deputy general director. Meetings of the board of management shall be convened by the chairman of the board of management.

Meetings of the board of management must have a quorum of at least two thirds of the members of the board of management representing all the parties to the joint venture.

Article 14

1. Principal matters which relate to the organization and operation of the joint venture, comprising the appointment and dismissal of the general director, the first deputy general director and the chief accountant; amendments of and additions to the charter of the enterprise; approval of final annual financial statements and final financial statements of capital construction; and loans for investment, shall be decided by the members of the board of management who are present at the meeting on the basis of the principle of unanimous decision.

The joint venture parties may agree on and state in the joint venture charter other issues which require unanimous decision.

2. With respect to matters which are not referred to in clause 1 of this article, the board of management shall decide on the basis of the principle of simple majority voting by members who are present at the meeting.

Article 15

Foreign investors may establish in Vietnam an enterprise with one hundred (100) per cent foreign owned capital.

An enterprise with one hundred (100) per cent foreign owned capital shall be established in the form of a limited liability company and shall be a legal entity in accordance with the law of Vietnam.

An enterprise with one hundred (100) per cent foreign owned capital may co-operate with a Vietnamese enterprise to establish a joint venture enterprise.

With respect to important economic establishments as determined by the Government, Vietnamese enterprises shall, on the basis of agreements with the owner of the enterprise, be permitted to purchase a part of the capital of the enterprise to convert such enterprise into a joint venture enterprise.

Article 16

The legal capital of an enterprise with foreign owned capital must be at least thirty (30) per cent of its invested capital. In special cases and subject to approval of the body in charge of State management of foreign investment, this proportion may be lower than thirty (30) per cent.

During the course of its operation, an enterprise with foreign owned capital must not reduce its legal capital.

Article 17

The duration of an enterprise with foreign owned capital and the duration of a business co-operation contract shall be stated in the investment licence for each project in accordance with regulations of the Government, but shall not exceed fifty (50) years.

Pursuant to regulations made by the Standing Committee of the National Assembly, the Government may, on a project by project basis, grant a longer duration but the maximum duration shall not exceed seventy (70) years.

Article 18

Foreign investors may invest in industrial zones and export processing zones in any of the investment forms stipulated in article 4 of this Law.

Vietnamese enterprises in any economic sector may co-operate with foreign investors to invest in industrial zones and export processing zones in any of the investment forms stipulated in clause 1 and 2 of article 4 of this Law or may establish their wholly owned enterprises.

The transfer of goods between enterprises operating in the Vietnamese market and export processing enterprises shall be deemed to be an export-import activity and shall be regulated by the provisions of the law on export and import. The Government shall provide simple and convenient procedures for export processing enterprises to purchase raw materials, materials and other goods from the Vietnamese market.

The Government shall make regulations on industrial zones and export processing zones.

Article 19

Foreign investors investing in the construction of infrastructure facilities may enter into Build-Operate-Transfer contracts, Build-Transfer-Operate contracts, or Build-Transfer contracts with an authorized State body of Vietnam. Foreign investors shall be entitled to the rights and be subject to the obligations stipulated in such contract.

The Government shall make detailed regulations on investment on the basis of Build-Operate-Transfer contracts, Build-Transfer-Operate contracts and Build-Transfer contracts.

Chapter III

INVESTMENT GUARANTEE MEASURES

Article 20

The State of the Socialist Republic of Vietnam shall guarantee that foreign investors investing in Vietnam are treated fairly and equitably.

Article 21

During the course of investment in Vietnam, capital and other lawful assets of foreign investors shall not be requisitioned or expropriated by administrative measures, and enterprises with foreign owned capital shall not be nationalized.

The State of the Socialist Republic of Vietnam shall protect industrial property rights and shall guarantee the legal interests of foreign investors in respect of technology transfers into Vietnam.

Where the interests of a licensed enterprise with foreign owned capital or of the parties to a licensed business co-operation contract are adversely affected by a change in the law of Vietnam, the State shall take appropriate measures to protect the interests of the investors.

Article 22

Foreign investors investing in Vietnam shall have the right to transfer abroad :

1. Their profits derived from business operations;
2. Payments received from the provision of technology and services;
3. The principal of and interest on any foreign loan obtained during the course of operation;
4. The invested capital;
5. Other sums of money and assets lawfully owned.

Article 23

Foreigners working in Vietnam for enterprises with foreign owned capital or for parties to business co-operation contracts shall, after payment of income tax as stipulated by law, be permitted to transfer abroad their lawful incomes.

Article 24

Any dispute between the parties to a business co-operation contract, between the parties to a joint venture contract, or between enterprises with foreign owned capital or parties to a business co-operation contract and Vietnamese enterprises must firstly be resolved by negotiation and conciliation.

Where the parties fail to settle the dispute by way of conciliation, the dispute shall be referred to a Vietnamese arbitration body or a Vietnamese court in accordance with the law of Vietnam.

With respect to disputes between parties to a joint venture enterprise or a business co-operation contract, the parties may agree in the contract to appoint another arbitration body to resolve the dispute.

Any disputes arising from a Build-Operate-Transfer, a Build-Transfer-Operate or a Build-Transfer contract shall be resolved in accordance with the dispute resolution mechanism agreed by the parties and stated in the contract.

Chapter IV

RIGHTS AND OBLIGATIONS

OF FOREIGN INVESTORS AND

ENTERPRISES WITH FOREIGN OWNED CAPITAL

Article 25

Enterprises with foreign owned capital and parties to a business co-operation contract shall have the right to recruit and employ labour in accordance with its business requirements, provided that priority must be given to recruiting and employing Vietnamese citizens. Foreigners shall only be recruited and employed for jobs which require a level of technical and management expertise which a Vietnamese citizen cannot satisfy, but training Vietnamese citizens as replacements must be undertaken.

The rights and obligations of an employee of an enterprise with foreign owned capital shall be ensured by the labour contract, the collective labour agreement and the provisions of the law on labour.

Article 26

Employers and foreign and Vietnamese employees must comply with the provisions of the law on labour and other relevant legislation, and respect the honour, dignity and traditional customs of each other.

Article 27

Enterprises with foreign owned capital must respect the rights of Vietnamese employees to participate in a political organization and socio-political organizations in accordance with the law of Vietnam.

Article 28

Enterprises with foreign owned capital and foreign parties to business co-operation contracts must purchase insurance cover for property and civil liabilities from Vietnamese insurance companies or other insurance companies permitted to operate in Vietnam.

Article 29

The transfer of foreign technology to Vietnam in foreign investment projects may be carried out in the form

of capital contribution of the value of technology or technology purchases made on the basis of a contract in accordance with the law on technology transfer.

The Government of Vietnam encourages accelerated transfers of technology, especially those of advanced technology.

Article 30

Enterprises with foreign owned capital and the parties to business co-operation contracts must, following completion of capital construction for the establishment of the enterprise, undertake a construction audit and prepare a financial statement of construction works which must be certified by an inspection organization.

Enterprises with foreign owned capital and parties to business co-operation contracts must carry out tenders in accordance with the provisions of the law on tendering.

Article 31

Enterprises with foreign owned capital and parties to business co-operation contracts shall have the right to autonomy in conducting their businesses in accordance with the objectives stipulated in the investment license; to import equipment, machinery, materials and means of transport; to export and sell either directly, or through an agent, their products in order to implement their investment projects in accordance with the law.

Enterprises with foreign owned capital and parties to business co-operation contracts must give priority to purchasing equipment, machinery, materials, and means of transport in Vietnam where the technical and commercial conditions are similar.

Article 32

An enterprise with foreign owned capital may establish branches outside the province or city under central authority in which its head office is located to carry out business activities within the scope and objectives stipulated in the investment licence provided that the approval of the people's committee of the province or city under central authority in which the branch is to be located is obtained.

Article 33

Enterprises with foreign owned capital and parties to business co-operation contracts shall, by themselves, meet the demand of foreign currency for their operations.

The Government of Vietnam assures its assistance in maintaining foreign currency balance with respect to projects for the construction of infrastructure facilities or the production of essential import substitutes, and other important projects.

Article 34

Any party to a joint venture shall have the right to assign its contributed capital in the joint venture enterprise provided that priority is given to the other parties to the joint venture enterprise. Where the assignment is made to a party other than a party to the joint venture enterprise, the conditions of the assignment must not be more favourable than those offered to the other joint venture parties. The assignment must be agreed to by the parties to the joint venture.

These provisions shall also apply to the assignment of rights and obligations of a party to a business co-operation contract.

An enterprise with one hundred (100) per cent foreign owned capital may assign its capital provided that priority is given to Vietnamese enterprises.

The assignment of capital shall only be effective upon the assignment contract being approved by the body in charge of State management of foreign investment.

Where profits arise from the assignment, the assignor must pay profits tax at a rate of twenty five (25) per cent on that profit. In the case of an assignment made to a Vietnamese enterprise, the assignor shall be entitled to a reduction of or exemption from tax.

Article 35

An enterprise with foreign owned capital shall open bank accounts in both Vietnamese currency and foreign currency at Vietnamese banks or joint venture banks or foreign bank branches established in Vietnam.

In special cases, an enterprise with foreign owned capital may open a loan account at a bank located in a foreign country provided that the approval of the State Bank of Vietnam is obtained.

Article 36

The conversion of Vietnamese currency into foreign currency shall be effected at the official exchange rate published by the State Bank of Vietnam at the time of conversion.

Article 37

An enterprise with foreign owned capital and a foreign party to a business co-operation contract shall apply the Vietnamese accounting system. The approval of the Ministry of Finance must be obtained if another common accounting system is applied.

Depreciation of fixed assets of enterprises with foreign owned capital and foreign parties to business co-operation contracts shall be carried out in accordance with the regulations of the Government.

Annual financial statements of enterprises with foreign owned capital and foreign parties to business co-

operation contracts shall be audited by an independent Vietnamese auditing company or another independent auditing company permitted to operate in Vietnam in accordance with the provisions of the law auditing. Annual financial statements must be sent to the State financial body and the body in charge of State management of foreign investment.

Article 38

Enterprises with foreign owned capital and foreign parties to business co-operation contracts shall be subject to profits tax at a rate of twenty five (25) per cent on the profits earned; where investment is encouraged, the rate of profits tax shall be twenty (20) per cent on the profits earned. Where the investment satisfies many investment promotion criteria, the rate of profits tax shall be fifteen (15) per cent on the profits earned. Where the investment is specially encouraged, the rate of profits tax shall be ten (10) per cent on the profits earned.

For investments in the exploitation of oil, gas and other rare and precious resources, the rate of profits tax shall be in accordance with the provisions of the *Law on Petroleum* and other relevant legislation.

Article 39

Depending on the investment sector and region as stipulated in article 3 of this Law, an enterprise with foreign owned capital and a foreign party to a business co-operation contract may be exempted from profits tax for a maximum period of two (2) years commencing from the first profit-making year and may be entitled to a fifty (50) per cent reduction of profits tax for a maximum period of two (2) successive years.

Enterprises with foreign owned capital and foreign parties to business co-operation contracts implementing a project which satisfies many investment promotion criteria shall be exempted from profits tax for a maximum period of four (4) years commencing from the first profit-making year and may be entitled to a fifty (50) per cent reduction of profits tax for a further maximum period of four (4) years.

For cases where investment is specially encouraged, exemption from profits tax may be allowed for a maximum period of eight (8) years.

Article 40

During its operation, losses incurred by a joint venture enterprise in any tax year may be carried forward to the following year and set off against the profits of subsequent years for a maximum of five (5) years.

Article 41

After payment of profits tax, an enterprise with foreign owned capital shall deduct five (5) per cent of the remaining profits to establish a reserve fund. The reserve fund shall be limited to ten (10) per cent of the legal capital of the enterprise. The percentage of profits set aside for a welfare fund and other funds shall be agreed by the parties and stated in the charter of the enterprise.

Article 42

Where reinvestment is made in encouraged investment projects, the total or a part of the profits tax paid in respect of the reinvested profits shall be refunded. The Government shall stipulate the percentage of profits tax to be refunded in respect of the reinvested profits depending on the investment sector and region and the form and duration of the reinvestment.

Article 43

A foreign investor shall, when transferring profits abroad, be subject to withholding tax at rates of five (5) per cent, seven (7) per cent or ten (10) per cent of the profits transferred, depending on the level of capital contribution of such foreign investor in the legal capital of the enterprise with foreign owned capital or the capital for the implementation of a business co-operation contract.

Article 44

Overseas Vietnamese investing in Vietnam in accordance with provisions of this Law shall be entitled to a reduction of profits tax of twenty (20) per cent of the otherwise applicable tax rate, with the exception of cases where the ten (10) per cent rate of profits tax is applicable, and shall be entitled to a withholding tax rate of five (5) per cent on profits transferred abroad.

Article 45

Pursuant to Government regulations, the body in charge of State management of foreign investment shall apply the profits tax rates, the periods of exemption from and reduction of profits tax, and the withholding tax rates in accordance with articles 38, 39, 43, and 44 of this Law. Tax rates and periods of exemption from and reduction of tax shall be specified in the investment licence.

If the investment conditions change during the implementation of an investment project, the exemption from or reduction of taxes applicable to the enterprise with foreign owned capital or the foreign party to a business co-operation contract shall be determined by the Ministry of Finance.

Article 46

Enterprises with foreign owned capital and foreign parties to business co-operation contracts must pay rent for the use of land, water or sea surfaces. Where natural resources are exploited, royalties must be paid in accordance with the provisions of the law.

The Government shall provide for exemptions from rent for the use of land, water or sea surfaces with respect to build-operate-transfer, build-transfer-operate, or build-transfer projects, and investment projects in mountainous and remote regions or regions with difficult socio-economic conditions.

Article 47

Products exported or imported by an enterprise with foreign owned capital or a party to a business co-operation contract shall be subject to export and import duties in accordance with the *Law on Export and Import Duties*.

Equipment, machinery and specialized means of transportation which are used in a technological process imported into Vietnam for the purpose of forming the fixed assets of an enterprise with foreign owned capital, forming the fixed assets for the implementation of a business co-operation contract, or to expand the scale of an investment project, and imported means of transportation used to transport workers shall be exempted from import duty.

The Government may grant exemption from, or reduction of, export and import duties in respect of other special goods which are subject to investment encouragement.

Article 48

An export processing enterprise shall be entitled to exemption from export duty on goods exported from an export processing zone to a foreign country or import duty on goods imported into an export processing zone from a foreign country.

Export processing enterprises and enterprises with foreign owned capital in industrial zones shall be entitled to preferential tax rates in cases where investment is encouraged or specially encouraged in accordance with articles 38, 39, 43, and 44 of this Law. The Government shall provide for the preferential tax rates applicable to each kind of export processing enterprise and enterprise with foreign owned capital in industrial zones.

Article 49

In addition to the types of tax stipulated in this Law, an enterprise with foreign owned capital and a foreign party to a business co-operation contract must pay other taxes in accordance with the law.

Article 50

Foreign and Vietnamese personnel working in an enterprise with foreign owned capital or for parties to a business co-operation contract must pay income tax in accordance with the law.

Article 51

Enterprises with foreign owned capital and foreign parties to business co-operation contracts have the responsibility to comply with the provisions of the law on environmental protection.

Article 52

The operation of an enterprise with foreign owned capital or a business co-operation contract shall be terminated in the following cases :

1. The expiry of the duration stipulated in the investment licence.
2. Following the proposal of one or more of the parties subject to approval by the body in charge of State management of foreign investment.
3. According to a decision of the body in charge of State management of foreign investment in consequence of a serious violation of the law or any provision(s) of the investment licence.
4. Following a declaration of bankruptcy.
5. In other cases stipulated by law.

Article 53

1. Upon the termination of operation as stipulated in clauses 1, 2, 3, and 5 of article 52 of this Law, the enterprise with foreign owned capital or the parties to the business co-operation contract must proceed to liquidate the assets of the enterprise, settle the outstanding liabilities of the parties to the contract, and perform other obligations in accordance with the provisions of the law.
2. Enterprises with foreign owned capital which are declared bankrupt shall be dealt with in accordance with the law on business bankruptcy.

Chapter V

STATE MANAGEMENT OF

FOREIGN INVESTMENT

Article 54

The scope of State management of foreign investment includes :

1. Developing strategies, master plans, plans and policies on foreign investment;
2. Promulgating laws and regulations on foreign investment activities;
3. Providing guidance to ministries and local authorities with respect to the performance of activities relating to foreign investment;
4. Issuing and revoking investment licences;
5. Determining the co-ordination between State bodies in relation to managing foreign investment activities;
6. Inspecting, monitoring and supervising foreign investment activities.

Article 55

The Government shall uniformly carry out State management of foreign investment in Vietnam.

The Government shall make provisions on the issuance of investment licences by the Ministry of Planning and Investment; decide on the delegation of investment licence issuing authority to qualified people's committees of provinces or cities under central authority, based on the master plans and plans for socio-economic development, the investment sector, the nature of the investment, and the scale of the investment project; and make provisions on the issuance of investment licences with respect to investment projects in industrial zones and export processing zones.

Article 56

The Ministry of Planning and Investment shall be the body in charge of State management of foreign investment and shall assist the Government in managing foreign investment activities in Vietnam.

The Ministry of Planning and Investment shall have the following duties and powers :

1. Preside over the preparation and submissions to the Government of strategies and plans to attract foreign investment; draft laws, regulations and policies on foreign investment; co-ordinate with ministries, ministerial level bodies and Government bodies in relation to the State management of foreign investment; provide guidance to people's committees of provinces and cities under central authority on the implementation of laws, regulations and policies on foreign investment;
2. Prepare and co-ordinate list(s) of investment projects; provide guidance on investment procedures; carry out State management of investment promotion and consultancy activities;
3. Receive investment applications and preside over the evaluation of investment projects; issue investment licences within its authority;
4. Act as a co-ordinating body to deal with problems arising during the formation, commencement and implementation of foreign investment projects;
5. Evaluate social and economic effects of foreign investment activities;
6. Inspect and supervise the implementation of foreign investment activities in Vietnam in accordance with the law.

Article 57

Ministries, ministerial level bodies, and Government bodies shall carry out State management of foreign investment within their authority and in accordance with the following powers and functions :

1. Co-ordinate with the Ministry of Planning and Investment to prepare laws and regulations, policies, master plans and plans relating to foreign investment;
2. Prepare plans and lists of investment projects calling for foreign investment within their respective industries; and organize the promotion and encouragement of investment;
3. Participate in the evaluation of investment projects;
4. Guide and resolve procedures relating to the commencement and implementation of investment projects;

5. Inspect and supervise the operations of enterprises with foreign owned capital and of parties to business co-operation contracts within their respective scopes of responsibility;
6. Perform other duties within their authority in accordance with the provisions of the law.

Article 58

People's committees of provinces and cities under central authority shall carry out State management of foreign investment in their respective localities in accordance with the following powers and functions :

1. On the basis of approved socio-economic development master plans, prepare and publish a list of local projects calling for foreign investment; organize the promotion and encouragement of investment;
2. Participate in the evaluation of foreign investment projects in their respective localities;
3. Receive investment applications, evaluate investment projects and issue investment licences to foreign investment projects in their localities in accordance with the authority delegated by the Government;
4. Resolve all administrative procedures relating to the formation, commencement and implementation of investment projects within their respective authority;
5. Carry out State management in their localities with respect to the business production activities of enterprises with foreign owned capital and parties to business co-operation contracts;
6. Inspect and supervise the operations of enterprises with foreign owned capital and parties to business co-operation contracts.

Article 59

Parties or one of the parties or the foreign investor shall send to the investment licence issuing body an application file for an investment licence, comprising an application for an investment licence, the business co-operation contract or the joint venture contract, the charter of the enterprise, a technical-economic explanatory statement and other relevant documentation.

Article 60

The investment licence issuing body shall consider the application and notify the investor of its decision no later than sixty (60) days as from the date of receipt of a proper application file. The approval decision shall be notified in the form of an investment licence.

An investment licence shall be the certificate of business registration.

Article 61

The joint venture contract, the business cooperation contract, the charter of the enterprise, and any changes to the business objectives, the scale of production or the contribution ratio of the legal capital must be approved by the body in charge of State management of foreign investment.

Article 62

Ministries, ministerial level bodies, Government bodies and people's committees of provinces and cities under central authority shall be responsible for the settlement of procedures relating to the implementation of investment projects within thirty (30) days as from the receipt of the proper documents.

Article 63

Any foreign investor, enterprise with foreign owned capital, party to a business co-operation contract, organization, individual, State officer or body breaching the provisions of the law on foreign investment shall, depending on the seriousness of the breach, be dealt with in accordance with the provisions of the law.

Article 64

Any foreign investor, enterprise with foreign owned capital, party to a business co-operation contract, organization or individual shall have the right to lodge a complaint or to take legal action against the decision or conduct of State officers or bodies, which is illegal, or which causes difficulties and inconveniences. The complaint or legal action and the resolution of complaints or legal actions shall be in accordance with the provisions of the law.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 65

Pursuant to the provisions of this Law, the Government shall make provisions for hospitals, schools, and research institutes in technological, technical, and natural science sectors to co-operate in foreign investment activities.

Article 66

Pursuant to the principles set out in this Law, the

Government of the Socialist Republic of Vietnam may enter into agreements with foreign governments for co-operation and investments which are consistent with the economic relations between Vietnam and the country concerned.

Article 67

This Law shall be of full force and effect as of the date of promulgation.

This Law replaces the *Law on Foreign Investment in Vietnam* dated 29 December 1987, the *Law on the Amendment of and Addition to a Number of Articles of the Law on Foreign Investment in Vietnam* dated 30 June 1990, and the *Law on the Amendment of and Addition to a Number of Articles of the Law on Foreign Investment in Vietnam* dated 23 December 1992.

Article 68

The Government shall make detailed provisions for the implementation of this Law.

This Law was passed by the National Assembly of the Socialist Republic of Vietnam at its IX legislature, 10th Session on 12th November 1996.

CHAIRMAN OF THE NATIONAL ASSEMBLY

Nong Duc Manh

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

GOVERNMENT No. 12/CP *Hanoi, 18 February 1997*

GOVERNMENT DECREE

PROVIDING DETAILED

REGULATIONS ON THE

IMPLEMENTATION OF THE LAW ON

FOREIGN INVESTMENT IN VIETNAM

the government

Pursuant to the *Law on Organization of the Government* dated 30 September 1992;

Pursuant to the *Law on Foreign Investment in Vietnam* dated 12 November 1996;

Pursuant to the *Law on Promulgation of Legal Instruments* dated 12 November 1996;

Following the proposal of the Minister of Planning and Investment,

Decrees :

Chapter I

GENERAL PROVISIONS

Article 1

This Decree makes detailed provisions on the implementation of the *Law on Foreign Investment in Vietnam* dated 12 November 1996.

Investments in industrial zones, export processing zones and investment under build-operate- transfer (abbreviated in English as *BOT*) contracts , build-transfer-operate *(BTO)* contracts and build-transfer *(BT)* contracts shall comply with the relevant provisions of this Decree and other legislation of the Government on industrial zones,export procesing zones, BOT, BTO and BT.

International credit activities, operations of branches of foreign companies in Vietnam, and other forms of indirect investment and trade are beyond the scope of this Decree.

Article 2

Entities participating in investment co-operation in accordance with the provisions of the *Law on Foreign Investment in Vietnam* shall include :

1. Vietnamese enterprises:

l State owned enterprises established in accordance with the *Law on State Owned Enterprises;*Co-operatives established in accordance with the *Law on Co-operatives;*

- Enterprises belonging to socio-political organizations;
- Enterprises established in accordance with the *Law on Companies;*
- Enterprises established in accordance with the *Law on Private Enterprises*.

2. Vietnamese organizations which are entities referred to in article 65 of the *Law on Foreign Investment in Vietnam* and which satisfy the criteria stipulated by the Government.

3. Foreign investors.

4. Enterprises with foreign owned capital.

5. Overseas Vietnamese.

6. State bodies authorized to enter into BOT, BTO and BT contracts.

Article 3

Based on the economic and social development planning and orientation for each period, the Ministry of Planning and Investment shall co-ordinate with ministries, branches and people's committees of provinces and cities under central authority (hereinafter referred to as *provincial people's committees*) to submit to the Government for approval and promulgation a list of regions in which investment is encouraged, a list of encouraged investment projects and specially encouraged investment projects, a list of sectors in which licensing of investment is conditional, and a list of sectors in which investment will not be licensed.

Article 4

Investment license issuing bodies as stipulated in article 55 of the *Law on Foreign Investment in Vietnam* shall be:

- Ministry of Planning and Investment.
- Qualified provincial people`s committees in accordance with the decision of the Government on delegation of licensing authority.

Based on the proposal of the provincial people`s committee and the conditions of each board of management of an industrial zone, the Ministry of Planning and Investment shall submit to the Pride Minister of the Government for a decision on authorization by the Ministry of Planning and Investment to a board of management of an industrial zone in respect of the issuance of investment licences to investment projects in such industrial zone.

Article 5

1. During its operation in Vietnam, an entity participating in investment co- operation as stipulated in article 2 of this Decree must comply with the provisions of the *Law on Foreign Investment in Vietnam*, the provisions of this Decree and other relevant provisions of the laws of Vietnam.
2. In cases where Vietnamese law does not yet provide for dealing with particular situations relating to foreign investment in Vietnam, the parties may agree in the contract to apply foreign laws provided that such agreement is not inconsistent with the provisions of Vietnamese law.

Article 6

The files of an investment project and official correspondence with State bodies of Vietnam must be done in Vietnamese or in Vietnamese and a commonly used foreign language.

Chapter II

FORM OF INVESTMENT

Article 7

1. A business co-operation contract is a document signed by two or more parties (hereinafter referred to as *the parties to business co-operation contracts*) which stipulates the responsibilities of, and the sharing of business results between, the parties for the purposes of commencing business investment in Vietnam without creating a legal entity.

   Commercial contracts, contracts for the delivery of raw materials in return for finished products, equipment purchasing contracts on deferred payment plans, and other contracts which do not provide for the sharing of profits or business results are beyond the scope of the regulations of this Decree.

   Business co-operation contracts for the exploration for or exploitation of oil and gas and a number of other natural resources in the form of a production sharing contracts shall be governed by the provisions of the law on petroleum, the relevant law, and the *Law on Foreign Investment in Vietnam.*

   2. A business co-operation contract shall be signed by the duly authorized representatives of the parties to business co-operation contracts .

Article 8

A business co-operation contract must contain the following principal matters:

1. The nationalities, addresses, and names of the duly authorized representatives of the parties to business co-operation contracts.
2. The objectives and scope of business.
3. The contributions of the parties to business co-operation contracts, the sharing of business results, and the schedule for performance of the contract.
4. The main products and the ratio of products for export and products for domestic consumption.
5. The duration of the contract.
6. The rights and obligations of the parties to business co-operation contracts.
7. Amendment and termination of the contract and conditions of assignment.
8. Dispute resolution.

A business co-operation contracts shall be effective as from the date of issuance of the investment licence.

Article 9

When conducting business, the parties to business co-operation contracts may by agreement establish a co-ordination board to monitor and supervise the performance of the business co-operation contract. The co-ordination committee of a business co-operation contract shall not be the legal representative of the parties to business co-operation contracts.

The functions, duties and powers of the co-ordination board shall be agreed by the parties.

Article 10

The application file for an investment licence in respect of an investment project in the form of a business co-operation contract shall include:

1. The application form for an investment licence.
2. The business co-operation contract.
3. Statements certifying the legal status and financial capacity of the parties.
4. The economic-technical explanatory statement.
5. Other documents stipulated in articles 38, 39, 45 and 83 of this Decree.

Article 11

1. The foreign party shall fulfill tax obligations and other financial obligations in accordance with the *Law on Foreign Investment in Vietnam*; the Vietnamese party shall fulfill tax obligations and other financial obligations in accordance with the provisions of the law applicable to domestic enterprises.
2. Each of the parties to business cooperation contracts shall be responsible for its activities before the law of the Socialist Republic of Vietnam.

Article 12

1. A joint venture enterprise is an enterprise established in Vietnam on the basis of a joint venture contract signed by one or more Vietnamese parties and one or more foreign parties in order to invest and carry on business in Vietnam.
2. A new joint venture enterprise is an enterprise established by a licensed joint venture enterprise operating in Vietnam and a foreign investor, or a Vietnamese enterprise, or a licensed joint venture enterprise or enterprise with one hundred (100) per cent foreign owned capital operating in Vietnam.

   In special circumstances, a joint venture enterprise may be established on the basis of an agreement signed by the Government of the Socialist Republic of Vietnam and a foreign government.

   3. A joint venture enterprise shall be established in the form of a limited liability company and shall be a legal entity in accordance with the law of Vietnam; each joint venture party shall be responsible to the other party and to the joint venture enterprise to the extent of its contribution to the legal capital.

4. A joint venture enterprise shall be established and operate as from the date of issuance of the investment licence.

Article 13

The application file for an investment licence in respect of a joint venture enterprise shall include:

1. The application form for an investment licence.
2. The joint venture contract.
3. The charter of the joint venture enterprise.
4. Statements certifying the legal status and financial capacity of the joint venture parties.
5. The economic-technical explanatory statement.
6. Other documents as stipulated in articles 38, 39, 45, and 83 of this Decree.

Article 14

A joint venture contract must contain the following principal matters:

1. The nationalities, addresses, and authorized representatives of the joint venture parties.
2. The objectives and scope of the business.
3. The invested capital, legal capital, legal capital contribution ratio, method and schedule for making capital contributions, and schedule for capital construction.
4. The main products and the ratio of products for export and products for domestic consumption.
5. The duration of operation of the enterprise.
6. The rights and obligations of the parties.
7. Amendment and termination of the contract, conditions of assignment, conditions for termination and dissolution of the enterprise.
8. Dispute resolution.

Article 15

The charter of a joint venture enterprise must contain the following principal matters:

1. The nationalities, addresses and names of the authorized representatives of the joint venture parties, and the name and address of the enterprise.
2. The objectives and scope of business of the enterprise.
3. The invested capital, legal capital, legal capital contribution ratio, method and schedule for making legal capital contributions.
4. The number of members, composition, duties, powers, and term of office of the board of management; the duties and powers of the general director and deputy general directors of the enterprise.
5. The representative of the enterprise before the courts, arbitration bodies, and Vietnamese State bodies.
6. The financial principles.
7. The ratio for distribution of profits and losses between the joint venture parties.

8. The duration of operation, and termination and dissolution of the enterprise.
9. Labour relations within the enterprise, training plans for executives, technical and professional staff, and employees.
10. The procedure for amendment of the charter of the joint venture enterprise.

Article 16

If, during operation, the joint venture parties agree to amend or add to the provisions of the joint venture contract or the charter of the joint venture enterprise, then such amendments or additions shall only be effective upon approval by the investment licence issuing body.

Article 17

1. The joint venture parties shall make contributions to the legal capital in accordance with the provisions of article 7 of the *Law on Foreign Investment in Vietnam*.
2. The Vietnamese party may mobilise its own capital and other capital resources of domestic enterprises and individuals in order to ensure an appropriate proportion of the legal capital of the joint venture enterprise.
3. The parties shall agree on the value of the capital contribution made by each party based on market prices at the time of contribution.
4. A foreign party to a joint venture enterprise may make its capital contribution in Vietnamese currency which originates from profits earned, distribution payments upon dissolution, and assignment of invested capital in Vietnam.
5. The making of capital contribution by a Vietnamese party in the form of the right to use land must take into account the specific conditions of the project in order to ensure that the land is used effectively for business purposes.

Article 18

1. The legal capital of the joint venture enterprise must not be less than thirty (30) per cent of the invested capital; in respect of infrastructure construction projects in regions with difficult economic and social conditions, investment projects in mountainous regions and remote or distant regions, and afforestation projects, this ratio may be reduced to twenty (20) per cent provided that the approval of the investment licence issuing body is obtained.
2. The capital contribution of a foreign party or foreign parties shall be agreed by the joint venture parties but shall not be less than thirty (30) per cent of the legal capital of the joint venture enterprise.

   In the case of a new joint venture, the capital contributions of foreign investors in the legal capital must satisfy the above ratio.

   In certain cases, depending on the particular business sector, technology, market, business results, and other economic and social benefits of the project, the investment licence issuing body may consider and permit the foreign party to reduce its capital contribution to the legal capital to twenty (20) per cent.

3. With respect to important projects, the joint venture parties may, when entering into the joint

venture contract, agree on the timing, method and proportion of further capital contributions by the Vietnamese party to the legal capital of the joint venture enterprise.

Article 19

The legal capital may be contributed once in full at the time of establishment of the joint venture enterprise or by installments over a reasonable period; the method and schedule of contribution to the legal capital must be stipulated in the joint venture contract and in accordance with the economic-technical explanatory statement.

In cases where the joint venture parties fail, without reasonable cause, to make capital contributions in accordance with the agreed schedule, the investment licence issuing body shall have the power to withdraw the investment licence.

Article 20

During its operation, a joint venture enterprise must not reduce its legal capital. Any increase in the invested capital or legal capital, or any change in the capital contribution ratio of the joint venture parties, must be decided by the board of management of the enterprise and approved by the investment licence issuing body.

Article 21

1. The board of management shall be the body in charge of the joint venture enterprise. The board of management shall comprise a chairman, a vice-chairman and members.

   The number of members constituting the board of management, the members representing each of the joint venture parties, and the appointments of board members, the chairman of the board of management, the general director and deputy general directors shall be in accordance with the provisions of articles 12 and 13 of the *Law on Foreign Investment in Vietnam.*

   The nominations and appointments of the above members must be carried out within a period of sixty (60) days from the date of issuance of the investment licence.

   The chairman of the board of management may concurrently hold the position of general director of the joint venture enterprise.

2. The term of office of the members of the board of management shall be determined by the joint venture parties but shall not exceed five years.
3. When establishing a new joint venture enterprise, the joint venture enterprise must have at least two members on the board of management, with at least one of those members being a Vietnamese citizen representing the Vietnamese party in the joint venture.

Article 22

1. The board of management shall hold a meeting at least once a year. Meetings of the board of management shall be convened by the chairman of the board of management; extraordinary meetings must be requested by two thirds of the members of the board of management, one of the joint venture parties, the general director, or the first deputy general director.
2. Meetings of the board of management must have a quorum of at least two thirds of the members of the board of management representing the joint venture parties. A member of the board of management may appoint, by a written instrument, a proxy to attend meetings and vote on that member's behalf on matters in respect of which the proxy is authorized to vote.

Article 23

1. The chairman of the board of management has the following powers and duties :

- to convene and chair meetings of the board of management;
- to have a key role in supervising and monitoring the execution of resolutions of the board of management.

1. Members of the board of management shall not be entitled to a salary but shall be entitled to an allowance relating to the operation of the board of management as determined by the board of management. These expenses may be included in the management expenditure of the joint venture enterprise.

Article 24

The general director and deputy general directors of the joint venture enterprise shall be responsible for the management and conduct of the day to day activities of the joint venture enterprise. The general director shall be the representative of the enterprise before the court and Vietnamese State bodies. The general director or first deputy general director must be a representative of the Vietnamese party and must be a Vietnamese citizen residing permanently in Vietnam. In cases where the joint venture has only one deputy general director, that director shall be the first deputy general director.

The board of management shall determine the powers and duties of the general director and the first deputy general director. The general director shall be responsible before the board of management for the operation of the joint venture enterprise. In cases where the general director and the first deputy general director have a difference of opinion in relation to the management and running of the enterprise, the opinion of the general director must be complied with, however, the first deputy general director may reserve his or her opinion and raise it with the board of management at its next meeting for consideration and decision.

Article 25

1. Based on the business sector and nature of the project, the board of management of the joint venture enterprise may hire the services of a management organization to manage the operation of the enterprise.

   The management contract shall be a contract for the operation, management, and exploitation of a project as agreed by the parties signing the contract. The signing and performance of the contract must be in accordance with the provisions of the law of Vietnam.

The management contract must not change the objectives and scope of operation of the project as stipulated in the investment licence. The management contract must be approved by the investment licence issuing body within thirty (30) days from the date of receipt of the file. If the contract is not approved within the above time-limit, the investment licence issuing body must notify the investor in writing stating clearly the reasons therefor.

2. The management organization shall operate within the scope stipulated in the approved management contract.
3. The management organization must fulfill all tax obligations and other obligations in accordance with the provisions of the law currently in force. The joint venture enterprise shall, on behalf of the management organization, pay these taxes to the State of Vietnam.
4. In all cases, the joint venture enterprise shall be entity responsible before the law for the operation of the management organization in its performance of the contract. The general director and the first deputy general director of the joint venture enterprise shall be responsible for assisting and supervising the operation of the management organization.

Article 26

An enterprise with one hundred (100) per cent foreign owned capital is an enterprise owned and established in Vietnam by a foreign investor who self-manages the enterprise and takes full responsibility for its business results.

An enterprise with one hundred (100) per cent foreign owned capital shall be established in the form of a limited liability company and shall be a legal entity in accordance with the law of Vietnam.

An enterprise with one hundred (100) per cent foreign owned capital shall be established and operate from the date of issuance of the investment licence.

Article 27

The application file for an investment licence in respect of an enterprise with one hundred (100) per cent foreign owned capital shall include :

1. The application form for an investment licence.
2. The charter of the enterprise.
3. Statements certifying the legal status and financial capacity of the foreign investor.
4. The economic-technical explanatory statement.
5. Other documents as stipulated in articles 38,39,45 and 83 of this Decree.

Article 28

1. The legal capital of an enterprise with one hundred (100) per cent foreign owned capital must constitute at least thirty (30) per cent of the invested capital; in respect of infrastructure construction projects in regions with difficult economic and social conditions, investment projects in mountainous and remote and distant regions, and afforestation projects, this ratio may be reduced to twenty (20) per cent provided that the approval of the investment licence issuing body is obtained.

2. During its operation, an enterprise with one hundred (100) per cent foreign owned capital must not reduce its legal capital. Any increase in the legal capital or invested capital shall be determined by the enterprise and must be approved by the investment licence issuing body.
3. With respect to important projects, the Ministry of Planning and Investment shall provide guidance for the foreign investor to assign capital by agreement to a Vietnamese enterprise. The conditions, proportion and timing of such assignment shall be specified in the investment application form.

Article 29

The charter of an enterprise with one hundred (100) per cent foreign owned capital must contain the following principal matters :

1. The nationality, address and name of the authorized representative of the foreign investor, and the name and address of the enterprise.
2. The objectives and scope of business of the enterprise.
3. The invested capital, legal capital, method and schedule of capital contribution, and schedule for capital construction.
4. The representative of the enterprise before the courts, arbitration bodies, and State bodies of Vietnam.
5. The financial principles.
6. The duration of operation, termination and dissolution of the enterprise.
7. Labour relations within the enterprise and training plans for executives, technical and professional staff, and employees.
8. The procedure for amendment of the charter of the enterprise.

Any amendment of or addition to the charter of an enterprise with one hundred (100) per cent foreign owned capital shall only be effective upon approval by the investment licence issuing body.

Article 30

The representative of an enterprise with one hundred (100) per cent foreign owned capital shall be the general director of the enterprise. If the general director is not a permanent resident of Vietnam, then he or she must delegate his or her authority to a representative who must be a permanent resident of Vietnam.

Article 31

1. The duration of operation of an enterprise with foreign owned capital and the duration of a business co-operation contract shall be proposed by the investor in accordance with article 17 of the *Law on Foreign Investment in Vietnam* and shall be approved and specified in the investment licence by the investment licence issuing body.
2. The duration of an enterprise with foreign owned capital and the duration of a business co-operation contract shall be calculated from the date of issuance of the investment licence .

   When enterprises with foreign owned capital or parties to business co-operation contracts wish to extend the duration of operation as stipulated in the investment licence, an application must be submitted to the investment licence issuing body for consideration and decision no later than six

months prior to the expiry to the duration of operation . Within thirty (30) days from the date of receipt of the application for an extension, the investment licence issuing body must notify the applicant of its decision. If an approval is not granted within the above time -limit, the investment licence issuing body must notify the investor in writing stating clearly the reasons therefor.

Article 32

Enterprises with foreign owned capital or parties to business co-operation contracts must publish in central and local newspapers the main information stipulated in the investment licence. The contents of the advertisement shall include:

- The names and the addresses of the joint venture parties , the parties to business co-operation contracts , or the foreign investor;
- The objectives and scope of business;
- The capital of the business co-operation, the invested capital and legal capital of the enterprise with foreign owned capital, and the capital contribution of each party;
- The representative(s) of the enterprises or parties to business cooperation contracts before the courts, arbitration bodies, and State bodies of Vietnam;
- The date on which the investment licence was issued, the duration of operation of the enterprise or the duration of the business co-operation contract.

Article 33

1. An enterprise with foreign owned capital or a business co-operation contract shall terminate in any one of the circumstances stipulated in article 52 of the *Law on Foreign Investment in Vietnam*. Within fifteen (15) days from the date on which operations are terminated, an enterprise with foreign owned capital or the parties to business co-operation contracts must publish such termination in central or local newspapers and commence liquidation of the assets of the enterprise or liquidation of the business co-operation contract.
2. The period of liquidation of an enterprise or a business co-operation contract shall not exceed six months as from the date on which a decision is made to dissolve the enterprise or terminate the contract prior to expiry. In special cases where approval of the investment licence issuing body is required, this period may be extended provided that the total period shall not exceed one year.
3. In the case of joint venture enterprises, the board of management shall, no later than six months prior to the expiry of operation or no later than thirty (30) days after a decision is made to dissolve the joint venture enterprise prior to its expiry, be responsible for the establishment of a liquidation committee comprising representatives of the joint venture parties and shall determine the powers and the duties of the liquidation committee. Member of the liquidation committee may be selected from the personnel of the joint venture enterprise or from external experts.
4. Liquidation of a business co-operation contract or liquidation of the assets of an enterprise with one hundred (100) per cent foreign owned capital shall be determined by the parties to business co-operation contracts or the foreign investor respectively.
5. All expenses incurred in the process of liquidation of an enterprise or business co-operation contract shall be borne by the enterprise or the parties to business co-operation contracts as the case may be and shall take priority over payment of all other liabilities.
6. All other liabilities of the enterprise or parties to business co-operation contracts shall be paid in accordance with the following order of priority:

- Wages and social insurance contributions of employees owed by the enterprise or parties to business co-operation contacts;
- Tax liabilities and other financial obligations of the enterprise or parties to business co-operation contracts payable to the State of Vietnam;
- Loans (including interest);

- Other liabilities of the enterprise or parties to business cooperation contracts.

Article 34

No later than thirty (30) days after the date of completion of liquidation, an enterprise with foreign owned capital or the parties to business co-operation contracts shall be responsible for submitting to the investment licence issuing body the investment licence a liquidation report, and the files on the operation of the enterprise and to the seal issuing body the seal. The liquidation report must be approved by the investment licence issuing body . The investment licence issuing body shall withdraw the investment licence and notify the relevant bodies.

Article 35

In cases where a dispute arises between joint venture parties or parties to business co-operation contracts, and between investors, in relation to the liquidation process, the investment licence issuing body shall still terminate all liquidation activities upon expiry of the liquidation period referred to in article 33 of this Decree. The disputed liquidation matters must be resolved in accordance with the provisions of article 102 of this Decree.

The investment licence issuing body shall issue a decision withdrawing the investment licence and shall notify the relevant bodies of that decision.

Article 36

1. Bankruptcy of an enterprise with foreign owned capital must be carried out in accordance with the orders and procedures stipulated in the law on business bankruptcy.
2. If, during the liquidation process, it is identified that the enterprise is in a position of bankruptcy, any dealings with the assets of the enterprise with foreign owned capital or parties to business co-operation contracts must be carried out in accordance with the procedures stipulated in the law on business bankruptcy.

Chapter III

TECHNOLOGY TRANSFER, ENVIRONMENTAL PROTECTION AND IMPORTING EQUIPMENT AND MACHINERY

Article 37

1. The government of the Socialist Republic of Vietnam shall create favorable conditions and shall protect the legal rights and interests of a party transferring technology into Vietnam for the purpose of implementing an investment project; the Government shall encourage and grant

preferential treatment for accelerated transfers of technology, especially those of advanced technology.

2. Technology transferred into Vietnam for the purpose of implementing an investment project must satisfy the following criteria:

a. It must produce new products which are required in Vietnam or products for export;
b. It must increase technical capability, product quality, or production capacity;
c. It must reduce usage of raw materials and fuel; it must exploit and utilize efficiently natural resources.

Transfers of technology which have adverse effects on the ecological environment and occupational safety are prohibited.

Article 38

1. The transfer of technology shall be in the form of capital contribution or technology purchases on the basis of a contract for technology transfer. The transferor of technology must have lawfully obtained the technology.
2. The value of technology transferred in the form of capital contribution shall be agreed by the parties and shall, in all cases, be no more than twenty (20) per cent of the legal capital.
3. When making capital contribution in the form of technology transfer, the investor must prepare a file for transfer of technology. The file for transfer of technology must be submitted together with the application file for an investment licence and must contain information relating to the industrial property, certificates of protection of industrial property rights, and other certificates of technical capability and the principles on which the value of the technology is determined as agreed by the joint venture parties.

   Capital contribution in the form of technology transfer must be considered and approved by the State management body in charge of technology and environment.

4. The transfer of technology in the form of a technology purchase shall be carried out on the basis of a contract for technology transfer in accordance with the provisions of the law on technology transfer.

Article 39

1. Based on the nature of operation, the level of technology and the degree of environmental impact, the Ministry of Science, Technology and Environment shall issue a list of projects which are required to prepare an environmental impact evaluation report.

   The preparation and appraisal of the environmental impact evaluation report shall be in accordance with the law on protection of the environment.

2. For projects not specified in the above list, the investor shall only be required to set out in the investment application file an explanation of any factors which may have an environmental impact, measures proposed to deal with those factors, and an undertaking to protect the environment during the period of construction and business operation.
3. In cases where the investor applies advanced international environmental standards during construction and business operation in Vietnam, the investor shall only be required to register with the State management body in charge of technology and environment.

Article 40

1. The standard and quality of equipment, machinery and materials imported into Vietnam for the purpose of implementing an investment project must be in accordance with the requirements of production, environmental protection, and occupational safety as specified in the economic-technical explanatory statement, technical designs, and provisions on importing equipment and machinery.
2. Equipment and machinery imported for the purpose of implementing an investment project must be inspected with respect to its value and quality prior to being imported or prior to installation.
3. In respect of projects for which installation or construction is completed but no inspection has been carried out in accordance with the provisions of this Decree, the inspection of equipment and machinery shall be decided on by the investment licence issuing body if it is considered necessary.
4. The organization carrying out the inspection of the imported equipment and machinery may be a Vietnamese inspection company, a joint venture inspection company, a one hundred (100) per cent foreign owned inspection company or a foreign inspection company. The investor must provide the investment licence issuing body with information on the selected inspection company.

   The organization carrying out the valuation shall be legally and materially responsible for the valuation result.

   In cases where the inspection result is less than the value specified by the investor, the investor must adjust the value in accordance with the inspection result. Where it is identified that the investor has committed a deceptive conduct, the investor shall, depending on the seriousness of the breach, be dealt with in accordance with the provisions of the law.

5. Where necessary, the investment issuing body may appoint an inspection organization or request a re-inspection of the imported equipment or machinery.

Chapter IV

LAND USE

Article 41

The State of the Socialist Republic of Vietnam shall permit enterprises with foreign owned capital and parties to business co-operation contracts to lease land, water and sea surfaces for the purpose of implementing investment projects.

The rent and any exemption from or reduction of rent for land, water and sea surfaces in respect of each project shall be stated in the investment licence.

Article 42

Rent for land, water and sea surfaces and any exemption from or reduction of rent shall be determined by the Ministry of Finance.

Rent for land, water and sea surfaces in respect of each project shall remain stable for a minimum period of five years and any increase in rent shall not exceed fifteen (15) per cent of the previously applicable rent.

An investment project which, prior to a decision being made on rent increase, pays land rent in accordance with the provisions of the investment licence may pay land rent at the rate specified in the investment licence for an additional period of five years as from the date on which a decision to increase rent is made.

In cases where enterprises with foreign owned capital or parties to business co-operation contracts have paid rent for the term of the lease of land, water and sea surfaces, or have made a periodical payment, such payment shall not be readjusted if the rent is increased during that term or period.

Article 43

In cases where the Vietnamese party to a joint venture enterprise is permitted to make contribution to the legal capital in the form of value of the right to use land, then the parties shall, on the basis of the land rent schedule stipulated by the Ministry of Finance, agree on the value of such right which shall remain stable for the entire period of capital contribution.

The Vietnamese party shall be responsible to record the said capital contribution as debt to the State Budget and to repay the debt in accordance with the regulations of the Ministry of Finance.

Article 44

The Prime Minister of the Government shall make a decision on the lease of land to projects which require five or more hectares of urban land or fifty (50) or more hectares of other land. The chairmen of provincial people's committees shall decide on the lease of land to other projects.

Article 45

1. The application file for leasing land shall be submitted together with the application file for an investment licence and must contain the following principal matters :
- the location and size of the land;
- the land rent as proposed by the provincial people's committee on the basis of the land rent schedule stipulated by the Ministry of Finance;
- the method for compensation and site clearance as approved in principle by the provincial people's committee.
1. The preparation of the file for leasing land, the land leasing contract, and the issuance of the certificate of land use right shall be in accordance with the provisions of the General Cadastral Department.
2. In cases where capital is contributed in the form of land use rights, the Vietnamese party shall be

responsible for completing all formalities relating to obtaining the land use rights.

In cases where the State of Vietnam permits the leasing of land, the provincial people's committee of the locality in which the investment project is located has the responsibility to organize compensation and site clearance and to complete all formalities relating to the leasing of land

3. In respect of land allocated to a Vietnamese party for use, when entering into an investment co-operation with a foreign party which does not change the use of land, the investor may, after the investment licence is issued, commence immediately all formalities in relation to design and construction or carry out other business operations in accordance with the prevailing provisions.

Chapter V

BUSINESS ORGANIZATIONS

Article 46

Enterprises with foreign owned capital or parties to business cooperation contracts shall have the right to determine business programs and plans in accordance with the objectives stated in the investment licence.

Article 47

1. Within a period of sixty (60) days from the date of issuance of investment licence, enterprises with foreign owned capital and parties to business co-operation contracts shall register with the Ministry of Trade all export and import activities and all products to be consumed in the domestic market.
2. Based on the provisions of the investment licence and the economic-technical explanatory statement, enterprises with foreign owned capital and parties to business co-operation contracts shall register plans to import machinery, equipment, spare parts, materials, raw materials, and so forth (hereinafter referred to as *goods*) for the entire duration of capital construction or on an annual basis in accordance with the construction schedule of the enterprise. Plans for importing goods may be added to or adjusted in accordance with the capital contribution schedule, work schedule and business production programs in the first month of each quarters of a year and each year.
3. Based on the provisions of the investment licence, enterprises with foreign owned capital and parties to business co-operation contracts shall annually register a plan for products to be exported and products to be consumed in the domestic market. In December of each year, the enterprises and parties to business co-operation contracts shall submit to the Ministry of Trade a report on the results of implementation of the export, import, and domestic consumption plans and any other proposals (if any) and, at the same time, prepare export, import, and domestic consumption plans for the following year.

   Where export, import, and domestic consumption plans are required to be added to or adjusted in respect of quantities, types, values and so forth, enterprises with foreign owned capital and parties to business cooperation contracts shall submit a written proposal to the Ministry of Trade for

consideration and decision.

4. In cases where commercial conditions are the same, enterprises with foreign owned capital and parties to business co-operation contracts must give preference to goods available in Vietnam over imports.
5. Based on the investment licence, the economic-technical explanatory statement, technical designs, and the provisions of clauses 2,3, and 4 of this article, the Ministry of Trade shall, within a period of fifteen (15) days from the date of receipt of the file, appraise the export, import, and domestic consumption plans for each project. If the plans are not approved within the above time-limit, the Ministry of Trade must notify the enterprise or parties to business co-operation contracts stating clearly the reasons therefor.

Article 48

1. Enterprise with foreign owned capital and parties to business co-operation contracts may process or re-process products in accordance with the objectives stated in the investment licence; processing contracts must be approved by the Ministry of Trade
2. An enterprise with foreign owned capital which mainly produces goods for export may establish a bonded warehouse at the enterprise for the purpose of producing goods for export. Goods delivered into the bonded warehouse of the enterprise shall temporarily not be liable for payment of import duties.

   An enterprise permitted to establish a bonded warehouse for the above purposes must ensure the following conditions and procedures :

- it must export at least fifty (50) per cent of its products;
- all goods delivered from the bonded warehouse to the production plants must be registered and be subject to the supervision of custom authorities;
- goods delivered into the bonded warehouse must not be sold in the Vietnamese market, except in special circumstances as approved by the Ministry of Trade; in cases where such goods are permitted to be sold in the Vietnamese market, the enterprise must pay import duties and other taxes in accordance with the prevailing provisions of the law;
- goods delivered into the bonded warehouse which are damaged, reduced in quality, or unable to satisfy production requirements must be re-exported or destroyed. The destruction of such goods must be in accordance with the provisions of the General Department of Customs and be subject to the supervision of custom authorities, the tax office and environmental authorities.

  The General Department of Customs shall, pursuant to the above provisions, provide guidelines for the issuance of a licence to establish a bonded warehouse at the enterprise and shall carry out the management and supervision of the operation of bonded warehouses.

Article 49

The provision of mortgage, pledges and guarantees to ensure the performance of the obligations of enterprises with foreign owned capital and parties to business co-operation contracts shall be carried out at Vietnamese banks of foreign banks and shall be in accordance with the provisions of the law of Vietnam.

Article 50

Enterprises with foreign owned capital and parties to business cooperation contracts shall be entitled to operate their businesses in accordance with the objectives and scope stated in the investment licence. In a number of business sectors or industries in which the law requires a practicing certificate to be obtained after the issuance of an investment licence, the investor shall only be required to register the business at the body authorized to issue the practicing certificate.

Chapter VI

LABOUR RELATIONS

Article 51

The use of labour within an enterprise with foreign owned capital or for the performance of a business co-operation contract shall be in accordance with article 25 of the *Law on Foreign Investment in Vietnam.*

Where foreign labour is required, enterprises with foreign owned capital and parties to business co-operation contracts must submit a statement explaining why foreign labour is required together with the professional certificate(s) of the foreigner(s) to the provincial or municipal office of labour, war invalids and social affairs of the locality in which the head office of the enterprise is located for consideration of the issuance of a work permit in accordance with the provisions of the laws on labour.

Article 52

Any breach of the laws on labour must be strictly and fairly dealt with in accordance with the law. Labour inspection bodies shall be responsible for inspecting matters relating to labour conditions and the protection of employees' rights in enterprises with foreign owned capital.

Chapter VII

PROVISIONS ON TAXATION

Article 53

Enterprises with foreign owned capital and foreign parties to business co-operation contracts shall pay profits tax at the rate of twenty five (25) per cent on the profits earned, except in the cases provided for in article 54 of this Decree.

With respect to exploration for and exploitation of oil and gas and a number of other rate and precious resources, profits tax rates shall be subject to the provisions of the Law on Petroleum and other relevant

legislation.

Article 54

The profits tax rates applicable to cases where investment is encouraged shall be as follows :

1. A rate of twenty (20) per cent shall apply to investment projects which satisfy one of the following criteria:

- export of at least fifty (50) per cent of products;
- having five hundred (500) or more employees;
- cultivation or processing of agricultural, forestry or aquatic products;
- utilization of advanced technology or investment in research and development;
- intensive use of materials and supplies available in Vietnam; efficient processing and exploitation of natural resources in Vietnam; obtaining a high localization rate in production as required by the regulations in respect of each particular field.

The profits tax rate of twenty (20) per cent shall be applied for a period of ten (10) years from the time when the project commences its production or business activities.

1. A rate of fifteen (15) per cent shall apply to investment projects which satisfy one of the following criteria:

- export of at least eighty (80) per cent of products;
- investment in the fields of metallurgy, basic chemicals, machinery manufacturing, petrochemicals, fertilizers and manufacture of electronic components, automobiles and motorcycle spare parts;
- construction and operation of infrastructure projects (bridges, roads, water supply and drainage systems, electricity, construction of seaports and so forth);
- cultivation of perennial industrial crops;
- investment in regions with difficult natural, economic and social conditions (including hotel projects);
- assignment of assets to the State of Vietnam after the expiration of the duration of operation without any compensation (including hotel projects);
- projects satisfying two of the conditions stipulated in clause 1 of this article.

The profits tax rate of fifteen (15) per cent shall be applied for a period of twelve (12) years from the time when the project commences its production or business activities.

1. A rate of ten (10) per cent shall apply to the following projects:

- construction of infrastructure in regions with difficult natural, economic, and social conditions;
- investment in mountainous regions and remote or distant regions;
- afforestation;
- those in the list of projects in which investment is specially encouraged.

The profits tax rate of ten (10) per cent shall be applied for a period of fifteen (15) years from the time when the project commences its production or business activities.

With respect to investment projects under BOT, BTO and BT contracts, projects for infrastructure construction of industrial zones and export processing zones, and investment projects in industrial zones and export processing zones, the incentive profits tax rates stipulated in this article shall be applied for the duration of implementation of the investment project.

Article 55

The tax rates provided for in article 54 of this Decree shall not apply to hotel projects (except where investment is located in mountainous regions, remote or distant regions, or regions with difficult natural, economic, and social conditions, or where assets shall be assigned to the State of Vietnam after the expiration of the duration of operation without any compensation) and projects in the fields of finance, banking, insurance, trade and provisions of other services.

Article 56

Exemptions from and reductions of profits tax shall be applied a follows:

1. Projects referred to in clause 1 of article 54 of this Decree shall be exempted from profits tax for one year commencing from the time when their operations start to earn profits and shall be granted a fifty (50) per cent reduction for the two subsequent years.
2. Projects referred to in clause 2 of article 54 of this Decree shall be exempted from profits tax for two years commencing from the time when their operations start to earn profits and shall be granted a fifty (50) per cent reduction for the three subsequent years.
3. Projects referred to in clause 3 of article 54 of this Decree shall be exempted from profits tax for four years commencing from the time when their operations start to earn profits and shall be granted a fifty (50) per cent reduction for the four subsequent years.
4. Afforestation projects, infrastructure construction projects in mountainous regions and remote or distant regions; large scale projects having a significant socio-economic impact which are included in the list of projects where investment is specially encouraged shall be exempted from profits tax for eight years commencing from the time when their operations start to earn profits.

   Periods of tax exemption or reduction shall run consecutively from the first profit making year.

5. The exemptions from and reductions of profits tax provided for above shall not apply to hotel projects (except in cases where the investment is located in mountainous regions, remote or distant regions, or regions with difficult natural, economic, and social conditions, or where the assets are assigned to the State of Vietnam after the expiration of the duration of operation without any compensation), and projects in the fields of banking, finance, insurance, trade and provisions of other services.
6. Investment projects referred to in article 53 of this Decree which invest in production activities or invest in rural areas may be considered for profits tax exemption for a maximum period not exceeding two years from the time when their operations start to earn profits.

Article 57

1. Upon being transferred abroad or retained outside Vietnam, profits earned by foreign investors from their investment in Vietnam (including profits tax refunded in respect of any reinvestment and profits earned from assignment of capital) shall be subject to withholding tax.
2. Withholding tax shall be applied at the following rates:

- five per cent of profits transferred abroad in respect of foreign investors contributing no less than ten (10) million United States dollars to the legal capital or capital of a business co-operation;
- seven per cent of profits transferred abroad in respect of foreign investors contributing from five

million United States dollars to less than ten (10) million United States dollars to the legal capital or capital of a business co-operation;

- ten (10) per cent of profits transferred abroad in respect of foreign investors contributing less than five million United States dollars to the legal capital or capital of a business co-operation.

1. Withholding tax shall be collected each time profits are transferred.

Article 58

1. Where an enterprise with foreign owned capital or a foreign party to a business co-operation contract fails, during the period of operation, to satisfy the conditions to enjoy the incentive profits tax rates and profits tax exemptions and reductions provided for in articles 54 and 56 of this Decree, the investment licence issuing body shall decide to adjust the tax rates and exemptions from and reductions of profits tax stipulated in the investment licence.
2. In the event of a natural calamity, fire or other event of *force majeure* occurring during the course of operations, the Ministry of Finance shall make decisions regarding any tax exemptions or reductions in accordance with the applicable regulations.

Article 59

1. A foreign investor which reinvests its distributed profits shall be entitled to a refund of any profits tax already paid in respect of the amount of profits reinvested provided that the following conditions are satisfied:

- the reinvestment is made in a sector where investment is encouraged as provided for in article 54 of this Decree;
- the reinvested capital is used for three years or more;
- the legal capital stated in the investment licence has been fully contributed.

1. Profits tax shall be refunded upon reinvestment at the following rates:

- one hundred (100) per cent in the case of projects provided for in clause 3 of article 54 of this Decree;
- seventy five (75) per cent in the case of projects provided for in clause 2 of article 54 of this Decree;
- fifty (50) per cent in the case of projects provided for in clause 1 of article 54 of this Decree.

1. When the requirement to use profits for reinvestment arises, the foreign investor shall prepare documents for submission to the Ministry of Finance for consideration and decision. Such documents shall comprise:

a. An application for a refund of tax due to reinvestment;
b. The investment licence or any decision to amend or add to the investment licence for the projects in which reinvestment is made;
c. A certificate of the tax authority in relation to the amount of profits tax already paid.

4. Within fifteen (15) days from the date of receipt of all documents, the Ministry of Finance shall notify the investor of its decision; if approval is granted, the investor may proceed with the procedures for a refund of the profits tax in respect of the profits reinvested. If approval is not granted within such time-limit, the Ministry of Finance must notify the investor in writing stating clearly the reasons therefor.

Where any profits intended to be reinvested are not reinvested, the investor must return any profits tax refunded, including interest, and shall be dealt with in accordance with law.

Article 60

The tax year applicable to an enterprise with foreign owned capital and to parties to business co-operation contracts shall commence on the first day of January and end on the thirty first day of December of each Gregorian year.

Enterprises with foreign owned capital and parties to business co-operation contracts may apply to the Ministry of Finance for permission to adopt their own twelve (12) month financial year for the purpose of profits tax determination and payment.

Article 61

The taxable profits of an enterprise with foreign owned capital shall be the difference between its total revenue and its total expenditure plus other additional profits of the enterprise in the tax year, less any losses permitted to be carried forward in accordance with article 40 of the *Law on Foreign Investment in Vietnam*. The taxable profits of an enterprise shall comprise the taxable profits of its headquarters and its subsidiary establishments (if any).

1. Revenue shall comprise :

- revenue from sales of products;
- revenue from provision of services; and
- other revenue of the enterprise.

1. Expenditure shall comprise :

- costs of raw materials and fuel required for the manufacture of principal products and by -products or for the provision of services;
- salaries, allowances and social insurance paid in respect of employees;
- depreciation of fixed assets in accordance with the regulations provided by the Ministry of Finance;
- costs of acquisition of, or fees paid for the right to use technical documents, patents, technology and technical services;
- enterprise management expenses;
- taxes, fees and imposts in the nature of taxation paid (except profits tax);
- interest payments on loans;
- costs of insurance of the assets of the enterprise;
- other expenses not exceeding five per cent of the total amount of expenditure.

The tax authority has the power to consider the reasonableness of the revenue and expenditure.

Article 62

In respect of business co-operation contracts, the method for determining distribution of profits shall be decided by the investment licence issuing body as appropriate to the type of business co-operation taking into account the proposals of the parties to business co-operation contracts.

In the case of production sharing contracts, profits tax and other entitlements enjoyed by the Vietnamese party (including the value of right to use land, water and sea surfaces, and any royalties) shall be

aggregated with the share of the production of the Vietnamese party.

Article 63

1. An enterprise with foreign owned capital and parties to business co-operation contracts shall be entitled to exemption from import duties in respect of the following:

- Equipment and machinery imported as part of the fixed assets of the enterprise or as part of the fixed assets for the implementation of the business co-operation contracts
- Specialized means of transport which form part the technological process imported as part of the fixed assets of the enterprise or as part of the fixed assets for the implementation of the business co-operation contract, and means of transport used for transporting employees (automobiles of twenty four (24) or more seats and watercraft).
- Components, parts, spare parts, support structures, moulds and accessories of the above equipment, machinery, specialized means of transport and means of transport.

The exemption of import duties applicable to the above equipment, machinery and means of transport shall also be applied in the case of expansion of a project and replacement or renewal of technology.

- Raw materials and supplies imported for the implementation of BOT, BTO and BT projects.
- Species of plants and animals or specialized agricultural chemicals permitted to be imported for the implementation of agricultural, forestry and fishery projects.
- Other goods and materials required for projects in which investment is specially encouraged as determined by the Prime Minister.

1. With respect to raw materials, spare parts, accessories and other supplies imported for the production of goods for export, import duties must be paid upon being imported into Vietnam and shall be refunded upon export of finished products in proportion to the quantity of finished products exported.
2. On the basis of the investment licence, feasibility study and technical design of the project, the Ministry of Trade shall determine the list of goods to be imported duty free in the case of goods referred to in clause 1 of this article.
3. The imported goods referred to in clauses 1 and 2 of this article may not be sold or disposed of in the Vietnamese market. Where they are sold or disposed of in the Vietnamese market, the approval of the Ministry of Trade must be obtained and import duties, turnover tax or special sales tax must be paid in accordance with law.
4. Patents, technical know-how, technology processes and technical services, and so forth, to be used as capital contribution shall be exempted from any taxes related to transfers of technology.

Article 64

1. Any assignment of capital shall be carried out in accordance with article 34 of the *Law on Foreign Investment in Vietnam.*

Assignment documents shall comprise:

- assignment contract;
- resolution of the board of management;
- status report regarding the operations of the enterprise;

legal status, financial capacity and authorized representative of the assignee (where capital is assigned to a party outside the enterprise).

2. An assignment shall only be effective upon approval being granted by the investment licence issuing body. The approval process shall be completed within thirty (30) days from the date of receipt of assignment application documents. If approval is not granted within such time-limit, the investment licence issuing body must notify the investor in writing stating clearly the reasons therefor.

3. Taxable profits shall be determined as follows:

a) Taxable profits shall be equal to the assigned value less the original value of the assigned capital less any assignment expenses, where:

- The assigned value shall be equal to the actual total value enjoyed by the assignee under the assignment contract.
- The original value of the assigned capital shall be determined on the basis of the accounting books and records as at the time of capital contribution or the capital contribution finalization report.

  Thereafter, each time of subsequent assignee assigns its contributed capital, the original value of the assigned capital shall be equal to the assigned value stated in the preceding assignment contract plus additional contributed capital (if any)

- Assignment expenses mean the actual expenses directly related to the assignment as evidenced by source documents accepted by the tax authority. Where assignment expenses are incurred overseas, source documents must be certified by a local notary public or independent auditing company.

b) The rate of capital assignment profits tax shall be twenty five (25) per cent on the profits earned.

Where capital is assigned to a Vietnamese State owned enterprise or an enterprise in which the State holds a controlling share, the foreign investor shall be exempted from capital assignment profits tax.

Where a foreign investor assigns capital to a Vietnamese enterprise other than the above, capital assignment profits tax must be paid at the rate of ten (10) per cent.

Chapter VIII

ACCOUNTING SYSTEM,

STATISTICS AND INSURANCE

Article 65

1. Accounting, auditing and statistical work for enterprises with foreign owned capital and foreign

parties to business co-operation contracts shall be conducted in accordance with Vietnamese laws relating to accounting, auditing and statistics.

2. Enterprises with foreign owned capital and foreign parties to business co-operation contracts shall adopt the Vietnamese accounting system.

   Where, for valid reasons, an enterprise with foreign owned capital or a foreign party to a business co-operation contract requires to adopt a generally accepted foreign accounting system, the approval of the Ministry of Finance must be obtained.

3. The foreign party to a business co-operation contract shall keep accounting records as appropriate to the type of business co-operation concerned.
4. Enterprises with foreign owned capital and foreign parties to business co-operation contracts must register the accounting system to be adopted at the Ministry of Finance and shall be subject to inspection by the financial authorities.

Article 66

1. The standard units of measure used in accounting and statistics shall be the official units of measure of Vietnam. All other units of measure must be converted into the official Vietnamese units of measure.
2. The monetary unit to be used in accounting and statistics shall be the Vietnamese Dong but may be a foreign currency as proposed by the enterprise with foreign owned capital or the foreign party to the business co-operation contract and approved by the Ministry of Finance.
3. The books of accounts and statistics shall be kept in Vietnamese or in both Vietnamese and a commonly used foreign language.

Article 67

The financial year of an enterprise must be in conformity with the tax year as prescribed in article 60 of this Decree.

Article 68

An enterprise with foreign owned capital or a foreign party to a business co-operation contract must, within three months of the close of its financial year, submit its annual financial statements to the investment licence issuing body, the Ministry of Planning and Investment, the Ministry of Finance, and the General Department of Statistics.

The annual financial statements of an enterprise with foreign owned capital or a foreign party to a business co-operation contract shall, prior to being submitted to the above bodies, be audited by a Vietnamese independent auditing company or another independent auditing company permitted to operate in Vietnam in accordance with the auditing regulations.

The audited financial statements of an enterprise with foreign owned capital or a foreign party to a business cooperation contract may be used as the basis for determining and finalizing tax obligations and other financial obligations to the State of Vietnam.

The auditing company must be responsible before the law for the independence, objectiveness and truthfulness of the audit results.

Article 69

The audit report prepared by the auditing company shall include the following main contents:

1. Certification of the objectiveness, truthfulness and reasonableness of the financial statements and accounting figures.
2. Assessment of the conduct of the accounting work and compliance with the law, regulations and standards of accounting.
3. Recommendations.

The audit report must be signed by, and state the name and registration number of the practicing certificate of the auditor, and be signed and sealed by the auditing company.

Article 70

1. Enterprises with foreign owned capital and foreign parties to business cooperation contracts shall take out insurance under insurance policies entered into with Vietnamese insurance companies or other insurance companies permitted to operate legally in Vietnam.
2. Enterprises with foreign owned capital and foreign parties to business co-operation contracts shall take out voluntary insurance and compulsory insurance in accordance with law.
3. Items to be insured include people, assets, civil liability and other items stipulated by law.

Chapter IX

FOREIGN EXCHANGE CONTROL

Article 71

Enterprises with foreign owned capital shall open foreign currency accounts and Vietnamese Dong accounts with banks permitted to operate in Vietnam.

Enterprises may open loan accounts with banks abroad for the purpose of receipt of loan capital in cases where foreign lenders require loan accounts to be opened with banks abroad subject to the approval of the State Bank of Vietnam.

Foreign parties to business co-operation contracts may open bank accounts in accordance with the above provisions. Where a foreign party to a business cooperation contract carries on operations directly in Vietnam, it must open bank accounts at banks permitted to operate in Vietnam.

Article 72

Enterprises with foreign owned capital or foreign parties to business co-operation contracts shall, by themselves, meet the foreign currency requirements of their operations.

With respect to projects for the construction of infrastructure or the production of essential import substitutes and some specially important projects, the State Bank assures that enterprises with foreign owned capital and foreign parties to business co-operation contracts shall be permitted to convert Vietnamese currency into foreign currency in order to meet their reasonable requirements in strict compliance with the regulations on foreign exchange control of Vietnam.

With respect to enterprises with foreign owned capital and foreign parties to business co-operation contracts which are not entitled to the above assistance in meeting their foreign currency requirements and which encounter difficulties in meeting their foreign currency requirements, the State Bank may consider permitting conversion or purchase of foreign currency in accordance with the regulations provided by the State Bank.

Article 73

1. After fulfilling their tax obligations, foreign investors investing in Vietnam shall be permitted to transfer abroad:
- their profits derived from business operations;
- payments received from provision of services and transfer of technology;
- the principal of and interest on any foreign loan obtained during the course of operation;
- the invested capital;
- other sums of money and assets lawfully owned by them.
1. Upon termination and dissolution of an enterprise, foreign economic organizations and individuals shall, following payment of all their liabilities, have the right to transfer abroad the capital invested and reinvested by them in the enterprise.
2. In cases where the amount transferred abroad under clause 2 of this article is greater than the initial (original) amount of capital and reinvested capital, then the excess amount can only be transferred abroad upon approval being granted by the investment licence issuing body.

Article 74

Foreigners working in enterprises with foreign owned capital and for parties to business co-operation contracts are permitted to transfer abroad, in foreign currency, their salaries and other legal income after deductions for income tax and other expenses have been made.

Article 75

The exchange rate for conversion of foreign currency into Vietnamese currency and *vice versa* during the implementation of investment and production and business operations of enterprises with foreign owned capital and foreign parties to business co-operation contracts shall be in accordance with the regulations of the State Bank of Vietnam.

Chapter X

CUSTOMS, IMMIGRATION, RESIDENCE AND COMMUNICATIONS

Article 76

On the basis of the investment licence and written approval of the plan for import and export of goods as issued by the Ministry of Trade, customs authorities shall complete expeditiously all procedures for the import and export goods in accordance with the laws on customs.

Article 77

Foreigners entering Vietnam for the purposes of investigating and preparing for investment may be granted multiple entry visas for a period not exceeding three months and such visas may extended for further periods of three months each.

Article 78

Foreigners working for parties implementing investment projects (including spouses, minor children and foreign domestic servants) shall be granted multiple entry visas as appropriate to the duration of operation of those projects.

Article 79

1. Entry visas shall be issued by diplomatic representative offices or consular offices of the Socialist Republic of Vietnam in foreign countries, no later than five days after application by an applicant.
2. In urgent cases, where due to unforeseen circumstances, a foreigner may be issued with an entry visa at the port in accordance with the applicable regulations.
3. Where a foreign applicant is a citizen of a country with which the Government of the Socialist Republic of Vietnam has entered into an agreement providing for exemption from the requirements for exit and entry visas, that agreement shall apply.

Article 80

Any foreigner referred to in article 77 and 78 of this Decree shall be free to travel in the territory of Vietnam, except for "prohibited areas".

Article 81

Following completion of all formalities required by the relevant postal and telecommunication authorities, a foreigner working in an enterprise with foreign owned capital shall be entitled to:

- use available postal and telecommunication facilities of Vietnamese post offices; and
- set up his own communication system for the internal operations of the enterprise.

Chapter XI

PROVISIONS ON CONSTRUCTION, TENDERING,

ACCEPTANCE OF PROJECTS AND FINALIZATION OF THE VALUE OF INVESTED CAPITAL

Article 82

The administration of construction of projects with foreign owned capital shall be carried out by way of the following :

1. Issuance of certificates of zone planning on the basis of which investors may formulate their projects;
2. Evaluation of zone planning and architecture of investment projects involving construction;
3. Evaluation of technical designs and approval of the construction of the project;
4. Inspection of the construction tendering processes and issuance of construction and consultancy contractor permit to contractors who are awarded to undertake construction works and projects in Vietnam;
5. Management of the quality of construction works.

Article 83

File for application of investment licence must include certificate of zone planning and the preliminary design indicating the proposed architecture.

Zone planning and the proposed architecture of the project shall be evaluated during the process of evaluation of the investment project.

During the course of evaluating a project, the investment licence issuing body must obtain the opinions of the Ministry of Construction and the provincial people's committee in relation to the zone planning and architecture of any project involving construction; with respect to other projects related to the planning for a particular branch of industry, the investment licence issuing body must obtain the opinion of the relevant branch ministry regarding conformity with the planning for the branch and territorial master plan.

Article 84

The following aspects of the construction design of a project shall be evaluated:

1. The legal status of the design organization;
2. The conformity of the design with zone planning and the architecture of the project which has been evaluated and the detailed master plan which has been approved;
3. Compliance with Vietnamese construction and design technical standards or foreign technical standards approved by the Ministry of Construction.

Investors are responsible before Vietnamese law for project safety, fire and explosion prevention and extinguishment and protection of the environment during the construction period as well as during the period of operation of the project.

Article 85

The organization of the evaluation of technical designs and approval of construction is provided for as follows:

1. The Ministry of Construction shall evaluate the technical designs of Group A projects as stipulated in article 93 of this Decree. Provincial people's committees shall evaluate the technical designs of Group B projects as stipulated in the article 93 of this Decree.
2. With respect to Group A projects, within twenty (20) days from the date of receipt of the documents, the Ministry of Construction shall complete the evaluation of the technical design and notify the investor of its decision. After the technical design of the project has been approved, the investor may commence construction works.
3. With respect to Group B projects, within twenty (20) days from the date of receipt of the documents, the provincial people's committee shall complete the evaluation of the technical design and notify the investor of its decision. After the technical design of the project has been approved, the investor may commence construction works.
4. After the expiry of the above twenty (20) day time-limit, if the design evaluation body fails to notify the investor of its decision, the investor may commence construction works.
5. The investor must notify the provincial people's committee responsible for the locality in which the construction will take place of the commencement of construction works at least ten (10) days in advance.

Article 86

In order to implement an investment project, the investor must organize a tender for, or select, consultants and designers and organize a tender for procurement of equipment and construction, and so forth, in accordance with the Vietnamese regulations on tendering.

Contractors must comply with laws relating to construction, finance, import and export and other relevant legislation.

Article 87

Investors shall be responsible before Vietnamese laws for the quality of construction works.

Surveying, designing and construction contractors must be responsible to investors and before Vietnamese laws for the part of the work that they perform with respect to the quality of the construction works.

Article 88

Upon completion of construction of a project, the investor shall report to the project design evaluation body on the completion of the project construction and shall be permitted to commence operating project. Where necessary, the above body shall inspect the project. Any breach of the approved construction design which is discovered shall be dealt with in accordance with the law.

Article 89

During the course of capital construction establishing a joint venture enterprise, the enterprise must open a separate bank account with a bank located in Vietnam in order to control the receipts and expenditure related to the capital construction of the enterprise. All receipts and expenditure related to the construction works must be effected through this account.

Article 90

Within six months from the date of completion of project construction, the investor must submit a report on the finalization of invested capital to the investment licence issuing body and the Ministry of Planning and Investment. The investor must be responsible for the truth and accuracy of the report on finalization of invested capital. The report relating to the project construction must be certified by an inspection organization.

Where necessary, the investment licence issuing body may reconsider the report on finalization of invested capital.

Chapter XII

PROVISIONS ON FORMULATION, EVALUATION FOR ISSUANCE OF INVESTMENT LICENCES AND IMPLEMENTATION OF INVESTMENT PROJECTS

Article 91

Ministries, branches and provincial people's committees shall be responsible for providing guidance, providing necessary information and creating all favourable conditions for investors to select investment opportunities in Vietnam.

Article 92

1. Following receipt of project documentation as provided for in articles 10, 13 and 27 of this Decree, the investment licence issuing body shall organize the evaluation of the project.
2. The aspects of an investment project which are the subject of evaluation shall comprise:

- The legal status and financial capacity of the foreign and Vietnamese investors;
- The conformity of the project objectives with planning;
- Socio-economic benefits (the capacity to create new production forces, new branches of industry and new products, to expand markets, to create employment; economic benefits of the project and revenue for the Budget, and so forth);
- The technological and technical level to be applied, the proper use and protection of natural resources and the ecological environment;
- The proper use of land; the plan to compensate for site clearance; the valuation of assets to be contributed as capital by the Vietnamese party (if any).

Article 93

The authority to consider and approve investment projects is provided for as follows:

1. The Prime Minister shall make decisions in relation to Group A projects comprising:

- Infrastructure construction of industrial zones and export processing zones; BOT, BTO and BT projects;
- Projects with invested capital of forty (40) million or more United States dollars in the following fields: electricity, mining, oil and gas, metallurgy, cement, chemicals, seaports, airports, cultural and tourist areas, and real estate business;
- Sea and air transport projects;
- Postal and telecommunications projects;
- Cultural, publishing, press, radio and television broadcasting, training, scientific research and health care projects;
- Insurance, finance, auditing and inspection projects;
- Projects for exploitation of rare and precious natural resources;
- National defence and security projects;
- Projects using five (5) or more hectares of urban land or fifty (50) or more hectares of land of other categories.

1. The Ministry of Planning and Investment shall make decisions in relation to Group B projects (Group B projects being all projects which are not stipulated in clause 1 of this article), except for projects referred to in clause 3 of this article and projects in respect of which the boards of management of industrial zones are authorised to issue investment licences.
2. Provincial people's committees shall make decisions in relation to projects in respect of which they are delegated by the Government with authority to issue investment licences.

Article 94

1. Project evaluation shall be provided for as follows:

- In respect of Group A projects, the Ministry of Planning and Investment shall collect the opinions of relevant ministries, branches and provincial people's committees and for submission to the Prime Minster for consideration and decision.

  In the event that there are different opinions in respect of important aspects of a project, the Ministry of Planning and Investment shall establish an advisory committee, composed of competent representatives of relevant bodies and experts, in order to consider the project prior to submission to the Prime Minister. Depending on each specific case, the Prime Minister may require the State Council for Evaluation of Investment Projects to study and advise before making a decision.

- In respect of Group B projects, the Ministry of Planning and Investment shall collect the opinions of relevant ministries, branches and provincial people's committees prior to consideration and decision.

1. Time-limits for project evaluation shall be as follows:

- Within fifteen (15) days from the date of receipt of project documents, ministries, branches and provincial people's committees shall provide their written opinions to the Ministry of Planning and Investment in relation to the contents of the project within their respective scope of administration. Upon the expiry of such time-limit, if no written opinions have been provided, the ministries concerned shall be deemed to have accepted the contents of the project.
- In respect of Group A projects, within forty (40) days from the date of receipt of documents, the Ministry of Planning and Investment shall submit its evaluation results to the Prime Minister. Within seven days from the date of receipt of approval of the Prime Minister, the Ministry of Planning and Investment shall issue investment licences.
- In respect of Group B projects, within forty five (45) days from the date of receipt of project documents, the Ministry of Planning and Investment shall complete the project evaluation and issue investment licences.

  Within seven days of the expiry of such time-limit, if no investment licence has been issued, the Ministry of Planning and Investment shall notify the investors in writing stating clearly the reasons therefor with copies distributed to the relevant bodies.

  The above time-limits shall not include the period of time during which an investor is permitted to amend or add to its investment application documents.

  Any requirement of the Ministry of Planning and Investment for amendment of or addition to project documents shall be fulfilled within twenty (20) days from the date of receipt of the documents.

  3. Copies of investment licences shall be distributed to relevant bodies.

  4. The evaluation and issuance of investment licences in respect of investment projects within the authority of provincial people's committees shall be in accordance with article 100 of this Decree.

  5. The evaluation and issuance of investment licences in respect of investment projects in industrial zones and export processing zones shall be in accordance with article 4 of this Decree and the regulations provided by the Government on industrial zones and export processing zones.

Article 95

1. The Ministry of Planning and Investment shall be the co-ordinating body responsible for dealing

with any problems arising during the formulation, commencement and implementation of investment projects, including the following tasks:

- Guiding and co-ordinating with ministries, branches and provincial people's committees in relation to planning, zoning and preparation of the list of projects calling for foreign investment;
- Preside over evaluation, issuance and amendment of investment licences in respect of investment projects within its scope of authority;
- Acting as a mediator of disputes when so requested;
- Organizing the inspection and examination of the implementation of investment projects;
- Assessing the socio-economic benefits of projects issued with investment licences;
- In respect of projects within its scope of authority, making decisions to dissolve enterprises with foreign owned capital and to terminate business co-operation contracts prior to the expiry of their duration.

1. The Ministry of Planning and Investment shall prepare a summary report regarding the issuance of investment licences and foreign investment activities in Vietnam for submission to the Prime Minister and distribution to ministries, branches and provincial people's committees on a regular basis (semi-annually and annually).

Article 96

Ministries, ministerial level bodies and Government bodies shall:

- Contribute opinions relating to project evaluation and amendment of investment licences;
- Issue and provide guidelines for the implementation of technical, technological and environmental policies and standards;
- Carry out specialized inspection; assess socio-economic benefits of investment projects within their respective areas of branch authority.

Article 97

Provincial people's committees shall have the following responsibilities:

1. Preside over evaluation, issuance or amendment of investment licences in respect of projects within their authority; participating in the evaluation of investment projects in their respective localities;
2. Carrying out State administration of all foreign investment projects located within their respective localities by way of the following:

- Monitoring capital contribution and compliance with the terms of investment licences and other relevant legislation.
- Monitoring compliance with regulations on financial obligations, labour relations, salaries, social order and security, environmental protection and fire and explosion prevention and extinguishment;
- Issuing certificates of land use rights; organizing site clearances; permitting establishment of offices and branches; registering the residence and movements of foreigners working in enterprises; recommending Vietnamese employees to enterprises; registering operations, and so forth;
- Joining ministries in organizing specialized inspections of the operations of enterprises with foreign owned capital;
- Assessing socio-economic benefits of foreign direct investment activities in their respective localities.

Article 98

1. Any examination or inspection of the operation of enterprises with foreign owned capital or parties to business co-operation contracts must be conducted in strict compliance with functions, authority and applicable regulations.

   Examinations or inspections may be held periodically or on an ad-hoc basis. Ad-hoc inspections or examinations may be conducted only where the operations of an enterprise or a party to a business co-operation contract indicate a breach of the law.

   Prior to conducting specialized inspections or examinations within their respective powers, State bodies must notify the Ministry of Planning and Investment and the relevant provincial people's committee for the purpose of co-ordination.

2. Organizations and individuals making decisions to conduct unlawful inspections or using inspections and examinations to cause trouble and difficulties for the operations of an enterprise shall, depending on the seriousness, be dealt with in accordance with law.
3. The Ministry of Planning and Investment shall provide detailed regulations regarding the organization and co-ordination of inspections of foreign investment activities.

Chapter XIII

DELEGATION OF AUTHORITY TO ISSUE

INVESTMENT LICENCES

Article 99

1. Investment projects in respect of which provincial people's committees are delegated with authority to issue investment licences must meet the following conditions:

- Being in accordance with the approved planning and socio-economic development plans;
- Not falling with Group A as stipulated in article 93 of this Decree.

1. Provincial people's committees shall not be delegated with the authority to issue investment licences to investment projects in the following fields (irrespective of the size of invested capital):

- Exploration and exploitation of oil and gas and petroleum services;
- Energy industry;
- Construction of seaports, air ports, national highways and railways;
- Cement, metallurgy, production of sugar, alcohol, beer and cigarettes.

1. On the basis of the specific conditions of cities and provinces under central authority and on the basis of the field and size of the investment, the Prime Minister shall determine a list of projects in respect of which the provincial people's committees shall be delegated with the authority to issue investment licences. The list of provincial people's committees and the list of such projects may be subject to periodic amendment and addition as appropriate to the prevailing situation.

Article 100

1. The evaluation and issuance of investment licences within the authority of provincial people's committees shall be provided for as followsd:

- The content of project evaluation shall be in accordance with article 92 of this Decree.
- Within thirty (30) days from the date of receipt of project documents, the provincial people's committee shall complete project evaluation and issue an investment licence.

  Within seven days of the expiry of such time-limit, if no investment licence has been issued, the provincial people's committee shall notify the investor in writing stating clearly the reasons therefor with copies distributed to the relevant bodies.

  The above time-limit shall not include any period of time during which the investor is permitted to amend or add to its investment application documents.

  Any requirement of a provincial people's committee for amendment of or addition to the project documents shall be fulfilled within fifteen (15) days from the date of receipt of the documents.

  2. Investment licences shall be issued to investors in the standard form as stipulated and issued by the Ministry of Planning and Investment.

  3. Within seven days from the date of issuance of an investment licence, the provincial people's committee shall forward an original investment licence to the Ministry of Planning and Investment and copies to the Ministry of finance, Ministry of Trade, the relevant branch ministries and other relevant State administrative bodies.

  4. On a semi-annual and annual basis, provincial people's committees shall report to the Ministry of Planning and Investment on the status of evaluation and issuance of investment licences.

Chapter XIV

INVESTMENT GUARANTEES AND SETTLEMENT OF DISPUTES AND BREACHES

Article 101

The Government of Vietnam guarantees that foreign investors investing in Vietnam shall be entitled to fair and equitable treatment in accordance with the *Law on Foreign Investment in Vietnam*. Where an international treaty on investment promotion and protection entered into between the Socialist Republic of Vietnam and a foreign country contains provisions which are inconsistent with the regulations on foreign investment, such international treaty shall prevail.

In the event that there are changes in the laws of Vietnam which adversely affect the interests of foreign investors as stated in their investment licences, the investment licence issuing body shall take appropriate measures to ensure the protection of the interests of the investors by coming to an agreement to apply the

following:

1. Change the operational objectives of project;
2. Grant tax reductions or exemption in accordance with law;
3. Deem the adverse effects on the investor to be a loss and carry such loss forward to the following years;
4. Consider payment of fair compensation where necessary.

With respect to projects licensed by a provincial people's committee, such provincial people's committee must, prior to taking any of the above measures, reach an agreement with the Ministry of Planning and Investment and the Ministry of Finance.

Article 102

1. Disputes between parties to joint venture enterprises and business co-operation contracts shall be resolved primarily through conciliation and negotiations between the parties.

   Failing such conciliation, the disputing parties may, on the basis of mutual agreement, select one of the following dispute resolution alternatives:

- a Vietnamese court;
- a Vietnamese arbitration body, foreign arbitration body or international arbitration body, or
- an arbitration tribunal established pursuant to an agreement between the parties.

2. Disputes between enterprises with foreign owned capital, or between enterprises with foreign owned capital or foreign parties to business co-operation contracts and Vietnamese economic organizations shall be resolved by Vietnamese arbitration organizations or courts in accordance with the law of Vietnam.

Article 103

Foreign investors, parties to business co-operation contracts, enterprises with foreign owned capital and Vietnamese organizations and individuals must comply with the law.

Vietnamese State employees and State bodies are strictly prohibited from using their authority to cause trouble and difficulties or hinder foreign investment activities. Any person in breach shall, depending on the seriousness, be held liable in accordance with law.

Chapter XV

IMPLEMENTATION PROVISIONS

Article 104

1. This Decree shall be of full force and effect as of 1 March 1997. All previous provisions which are inconsistent with this Decree are hereby repeated.
2. Ministers, heads of ministerial level bodies, heads of Government bodies and chairmen of people's committees of provinces and cities under central authority shall be responsible for the implementation of this Decree.

ON BEHALF OF THE GOVERNMENT

PRIME MINISTER

Vo Van Kiet