

# YEAR IN REVIEW

## 2020/Q1-21

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*View of Thu Thiem New Urban  
Area in Thu Duc City from  
District 1 of Ho Chi Minh City,  
March 2021.  
Photo by Thái Dũng Nguyễn.*



# INTRODUCTORY WORDS



Board that reads: "Ho Chi Minh City is happy to welcome the New Year 2021... Make Ho Chi Minh City a better-living, modern and humanitarian city."

## — WHAT A TUMULTUOUS AND CHALLENGING YEAR COVID-19 BROUGHT UPON US!

Éric Le Dréau  
Managing Partner

**T**HE COVID-19 pandemic impacted and continue to affect the social, political and economic fabric holding the global community together. Vietnam has not been immune from the many challenges that followed the pandemic. As both supply and demand were globally disrupted, many businesses suspended operations, closed or declared bankruptcies, taking a toll on the country's economy.

Vietnam however, has successfully handled the pandemic, so much so that it stood out across the world as a model for maintaining one of the lowest numbers of con-

tamination cases. As a result, it had a comparatively productive year punctuated by several key economic, political and legal developments that build for the future.

For instance, among other significant developments, the country became the major beneficiary of the US-China trade tensions boosting its industrial and export sector while significant changes were made to its legal framework through the revamp of legal instruments on enterprises, investment, securities, construction, PPP and energy. It also strengthened its integration into the global market by concluding 3 free trade agreements

with its major economic partners (European Union, United Kingdom, ASEAN+5) and closed the year on a positive note as it continued to register a growth unlike most of the countries in the region and indeed worldwide.

Since the pandemic struck, we at Indochina Legal have dedicated our resilience and expertise to help clients navigate and overcome 2020's challenges.

On behalf of Indochina Legal, I am pleased to present this 2020 Year in Review. As 2021 heralds investment opportunities in the country, we hope you will find it useful for your endeavors in Vietnam.

## Onwards the year of the golden buffalo

**2021** is the year of the Golden Buffalo, closing the turbulent 2020 Year of the Golden Rat, marked by the COVID-19 global pandemic that has changed the face of the world. The Rat is associated with a fast and disruptive force and is believed to bring drastic changes that impact the world. Obviously, the past year brought negative social and economic challenges. The Buffalo, meanwhile, is associated to a gentle force, representing stability and nourishment, and symbolizes strength, patience and determination heralding good fortune and success.

Gold is an element that also represents strength, determination and believed to bring transformations. As such, the gold element perfectly fits with the Buffalo.

May the 2021 Year of the Golden Buffalo be a year of success for Vietnam in which continued resilience and strategic vision will be rewarded and will bring Vietnam to new heights.

Warm wishes of Health, Happiness and Prosperity



# NEW HCMC OFFICE

**F**OR the past 20 years, Indochina Legal's office in Ho Chi Minh City has been located in the high-rise office building Sunwah Tower, landmark on the city's main artery that goes from the Ho Chi Minh City Hall to Saigon River.

Facing a global pandemic, access for our team members to a safe environment became a priority as conventional office towers bring many challenges.

Even if Vietnam has had just a handful community transmission cases of COVID-19, as office build-

ings closures were reported in June, Indochina Legal took all the preventive and proactive measures to ensure the health and safety of its team, and embraced the new reality as an opportunity to rethink the use of its office space.

Located in a spacious villa, our new Ho Chi Minh City office was designed to provide a safe working environment for our team members while maintaining a collaborative workspace that promotes teamwork. It is an innovative space with a cutting-edge video conference facility, spacious

and functional open offices and a peaceful outdoor.

A new office was also an opportunity to accomplish a transition to renewable energy as powered in its entirety by solar panels.

Indochina Legal is a pioneer, as its office is located in the center of the future administrative, business and innovation city-within-a-city of

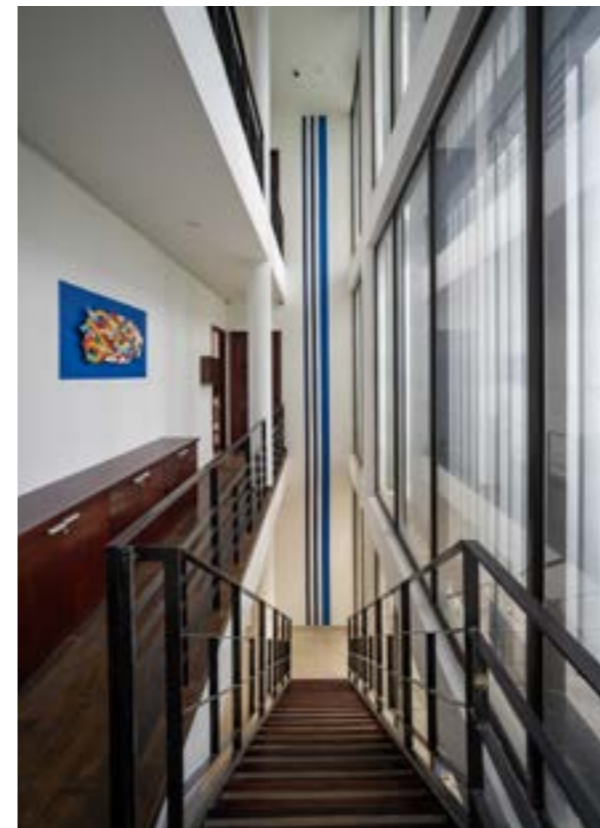
Thu Duc, in the vicinity of the Thu Duc City People's Committee..

While we continue to welcome you to our Hanoi office at Suite 2001, The Press Club, 12 Ly Dao Thanh Street, Hoan Kiem District, we are pleased to now open our doors to our new Ho Chi Minh City office at 18 Street 53, Quarter 3, Binh Trung Tay Ward, Thu Duc City, Ho Chi Minh City.

— WE ARE PLEASED TO WELCOME YOU TO OUR HO CHI MINH CITY AND HANOI OFFICES



Various snapshots of our Ho Chi Minh City office.



# THU DUC CITY

Total Land Area  
**21,265** ha

Population  
**1.3** million

**1/3**  
of Ho Chi Minh  
City GRDP

**7%**  
of Vietnam's GDP



3D model of Thu Thiem, Sasaki Master plan, 2003.

**A**FTER Vietnam's opening to the global market economy (Đổi mới) in the early '90s, Ho Chi Minh City imposed itself as the country's locomotive, shifting its economy toward industrialization by relying upon the neighboring industrial provinces of Binh Duong and Dong Nai.

The city successfully upgraded its urban infrastructure, attracted an abundant skilled workforce including foreign workers and strongly developed its private and FDI sectors, so as to become Vietnam's leading city in terms of economic, social, and cultural development.

Nonetheless, in rapidly industrializing Ho Chi Minh City, urbanization became an ever-growing concern, exacerbated by the rapid economic and population growth, with an average population density of over 4,500 per square kilometer (higher than Shanghai). It became apparent that the city must accommodate its needs to reduce pressure on the historic center and develop new urban business areas to address congestion and increasing demand for new infrastructure. Re-

solving such urbanization issues is also crucial to catch up with South-East Asia's top cities.

Considering the foregoing, Ho Chi Minh City began in the late '90s to expand in all directions, developing new urban area projects such as Phu My Hung in the South and Thu Thiem in the East.

On 9 December 2020, the Standing Committee of the National Assembly founded Thu Duc City, implementing a strategic urban planning to compete on the same footing with the region's leading cities.

Out of the 19 districts of Ho Chi Minh City, the new city merged all districts on the East bank of Saigon River (namely, previous districts 2, 9 and Thu Duc) and borders Binh Duong and Dong Nai, the industrial powerhouse of the country.

Driven by a single administrative unit, the new city-within-a-city, like Gangnam in Seoul or Pudong in Shanghai, is expected to boost the South key economic zone, first hub of industrial development and most active economic zone across the country, comprising Ho Chi Minh City, Binh Duong, Dong Nai, Long An, Ba Ria-Vung Tau, Binh Phuoc, Tay Ninh and Tien Giang.

Thu Duc City has been established to develop a high-tech multi-interactive center that foster innovation and entrepreneurship to drive Vietnam's economic growth toward the knowledge economy. It will uplift the economic development of specialized industries such as biomedicine, aviation, AI, high tech and advanced manufacturing, information and technology, phar-

maceutical, healthcare, education, regional R&D centers, data centers, among many others. As such, it is intended to attract a workforce of highly skilled labor with expertise and training, increase connectivity and implement sustainable development that strikes a balance between conservation and development.

Thu Duc City key development projects include Thu Thiem New Urban Area (NUA); Saigon Hi-Tech Park (SHTP) Manufacturing Hub; National University Hub; Rach Chiec National Sports Complex; and the Tam Da-Long Phuoc Ecological and Technology Hub.

The new city can also rely on major transportation infrastructures and projects, including: Metro route No.1, Ring Road 2, Ring Road 3, East West Road, My Thuy Intersection, An Phu Intersection, Thu Thiem Bridge 2 and New Eastern Bus Station.

At its inception, Thu Duc City has been setup as a city-within-Ho Chi Minh City, an ambitious and innovative status that comes with its share of uncertainties, from budget to governance, but expected to be the main investment hotspot in the region in the coming years.

*"WHEN ESTABLISHED, THE EASTERN CITY WILL CONTRIBUTE 30% OF HCMC'S GDP, EQUIVALENT TO THE AGGREGATE GDP OF MANY PROVINCES. IT WILL GIVE THE CITY ITS ECONOMY PUNCH".*

**Nguyen Thien Nhan**, HCMC Party Secretary

## Regional Comparison

REGIONAL CITY	HCMC	HANOI	JAKARTA	MANILA	KUALA LUMPUR	BANGKOK	SINGAPORE	SHANGAI
Area	2 061 km <sup>2</sup>	3 359 km <sup>2</sup>	662.3 km <sup>2</sup>	42.88 km <sup>2</sup>	243 km <sup>2</sup>	1 569 km <sup>2</sup>	782.3 km <sup>2</sup>	6 340 km <sup>2</sup>
Population (million persons)	8.9	3.4	9.6	1.8	1.8	8.3	5.7	26.3
Population density (person per km <sup>2</sup> )	4 500/km <sup>2</sup>	662.1/km <sup>2</sup>	16 262/km <sup>2</sup>	41 515/km <sup>2</sup>	7 366/km <sup>2</sup>	5 300/km <sup>2</sup>	7 804/km <sup>2</sup>	4 200/km <sup>2</sup>
2020 cosmopolitan cities ranking by A.T. Kearney (out of 151 cities)	97	N/A	70	67	58	36	9	12

## The Development Phases

### LATE 90'S

Plan to develop a new financial technology center in Thu Thiem.

### 1998

Ho Chi Minh City's chief architect approves Thu Thiem's master plan.

### 2003

An international competition is held for which the master plan by Sasaki Associates is selected.

### 2008

Opening of Thu Thiem Bridge.

### 2009

Opening of Phu My Bridge.

### 2011

**20 November.** Opening of Saigon 2 Bridge.

### 2012

**15 October.** Opening of the Saigon River Tunnel.

### 2020

**9 December 2020.** Decree 1111/NQ-UBTVQH14 by the Standing Committee of the National Assembly approves the formation of Thu Duc City

**29 December.** Decision 4764/QĐ-UBND by HCMC People's Committee acts administrative changes such as seals, documents, change of agencies' signs.

### 2021

**22 January.** Official establishment date of Thu Duc City.

**7 February 2021 – 23 May 2021.** Conversion of certificates, permits and licenses for individuals and organizations to reflect address change.

**After 23 May.** Improvement of Thu Duc city's organization apparatus.

### 2022

**December.** Thu Duc City master planning to be completed.





A Covid-19 propaganda banner in one of the streets in Hanoi, Vietnam. Source: Reuters

V IETNAM'S founding father, Ho Chi Minh, once said that "the storm is a good opportunity for the pine and the cypress to show their strength and their stability". So far, Vietnam has not only shown strength and stability, but has even been internationally hailed as a model for handling the COVID-19 outbreak.

Despite neighboring China where it was first detected, Vietnam has only reported over 2591 cases and 35 deaths as of 30 March 2021.

The country has successfully managed to keep the pandemic under control and stood out across the world as one of the countries with the lowest number of contamination cases thanks to its immediate and determined response to prioritize health above economic concerns. When the World Health Organization declared COVID-19 as a pandemic on 11 March 2020, Vietnam had already canceled its flights from/to Wuhan since January and launched an app to aid contact tracing. The country then gradually introduced restrictions that were rigorously enforced including wearing



#### VIETNAM'S 5K COVID-19 RULES

- **Khẩu trang:** face mask
- **Khử khuẩn:** disinfection
- **Khoảng cách:** distance
- **Không tụ tập:** no gathering
- **Khai báo y tế:** health declaration

having hand sanitizers in public areas, workplaces, and residential buildings; practicing physical distancing; travel bans on foreign visitors; mandatory tests and a 14-day quarantine period for international arrivals; circuit breaker lockdowns; school closures; and public event cancellations.

Vietnam's drastic measures, particularly the aggressive contact tracing, isolation and mass quarantine, up to third-tier contacts, as well as the public reception of such protective measures, allowed Vietnam to shut-down non-essential services and impose strict restrictions on movement for only 3 weeks in early April of 2020.

Southeast Asia, like most regions around the world, has economically suffered over the course of the pandemic, but Vietnam's success in containing the virus has considerably lessened the pandemic's impact on the country's economy.

Nonetheless, even with the pandemic in the country fully controlled, Vietnam's economy is not immune to difficulties, as COVID-19 remains present throughout the world.

The tourism and hospitality industry, which contributed to 9.2% of the country's GDP in 2019 per the Vietnam National Administration of Tourism, will need international arrivals in order to fully recover. Many import-export-oriented businesses could face difficulties as well in the years to come if Vietnam's dependence to major economic partners affected by COVID-19 is too heavy.

## Covid-19 pandemic timeline

December 2019  
March 2021

### 2019

#### DECEMBER

31. China reports a cluster of pneumonia-like cases in Whuan.

#### FEBRUARY

6. Prime Minister affirms Covid-19 containment as top priority.

#### MARCH

3. All incoming travelers required to fill in a health declaration.  
14. Vietnam suspends visa issuance to citizens of the UK and all Schengen countries.  
22. Vietnam suspends entry to all foreigners.  
29. Outbreak in Hanoi-based Bach Mai Hospital, largest epicenter in the country.

#### JUN

15. Indochina Legal moves into its new Ho Chi Minh City office.

#### AUGUST

14. PM calls on citizens to use Bluezone app to help contain virus.

### 2021

#### JANUARY

2. First case of UK variant of SARS-CoV-2 is reported in Vietnam.  
28. Outbreak in Hai Duong and Quang Ninh, the highest number of new cases reported in a day since the beginning of the pandemic.  
31. Hanoi People's Committee decides to close all bars, karaoke parlors, and discotheques and residents are required to avoid non-essential gatherings from 1 February 2021.

#### MARCH

3. Vietnamese Covivas vaccine enters first phase of human trials.

### 2020

#### JANUARY

23. First COVID-19 cases recorded in Vietnam. Incoming travelers from China required to fill in a health declaration.  
27. Prime Minister orders detailed plan for COVID-19 fight.  
30. Vietnam suspends flights from China and COVID-19 affected areas.

#### APRIL

1. Outbreak in HCMC. Whole nation starts a 15-day nationwide isolation.  
15. Nationwide isolation lifted but extended by one week in 28 localities, including Hanoi and HCMC.

#### JULY

26. Government vows to crackdown on illegal entrants to importation.  
28. All domestic flights to/from Da Nang suspended to contain COVID-19 hot spot, with the city on lockdown for 15 days.  
31. Vietnam reports first deaths related to COVID-19.

#### DECEMBER

17. Vietnamese Nano Covax vaccine enters first phase of human trials.  
28. 4 apartment blocks in District 5 of Ho Chi Minh City locked down after a person tested positive.

#### FEBRUARY

15. Entire province of Hai Duong is locked down for 15 days and Hanoi and Ho Chi Minh City suspend all entertainment activities.  
22. Ministry of Health declares that priority will be given to health workers, police, military officers, and those over 65 years of age to receive vaccines.  
24. Vietnam receives the first batch of 117,000 doses of the Oxford-AstraZeneca COVID-19 vaccine.

I N JANUARY 2021, the 13th National Congress of the Vietnamese Communist Party (VCP) elected 200 Party Central Committee members, re-elected Nguyen Phu Trong as the VCP's General Secretary and elected the members of the Politburo. The resolution of the 13th National Party Congress and the five-year socio-economic development plan for 2021-2025 were also set out. Following the 13th National Party Congress, National Assembly and all-levels People's Councils elections for the 2021-2026 tenure will be held in May 2021.

#### VCP'S GENERAL SECRETARY

Nguyen Phu Trong was re-elected to the highest office within the Communist Party, for an unprecedented third term, stabilizing the country's political landscape for the next 5 years.

His previous term has been particularly praised for his COVID-19 management and for having successfully negotiated Vietnam's signing of numerous new FTAs. A great task lies ahead of the Party Central Committee members and the VCP's General Secretary, as the country must maintain its economic and social development despite a worldwide pandemic.

#### PARTY CENTRAL COMMITTEE

The new members of the highest body of the Communist Party were elected by the 13th National Party. Of the 180 official Party Central Committee members, 120 were re-elected. There are 19 women and 13 ethnic minority members in the new committee.

#### POLITBURO

The members of the Political Bureau (Politburo) of the Central Committee were elected in the aftermath of the 13th National Party Congress and given a ranking, which set the level of political power. Of the 18 members, 11 were newly elected.

#### NATIONAL ASSEMBLY

In May 2021, Vietnam will also elect the 15th National Assembly, the national legislature and highest government representative body of the people. In turn, the National Assembly will elect the State President and Prime Minister. Finally, the Ministers will be appointed by the Prime Minister upon approval of the National Assembly.

#### RESOLUTION OF THE 13TH NATIONAL PARTY CONGRESS

As set out in the Resolution of the 13th National Party Congress, Vietnam aims to become a developed country by 2045. To that end, the country's objective is to be a modernity-oriented industrial developed country by 2025, a developing nation with modern industrial development and upper-middle income by 2030 and a developed economy with a GDP of US\$ 2.5 trillion with per capita income about US\$ 18,000 a year by 2045.



M. Nguyen Phu Trong during the 13th National Congress of the VCP. Source: VNA

Party Central Committee is shaping the country's future over the next decade by building the Socioeconomic Development Strategy 2021-

2030. The related report states that the country "must be strongly developed qualitatively and quantitatively, effectively and sustainably, and must be turned into a really important impetus for national economic development". In 2020, the country's per capita GDP hit about US\$3000, which may drive the country into a "middle-income trap" according to Tran Du Lich, member of the Prime Minister's Economic Advisory Group. To avoid it, the Central Committee set a target average annual growth of 7% a year and is expecting Vietnam's business to achieve being ranked in the list of the world's top 30 nations.

To fulfill such objectives, Vietnamese authorities worked closely with the Development Partners Group (DPG), formed by representatives from 27 international organizations and nations, which recommended above all the development of the private sector. On March 6, 2021, the country organized the event "Dialogue 2045", a meeting with entrepreneurs and intellectuals to promote the private sector's role and its contributions to the country's development.

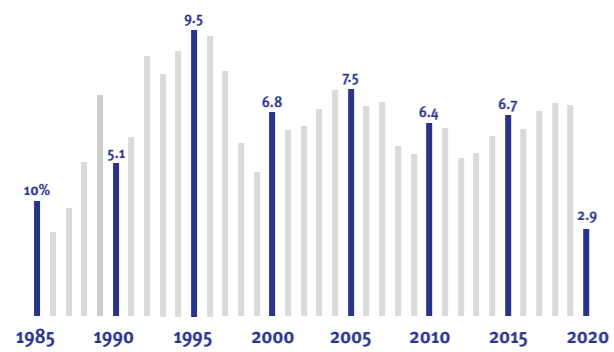
RANKING	13TH POLITBURO'S MEMBERS	STATE POSITION
1	Nguyễn Phú Trọng	President and Chairman of the Council for National Defense and Security
2	Nguyễn Xuân Phúc	Prime Minister and Vice-Chairman of the Council for National Defense and Security
3	Phạm Minh Chính	Deputy of the 14 <sup>th</sup> National Assembly and Head of the Party Central Committee (PCC) Organization Commission
4	Vương Đình Huệ	Deputy of the 14 <sup>th</sup> National Assembly
5	Trần Tuấn Anh	Minister of Industry and Trade
6	Nguyễn Hòa Bình	Chief Justice of the Supreme People's Court
7	Lương Cường	Director of the Vietnam People's Army General Political Department
8	Đình Tiến Dũng	Minister of Finance
9	Phan Văn Giang	First Deputy Minister of Defence and Chief of the General Staff of the Vietnam People's Army
10	Tô Lâm	Minister of Public Security
11	Trương Thị Mai	Chairwoman of the Party Central Committee's and Deputy of the 14 <sup>th</sup> National Assembly
12	Trần Thanh Mã	Chairman of the Vietnamese Fatherland Front Central Committee
13	Phạm Bình Minh	Deputy Prime Minister and Minister of Foreign Affairs
14	Nguyễn Văn Nên	Secretary of the Party Committee of Ho Chi Minh City.
15	Nguyễn Xuân Thắng	Secretary of the Party Central Committee and Chairman of the Central Theoretical Council
16	Võ Văn Thưởng	Permanent member of the Party Central Committee Secretariat and Deputy to the 14 <sup>th</sup> National Assembly
17	Phan Đình Trạc	Deputy of the 14 <sup>th</sup> National Assembly, Standing deputy head of the Central Steering Committee for Anti-Corruption and Head of the Party Central Committee's Commission for Internal Affairs
18	Trần Cẩm Tú	Chairman of the Party Central Committee's Inspection Commission

— ONLY 2 591 CASES AND 35 DEATHS

# ECONOMY

Vietnam's development over the past decades has been phenomenal. According to World Bank and International Monetary Fund figures, between 2002 and 2018, GDP per capita increased by 2.7 times, reaching over US\$ 2700 in 2019. During the same period, more than 45 million people were lifted out of poverty and poverty rates declined sharply from over 70% to below 6%. Vietnam's growth also averaged 6.4% during 1985-2020, with a 10-year high of 7.1% in 2018.

## GDF Growth Rate Of Vietnam (1985-2020)



Source: World Bank

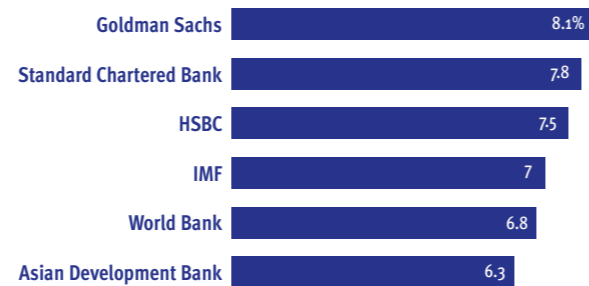
## ASIA'S TOP-PERFORMING ECONOMY AMID COVID-19 PANDEMIC

The pandemic has reached almost all the countries in the world, impacting an unprecedented number of economies and businesses simultaneously and plunging most countries in a recession described as the worst since the Great Depression of the 1930s.

Vietnam is no exception. This unprecedented health crisis has brought considerable difficulties on the country's economy and its long-term impact is accompanied by many uncertainties. Vietnam's GDP fell to 1.8% in the first 6 months of 2020, compared to 6.76% in the same period in 2019, according to the General Statistics Office of Vietnam.

The country had to issue practical policies to support companies to overcome the impacts of the COVID-19 pandemic, including 4 major packag-

## Forecasts on Vietnam's Economic Growth for 2021



Source: Vietnam Investment Review (VIR)

es of VND 250 trillion (US\$ 10.8 billion) in credit support, VND180 trillion (US\$ 7.8 billion) in tax deferrals, VND 16 trillion (US\$ 690 million) in preferential loans with zero rate and VND 62 trillion (US\$ 2.7 billion) in social welfare.

Nonetheless, the country has managed to minimize the economic hit of the outbreak as it is one of the few countries that continued to grow in 2020.

Vietnam is even said to be Asia's top-performing economy in 2020, outperforming Taiwan and China. The Vietnamese economy grew 2.8% in 2020, one of the highest growth rates in the world while most of the countries were in deep recession.

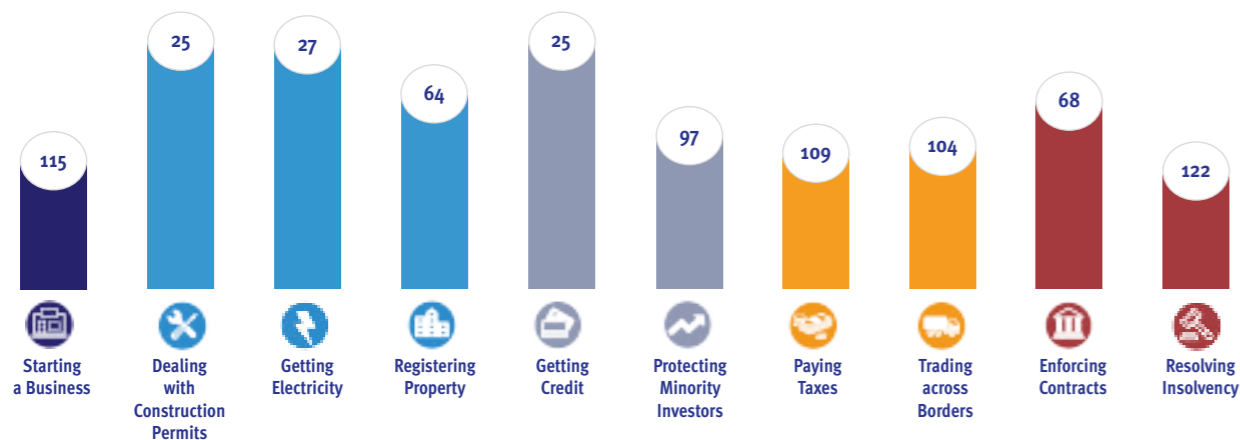
The country's manufacturing sector is largely credited for the economy's performance. Vietnam has emerged as the largest beneficiary of the diversion in trade flows resulting from the tariff fight between the U.S. and China, gaining an estimated 7.9% of its gross domestic product mostly from additional exports to the U.S. In addition to benefiting from the supply chain relocations out of China, Vietnam should also profit from the new FTAs with the European Union (EU) and the United Kingdom (UK).

## VIETNAM'S ECONOMY FORECAST FOR 2021

Major financial institutions and multilateral agencies are optimistic on Vietnam's growth in 2021. The country is expected to be one of the most attractive destinations for foreign investors, not only in Southeast Asia, but in the world, with a 7.2% average estimated growth.

## Ranking on Doing Business topics - Vietnam

Ranking at 104<sup>th</sup> place (out of 175 countries) in 2007, year of its entry into the WTO, Vietnam held in 2020 the 70<sup>th</sup> place in the ranking (about unchanged for the past 3 years). Recent reforms including the streamlining of online tax filings and registration of companies should have the effect to boost its ranking in coming years.



Source: World Bank

**2.8%**  
GDP Growth

**US\$ 281.5**  
billion exports

**US\$ 262.3**  
billion imports

**134,900**  
newly registered  
businesses

**35,000**  
businesses  
bankruptcy



Deep-water terminal of Gemalink - Cai Mep - Thi Vai in Dong Nai. Photo by Mr. Nguyen Minh Tam

Having successfully handled the COVID-19 outbreak, entered into major FTAs and benefited from the US-China trade war, World Bank forecasts that Vietnam will have an average growth of 6.6% between 2021-2022, resulting in the country's middle class to grow from 13% in 2019 to 26% of the population by 2026.

## EXPORTS

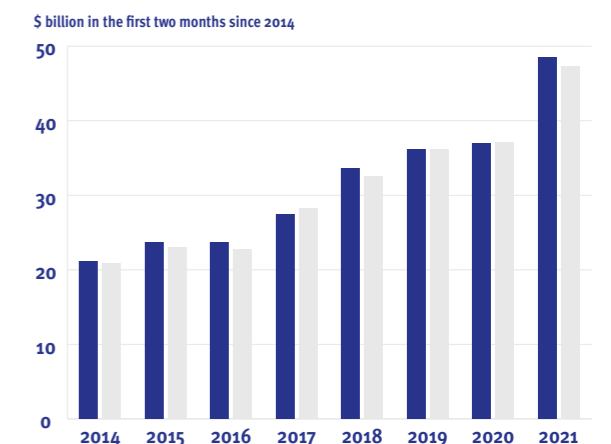
2020 was a successful year for Vietnam's export. While the Vietnamese market was hit by the COVID-19 pandemic, exports played a crucial role in enabling the economy to reach a 2.8% overall growth. Exports went from contributing 52% to the output of economic growth in 2019 to 66.4% in 2020.

During the last decade, Vietnam moved up from the 41st to the 23rd position in the list of 50 nations having the largest exports in the world as compiled by the World Trade Organization (WTO). In 2020, it also obtained a record trade surplus of US\$ 19.1 billion, due to its export growth rate being positive while import tending to be stagnant.

The forecasts on Vietnam exports in 2021 are encouraging. The US and Europe being its major export markets, the country's exports should continue to benefit from the hard China approach pursued by the Biden administration as well as the EU-Vietnam Free Trade Agreement (EVFTA) and the UK-Vietnam Free Trade Agreement (UKVFTA).

## Export And Import Turnover

■ IMPORT ■ EXPORT



Source: Vietnam Investment Review (VIR)

# FREE TRADE AGREEMENTS

**A**LREADY signatory of not less than 12 FTAs, one with the Association of Southeast Asian Nations (ASEAN), 6 through the ASEAN and 5 on its own, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Vietnam entered into 3 additional FTAs in 2020.

## EU-VIETNAM FREE TRADE AGREEMENT (EVFTA)

The EVFTA, a multilateral agreement between the 27 EU member countries and Vietnam to promote the development of commercial exchanges and ensure sustainable economic growth through improved market access, was signed on 20 June 2019 and entered in effect in August 2020. The EU-Vietnam Investment Protection Agreement (EVIPA) was also approved on 12 February 2020 but has yet to be ratified by each of the EU members.

Since the EU and Vietnam established formal diplomatic relations, the EU has been one of the largest foreign investors in Vietnam, with a total

FDI of EUR 7.4 billion in 2018, while Vietnam is the EU's second largest trading partner in the ASEAN after Singapore, with trade in goods worth EUR 45.5 billion in 2019 and trade in services worth around EUR 4 billion in 2018.

The EVFTA is said to be the most ambitious FTA the EU has ever concluded with a developing country and represents an important milestone in the EU's economic relations with the ASEAN. It strengthens an already dynamic economic link between the EU and Vietnam by giving companies of both parties a preferential access to each other's markets.

The EVFTA is expected to help increase Vietnam's GDP by 4.6% and its exports to the EU by 42.7% by 2025. Within the next 15 years, EU exports to Vietnam are expected to increase by around 29%, while Vietnam exports to the EU are estimated to grow by around 18%, which correspond to export gains of respectively US\$ 9.7 billion for EU companies, and US\$ 18 billion for Vietnamese companies.

Key points of the EVFTA are the elimination of tariffs (over 99% on both sides), reduction

of non-tariff barriers, customs and trade facilitation, preferential access for EU service providers, government procurement, protection of intellectual property rights and geographical indications, and the implementation of a dispute resolution mechanism.

## UK-VIETNAM FREE TRADE AGREEMENT (UKVFTA)

The UKVFTA was negotiated based on commitments that were made in the EVFTA and amended in accordance with the bilateral trade framework between Vietnam and the UK. The UKVFTA was signed on 8 October, 2020 and temporarily took effect from 1 January 2021, to ensure uninterrupted trade, but will officially enter into force on 1 May, 2021.

It eliminates 65% tax tariffs and increases the elimination rate to 99% within seven years. Accordingly, Vietnam removed 48.5% tax tariffs and, will rise this rate to 92% to 98% after six years.

The UKVFTA is expected to boost UK - Vietnam bilateral trade further, which has already tripled between 2010 and 2019 to 5.7 billion

PRODUCTS	PERIOD UNTIL 0% TAX RATE APPLIES (FROM AUGUST 2020)
Cars	10 years
Cars parts	7 years
Motorcycles with engines larger than 150 cc	7 years
Machinery and appliances	5 years
Pharmaceuticals	7 years
Chemicals	7 years
Cheeses with a geographical indication	3 years
Dairy products	5 years
Wines and spirits	7 years

pounds (US\$ 7.58 billion). Both UK and Vietnam described the deal between the two as a "key step" towards UK's entry into the CPTPP.

## REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP)

Unifying 5 pre-existing bilateral agreements with its major trade partners, the ASEAN signed a mega-regional free trade agreement with Australia, China, Japan, South Korea and New Zealand on 15 November 2020. India was originally part of the RCEP as well but withdrew in November 2019. Nonetheless, the ASEAN-India Free Trade Area (AIFT) remains in force.

RCEP's market coverage comprises 30% of the world's population, with a combined GDP of US\$ 26.2 trillion (30% of global GDP), and nearly 28% of global trade.

The RCEP will remove tariffs on at least 64% of tariff lines soon after it takes effect. In about 15 to 20 years, Vietnam will have removed 89.6% of tariff lines for partner countries which, in return, will have removed up to 92% of tariff lines for Vietnam.

China, South Korea, Japan, New Zealand, Australia, and other ASEAN countries made commitments to reduce tariffs to 0% as soon as the agreement takes effect, which opens new opportunities for Vietnam to increase export to the RCEP market.

## UNDER NEGOTIATIONS

In addition to the already 15 signed FTAs, Vietnam is also under negotiations with the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland) since 2012 and Israel since 2015.

# LEGAL UPDATES

— 2020 SAW SEVERAL MAJOR VIETNAMESE LEGAL INSTRUMENTS PASSED BY THE NATIONAL ASSEMBLY, ISSUED BY THE GOVERNMENT AND MINISTERIAL BODIES, AND/ OR TAKING EFFECT.

## INVESTMENTS

- Law No. 59/2020/QH14 dated 17/06/20 on enterprises, effective 01/01/21
- Law No. 61/2020/QH14 dated 17/06/20 on investment, effective 01/01/21
- Decree No. 35/2020/ND-CP dated 24/03/20 elaborating on several articles of the Law on Competition, effective 15/05/20
- Decree No. 37/2020/ND-CP dated 30 March 2020 on amendments to the list of industries benefitting from investment incentives attached to Decree No. 118/2015/ND-CP, effective 01/05/20

## SECURITIES

- Law No. 54/2019/QH14 dated 26/11/19 on securities, effective 01/01/21 (Law 54)
- Decree No. 153/2020/ND-CP dated 31/12/20 on private placement and trading of privately placed corporate bonds in the domestic market and offering of corporate bonds in the international market, effective 01/01/21
- Decree No. 155/2020/ND-CP dated 31/12/20 detailing some articles of the Law 54, effective 01/01/21
- Circular No. 118/2020/TT-BTC dated 31/12/20 on offer and issue of securities, public offer, share acquisition, registration of public companies and cancellation of public company registration, effective 15/02/21
- Circular No. 119/2020/TT-BTC dated 31/12/20 providing guidelines on operations being registration, depository, clearing and settlement of securities transactions, effective 15/02/21
- Circular No. 120/2020/TT-BTC dated 31/12/20 on trading of listed and registered shares, fund certificates, corporate bonds and secured warrants listed on securities trading systems, effective 15/02/21
- Circular No. 121/2020/TT-BTC dated 31/12/20 regulating the operations of securities companies, effective 15/02/21

## CONSTRUCTION

- Law No. 62/2020/QH14 dated 17/06/20 on amendments to the Construction Law, effective 01/01/21
- Decree No. 25/2020/ND-CP dated 28/02/20 elaborating some articles of the Law on Bidding on investor selection, effective 20/04/20 (Decree 25)
- Circular No. 06/2020/TT-BKHDT dated 18/09/20 guiding the implementation of Decree 25, effective 05/11/20

## PUBLIC-PRIVATE PARTNERSHIP (PPP)

- Law No. 39/2019/QH14 dated 13/06/19 on public investment, effective 01/01/20
- Law No. 64/2020/QH14 dated 18/06/20 on PPP investment, effective 01/01/21

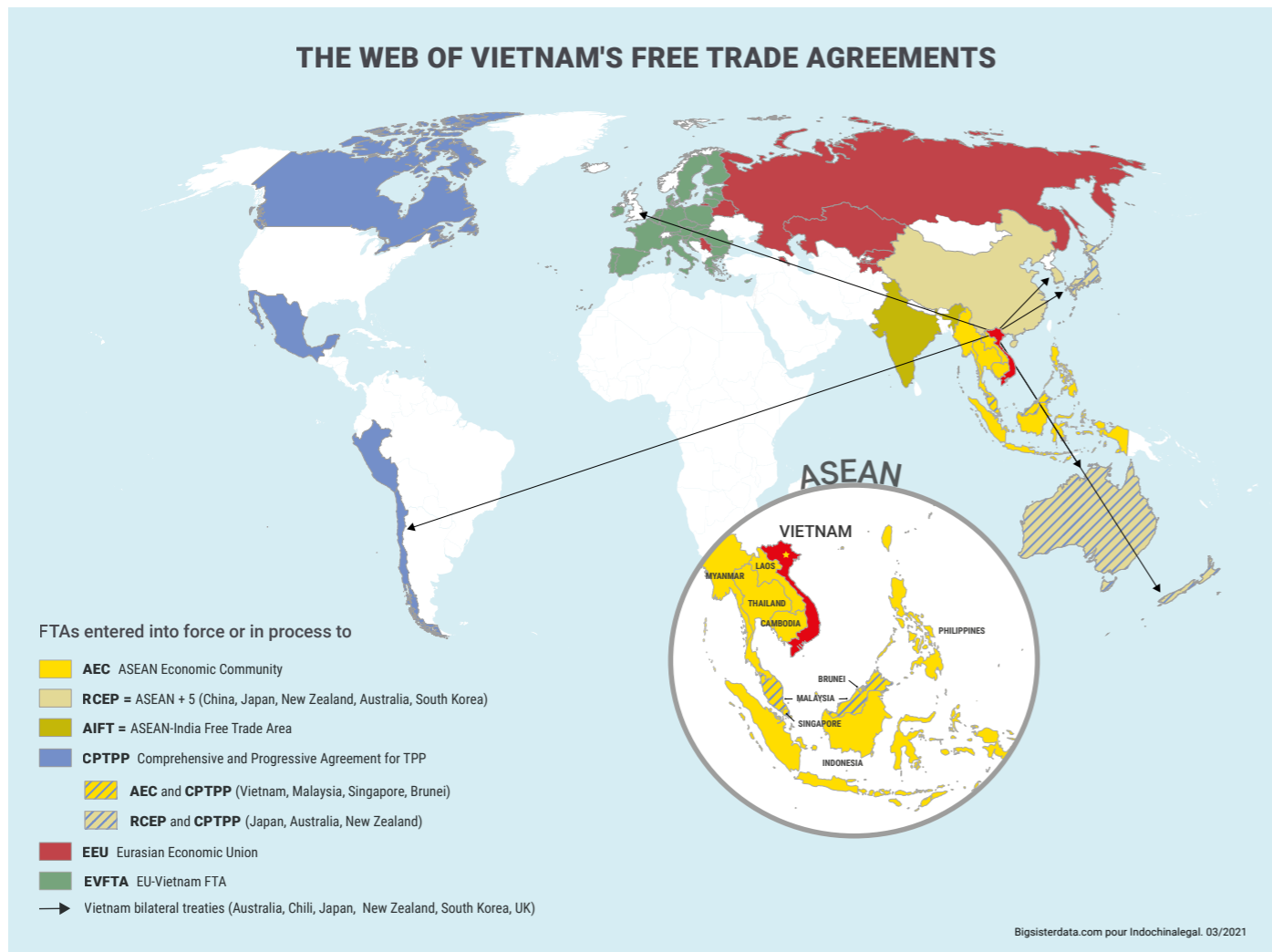
## ENERGY

- Decision No. 08/2020/QD-TTg dated 05/03/20 providing amendments to Decision No. 24/2014/QD-TTg on support mechanism for development of biomass power projects in Vietnam, effective 25/04/20
- Decision No. 13/2020/QD-TTg dated 06/04/20 on the mechanism for the encouragement of development of solar power in Vietnam, effective 22/05/20
- Circular No. 18/2020/TT-BCT dated 17/07/20 on project development and sample of electricity sale contract applicable to solar power projects, effective 31/08/20
- Circular No. 21/2020/TT-BCT dated 09/09/20 on the order and procedures for the grant of electricity operation licenses, effective 26/10/20

## LABOUR AND EMPLOYMENT

- Law No. 45/2019/QH14 dated 20/11/19 on labor, effective 01/01/21
- Decree No. 145/2020/ND-CP dated 14/12/20 elaborating some articles of the Labor Code on working conditions and labor relations, effective 01/02/21
- Decree No. 152/2020/ND-CP dated 30/12/20 on foreign workers working in Vietnam and recruitment and management of Vietnamese workers working for foreign employers in Vietnam, effective 15/02/21

## THE WEB OF VIETNAM'S FREE TRADE AGREEMENTS



Bigstaterdata.com pour Indochinalegal. 03/2021

# GREENFIELD INVESTMENT



NGUYEN THI THIEN THANH NGUYEN THI MINH HANG

**S**INCE the Đổi mới policy and the country's first opening to foreign investment in the beginning of 1991, FDI in Vietnam has steadily increased allowing the country's economic transformation and integration into the world economy.

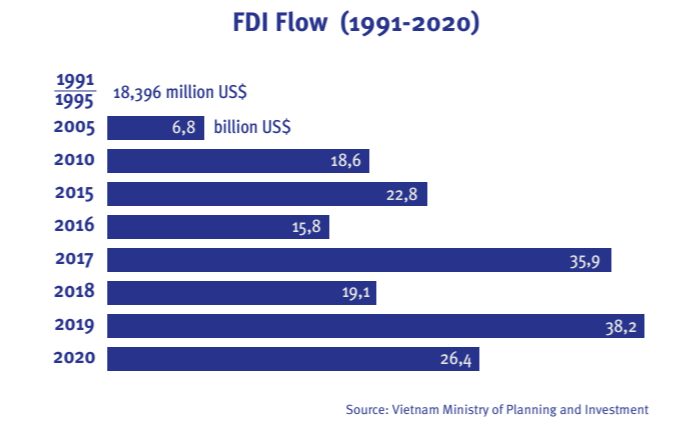
Per Vietnam's General Statistics Office, registered FDI in the country hit US\$ 28,53 billion in 2020, a year-on-year decline of 25 % due to the COVID-19 pandemic. From these figures, about 2523 new projects were licensed with capital totaling US\$ 14.6 billion.

Foreign companies invested in 19 sectors, of which processing and manufacturing lured the lion's share of FDI with US\$ 13.6 billion, accounting for 47.7 % of the total capital. Power production and distribution came next with more than US\$ 5.1 billion or 18 %. Real estate and wholesale sectors were the runners-up with US\$ 4.2 billion and US\$ 1.6 billion, respectively. As of December 2020, Vietnam was home to 33070 valid foreign-invested projects with a total registered capital of US\$ 384 billion, 60.4% of which (US\$ 231.86 billion) was disbursed. As of December 2020, Vietnam was home to 33070 valid foreign-invested projects with a total registered capital of US\$ 384 billion, 60.4% of which (US\$ 231.86 billion) was disbursed.

The Ministry of Planning and Investment remains optimistic in that many foreign-invested enterprises in the country have gradually recovered and maintained business and production activities in 2020. As good omen for the year, newly-and-additionally-registered and disbursed FDI for Q1-2021 are up respectively by 41,5% and 6,49%, amounting to US\$ 9.3 billion and US\$ 4.1 billion.

## NEW LAW ON INVESTMENT

Effective since 1 January 2021, the new Law No. 61/2020/QH14 dated 17 June 2020 on investment (2020 LOI) introduced several changes impacting greenfield investment in the country, among others, the new "negative list" approach to market entry; amendment of the list of conditional business lines by removing 22, revising 25 and supplementing 7 more business lines; express prohibition of debt collection services, with a requirement that all current debt collection services be suspended from 1 January 2021; new additional condition for foreign investment on ensuring "national de-



fense and security"; a streamlined process for selection of investors and revised investment in-principle approval process; relaxation of investment conditions for small- and medium-sized startup innovative enterprise or an innovative startup investment fund; and the new 50% foreign ownership threshold to determine whether a foreign-invested enterprise is subject to conditions and investment procedures applicable to foreign investors (instead of those to Vietnamese investors). The Ministry of Planning and Investment (MPI) has published a draft decree for the implementation of the new Law on Investment. Key points of the draft decree include business investment guarantees, the "negative list", investment incentives, timing and escrow deposit for investments projects, among many other detailed regulations and guidances.

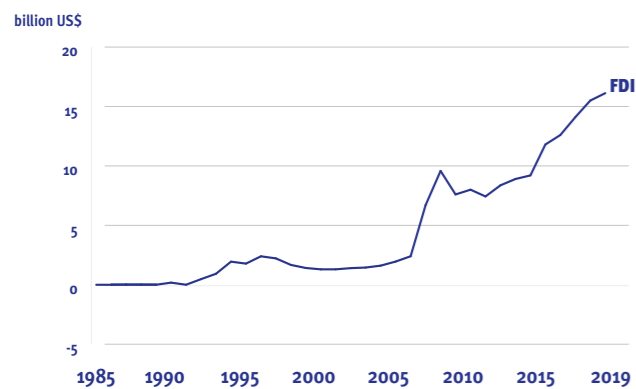
## SELECTED EXPERIENCE

Amidst the pandemic, Indochina Legal assisted several companies in difficulties, often advising on suspension of activities in Vietnam, versus plain closure, in the perspective of an economic rebound. Nonetheless, the Firm also handled notable greenfield investment projects in the logistic, manufacturing, next gen medical services, software development and animal feed sectors, including a Singaporean biotech company operating in Vietnam to develop the potential of insects as resource for animal feed and health industries. The favored investment structure remains the wholly foreign-owned enterprise, with the sole investor incorporated in a WTO country, as to facilitate the licensing process.

— VIETNAM'S Q1-2021 RECORDED THE BEST FDI PERFORMANCE FOR A DECADE, DRIVEN BY THERMAL POWER AND HIGH-TECH INVESTMENTS.

Portraits / Yan Lervai Digital

## FDI Net Inflows (1985-2019)



# M&A



ÉRIC LE DRÉAU ARCHELLE LAGSUB

**B**ETWEEN 2015 and 2020, Vietnam was ranked second out of 50 countries in the M&A environment attractiveness by Euro-monitor International, behind the U.S. but before China, India and the U.K. Although M&A in Vietnam appears to have fallen in 2020 by 49% year-on-year to \$3.5 billion due to COVID-19, its value is expected to fully recover by 2022, according to a report from the Corporate Investment and Mergers & Acquisitions Center.

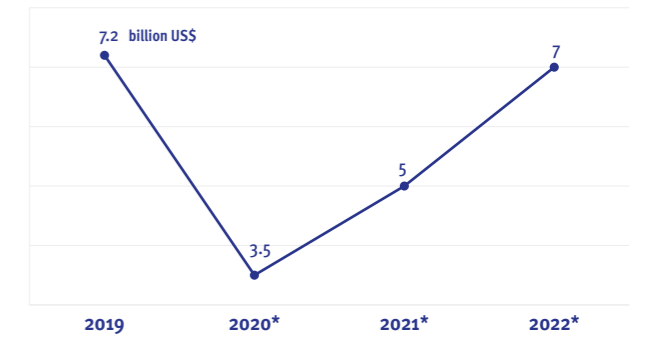
With the country now also emerging as a convenient alternative destination for foreign enterprises seeking to relocate their operations from China, and with a continuous appreciation from EU investors, heightened by the recent entry into force of the EVFTA, M&A activities are expected to remain strong in 2021 (with high expectations in the retail, e-commerce, medical and real estate sectors). The clarifications on M&A conditions and approvals under several new legal instruments should support the trend.

## REGULATORY CHANGES IMPACTING M&A TRANSACTIONS

Decree No. 35/2020/ND-CP dated 24 March 2020 elaborating on several articles of Law on Competition, effective 15 May 2020 (Decree 35), impacted M&A control. The following are among the significant changes introduced by Decree 35:

- A comprehensive definition of what constitutes "control or govern" in acquisition transactions
- Multi-criteria approach (compared to the sole consideration of combined market share of the enterprises under the previous regulations) to determine when an economic concentration (defined as including mergers, consolidations, acquisitions and joint ventures) would be subject to mandatory merger approval from the National Competition Commission (NCC), such criteria comprising: (a) total assets in the Vietnam market of an enterprise or a group of affiliated enterprises, (b) total sales turnover or input purchase turnover in the Vietnam market of the enterprise or group of affiliated enterprise, (c) the transaction value and (d) the combined market share of the enterprises
- Specific thresholds to the abovementioned multi-criteria approach for special enterprises namely credit institutions, insurance enterprises and securities companies, and other enterprises, such that in the event that the economic concentration exceeds the prescribed thresholds, NCC must be notified of the economic concentration.

## Vietnam's M&A Value



The 2020 Law on Investment (LOI) provides a welcome clarification on the circumstances where a foreign investor must obtain an M&A approval for its investment in a Vietnamese target company. Specifically, an M&A approval is required when the acquisition by the foreign investor leads to:

- an increase in the ownership of the foreign investor in the target company engaged in business lines subject to market access restrictions for foreign investors
- an increase in foreign ownership in the target company from less than 50% or 50% to more than 50% of the charter capital
- an increase in foreign ownership in the target company where foreign ownership already exceeds 50% of the charter capital.

The above foreign ownership threshold has been reduced from 51% to 50% under the 2020 LOI.

The 2020 LOI supplements also one more circumstance where foreign investors are required to procure M&A approval, that is, where the target enterprise owns a land use right certificate over areas affecting national defense and security such as sea-island, border or coastal areas.

CRITERIA	SPECIAL ENTERPRISES			OTHER ENTERPRISES
	CREDIT INSTITUTIONS	INSURANCE COMPANIES	SECURITIES COMPANIES	
Total assets in the Vietnam market in the preceding fiscal year	20% or more of the total assets of the credit institution system in the Vietnam market	VND 15 trillion or more (roughly US\$ 650 million)	VND 15 trillion or more (roughly US\$ 650 million)	VND 3 trillion or more (roughly US\$ 130 million)
Total sales turnover or input purchase turnover in the Vietnam market in the preceding fiscal year	20% or more of the total turnover of the credit institution system in the Vietnam market	VND 10 trillion (roughly US\$ 430 million)	VND 3 trillion or more (roughly US\$ 130 million)	VND 3 trillion or more (roughly US\$ 130 million)
Transaction value	20% or more of the total charter capital of the credit institution system in the Vietnam market	VND 3 trillion or more (roughly US\$ 130 million)	VND 3 trillion or more (roughly US\$ 130 million)	VND 1 trillion or more (roughly US\$ 43 million)
Combined market share	20% or more of the relevant market			



ARCHELLE LAGSUB



PHAM THI DUNG

Foreign M&A Transactions in the Manufacturing Sector, under Resolution No. 50-NQ/TW of the Central Committee of the Communist Party dated 20 August 2019 (Resolution 50), now requires a foreign investor to submit for the authorities' assessment a comprehensive explanation of its technologies, machinery, labor usages, sources of input materials, market for products and environmental protections, to be able to procure an M&A approval for a M&A transaction involving a manufacturing company. This would likely result to M&A deals in the manufacturing sector to take longer to close.

**SELECTED EXPERIENCE**

Indochina Legal has been especially active with M&A transactions throughout the year, with a particular focus on renewable energy deals (solar and wind farms) and real estate transactions (residential, hospitality and industrial real estate). Other sizable M&A transactions carried out by the Firm involved acquisition deals in the manufacturing industry (high tech laboratory equipment, packaging solutions, leather products), share subscriptions and capital increase (e-commerce platform, machine manufacturing), with some restructuring operations in in the logistic and infrastructure, distribution, and agro-food sectors. Indochina Legal also completed or initiated several investments procedures in the food, beverage and manufacturing industries.

We note, in particular, the following significant transactions that we have assisted in completing in 2020 despite considerable constraints resulting from the COVID-19 crisis:

- The representation of a group of individuals and corporate shareholders in a multi-million dollars transfer of a luxury eco-resort located at a prime river frontage in Central Vietnam, to a renowned Vietnamese real estate group
- Assisting a French conglomerate, acting through a Singaporean special purpose vehicle, in the acquisition from foreign individual owners of all their shares in a Hong Kong holding company of the Vietnamese entity owning, developing and operating a resort complex in the Ho Tram Strip in Ba Ria-Vung Tau Province
- Legal due diligence assistance to a Swiss-headquartered purchaser in its acquisition from a Belgian company of 100% of the shares of a HK company holding interest in information technology (IT) companies in several jurisdictions, including the ultimate target being 2 Vietnamese IT companies.

**O**WING in part to the manufacturing shift from China to Vietnam, the average industrial rent has gone through its highest growth in decades, with a 7.9% year-on-year increase in 2020 according to real estate services firm JLL. Rents nevertheless remain lower than other neighboring countries in Southeast Asia, and thus Vietnam continues to be very attractive. For instance, rents are 25-30% lower than Thailand and Indonesia, the country's main competitors in the sector according to SSI Securities Corporation. With more limited raw land vacancy, the demand for ready-built factories is also increasing. The country's industrial property market in 2020 was vibrant, a trend that will certainly continue in 2021.

The Vietnam construction industry also impressed last year, being the best performing one in the Asia-Pacific (APAC) region, as reported by GlobalData, with an overall growth rate in 2020 of 5.5%, despite the Covid-19 outbreak and the multiple disruptions of activities that occurred during the year. Growth rate is expected to rise up again to its pre-Covid level in 2021 (average growth was 9.6% on the 2015-2019 period).

**INVESTOR SELECTION BIDDING PROCESS**

On 28 February 2020, the government issued Decree No. 25/2020/ND-CP elaborating some articles of the Law on Bidding on investor selection (Decree 25), which introduces the following salient changes: (i) expansion of coverage to include, in addition to PPP projects and land-using projects, projects which are required to implement bidding for selection of investor in accordance with specialized laws and laws on socialization; (ii) clarification of conditions

to be deemed as a land-using project covered by the new regulations; (iii) clarification of the mechanism of land allocation or land lease upon closing of the bid; and (iv) change on pre-qualification and methods of selection of investor of land-using projects.

**SELECTED EXPERIENCE**

Indochina Legal has successfully assisted in the completion of several real estate deals, notably including the following, confirming the Firm's strong core focus and capabilities in this area:

- Development from scratch (licensing, construction) by a group of individuals and corporate shareholders of a luxury eco-resort hotel to its sale to a renowned Vietnamese real estate group.
- the purchase by a French conglomerate, acting through a Singaporean special purpose vehicle, from foreign individual owners of all their shares in a Hong Kong holding company of the Vietnamese entity owning, developing and operating a resort complex in the Ho Tram Strip in Ba Ria-Vung Tau Province.
- the preliminary stages for the acquisition by a Taiwanese multi-industry group, acting through their Vietnamese subsidiaries, of interests in a joint venture to develop a 45-hectare mixed-purpose complex within the eco-tourism urban area in Dai Phuoc Island, the "Pearl of the East of Saigon".

As to the construction industry, the Firm provided assistance on construction disputes and recently advised a French contractor on works suspension and contract termination issues relating to their pipeline project in Ho Chi Minh City.

— THE COUNTRY'S AMBITIOUS INFRASTRUCTURE PROJECTS AND THE RESIDENTIAL AND COMMERCIAL BUILDING DEMAND ARE SPURRING THE CONSTRUCTION SECTOR, KEY FACTOR OF VIETNAM'S ECONOMIC GROWTH AND FDI.



NGUYEN THI THIEN THANH



LY HUYNH KIEU ANH



Logistic Center in VSIP Bac Ninh. Source: FM Logistic

**V** IETNAM'S logistic sector has been flourishing over the last decade. The 2018 World Bank's Logistic Performance Index ranked Vietnam 39 out of 160 countries. Despite the COVID-19 pandemic, the country had an impressive container shipping growth in 2020, with volumes up to 10.6% and 14.65 million Twenty Foot Equivalent Units (TEUs). Vietnam also ranked 8th emerging logistic markets in the world in the 2021 Emerging Markets Logistics Index released by logistics company Agility.

Vietnam's logistics sector has recently been further uplifted by the shift of the supply chain and production out of China along with the FTAs signed by Vietnam as well as the country's thriving manufacturing and e-commerce sectors. Having the opportunity and ambition of becoming South-East Asia's logistics hub, the Prime Minister's Decision No. 200/QĐ-TTg aims that by 2025, the logistics sector will grow by 15 to 20%, and costs cut to 16-20% of GDP.

**WORLDWIDE HIGH SHIPPING FREIGHT RATES**

COVID-19 pandemic has caused a shortage of empty shipping containers in Asia, leading to all-time high shipping freight rates. In December 2020, spot freight rates were 264% higher for the Asia to North Europe route compared to December 2019, and up to 145% for the Asia to the US-West Coast route. The pandemic delayed unloading at many major ports around the world. Over a thousand containers have been stuck in the United States and Europe due to COVID-19 restrictions. As a result, empty containers have not been able to return to Asia, making it nearly impossible for shipping companies to operate. Nevertheless, Vietnam's growth in export activities in 2020 remained positive with an export turnover of US\$ 202.86 billion, a 4.2% year-on-year increase, according to Vietnam's General Statistics Office.

**HCMC LOGISTICS DEVELOPMENT STRATEGY**

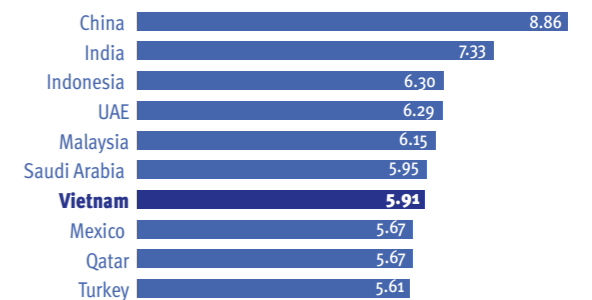
Ho Chi Minh City is the biggest distribution and supply center in the South of Vietnam and is located near the major East Sea shipping routes. As a result, 5 of its 6 depots are operating over their intended capacity, causing congestion in the city's port clusters. Ho Chi Minh City's Department

of Industry and Trade and Vietnam Logistics Research and Development Institute are therefore working alongside since 2019 to build 3 new logistic centers. The projects seek improving connections within the city and other provinces, as well as increase the number of businesses hiring specialized logistic services to reduce costs while improving quality.

**SELECTED EXPERIENCE**

Indochina Legal continues to assist and represent several major foreign logistics service providers, including a world leader in shipping and logistics to proceed the assignment of its stakes in one of eight port terminals for enabling the new investor to expand its global network and enhancing its business development prospect, as well as an international joint-venture logistic giant in various issues relating to the operation of its investment in construction and development of warehousing and warehouse leasing business in Vietnam.

**Top 10 Emerging Logistics Markets 2021**



Source: Emerging Markets Logistics Index, Agility



# ENERGY



ANTOINE TOUSSAINT PHAM THI DUNG

OVER the past decade, Vietnam's economic growth has averaged 6% GDP per year, resulting in a consumption increase of more than 11% per year, almost twice the country's annual GDP. In the 2020-2030 period, the National Steering Committee for Electricity Development expects electricity demand to keep increasing annually by 7.5%-8% on average.

Vietnam's domestic production of hydroelectricity combined with its domestic production of fossils fuels have not been enough to satisfy the power demand. The country had to rely on imports, becoming an important coal importer (43.7 million tons in 2019) and continuously increasing its natural gas and crude oil imports since 2014.

In order to limit its dependence to imports, the country promoted the development of renewable energy through feed-in-tariffs to attract investment in solar and wind power. As a result, between 2014-2019, solar and wind went from accounting for 0% to 10% of the total supply of

energy, with Vietnam now being the third leading nation in renewable energy shift in Asia Pacific, according to HIS Markit.

In 2020, the Politburo issued Resolution No. 55-NQ/TW on the orientation and strategy for Vietnam's energy development to 2030, with a vision to 2045, which encourages and facilitates the private sector to participate in energy development.

### IN SUPPORT OF VIETNAM'S SOLAR POWER ENERGY

After prolonged discussion and consideration, the Prime Minister issued on 6 April 2020 the long-awaited Decision No. 13/2020/QĐ-TTg on the mechanism for the encouragement of development of solar power in Vietnam. Among the key points under the new regulation are the distinction among 3 different types of solar projects (namely rooftop solar power systems, floating solar power projects and ground-mounted solar power projects), the allowance of freely nego-

tiated corporate power purchase agreements between a rooftop solar generator and a non-Vietnam Electricity (EVN) buyer, and the application of a new fee-in tariff regime.

### SELECTED EXPERIENCE

Foreign appetite for energy projects in Vietnam (and especially renewable energy) remained robust last year, which reflected in the Firm's activity. Indochina Legal conducted several due diligence exercises on photovoltaic projects and advised on the acquisition of several power companies by foreign investors, both from the neighboring region, and Europe (wind and solar farms). The Firm also worked on several PPAs, including a cross border one to offtake electricity from Laos.

Indochina Legal continues to advise Mekong Energy Company in relation to the Phu My Power Generation Complex in the province of Ba Ria-Vung Tau, the first BOT power project in Vietnam (with EDF, Tepco and Sumitomo).

An aerial view of photovoltaic panels at Xuan Tho, Song Cau, Phu Yen, Vietnam. Source: Shutterstock



# TECH



ANTOINE TOUSSAINT NGUYEN THI THIEN THANH

THE new technologies industry is mostly foreign invested. Major multinational companies such as Intel (who recently opened a chip assembly plant and testing facility in Ho Chi Minh City), Samsung (who announced its plan to build eight factories and one R&D center), Microsoft, Panasonic, Apple and LG are funding projects to build electronic components in the country. At least 86% of total IT revenues in 2017 were derived from hardware manufacturing. In 2020, Vietnam exported \$19.2 billion worth of mobile telephones and accessories, which is 8% more than in 2013, according to Vietnam's General Statistics Office, and its electronics exports rose by 50.5% year-on-year in January 2021.

IT services are also gaining traction. Tholons, advisory Firm for Global Investments, even rated Vietnam the 8th leading provider of IT services worldwide in its Services Globalization Index. As a result, recruitment demand for IT staff has quadrupled in the past 10 years. According to a survey by a top job recruitment website VietnamWorks, the demand for software developers accounted for half of demand in the 2010-2019 period, and this trend should continue as it is among the few sectors seeing increases in employment rates during the COVID-19 pandemic.

### FOXCONN SHIFT APPLE PRODUCTION TO VIETNAM

Apple requested Taiwan's Foxconn Technology Co Ltd to move a part of the iPad and MacBook assembly from China to Vietnam in the context of tensions between China and the United States. Vietnam's government awarded a license to a unit of Foxconn to build a US\$ 270 million plant in the northern province of Bac Giang to produce laptops and tables. Foxconn has already invested US\$ 1.5 billion in Vietnam and expects to raise its investment by US\$ 700 million and recruit 10,000 more local workers in 2021.

### INTEL INVEST 1.5 BILLION IN VIETNAM

In 2006, Intel Corp announced a US\$ 1 billion investment in Vietnam to build a 47,000-square-metre facility in the new Thu Duc City. In 2021, Intel has invested an additional US\$ 475 million in its plant in Vietnam in order to improve technologies and boost production of its 5G products and core processors, taking its investment to a total amount of US\$ 1.5 billion. Intel has therefore become Southeast



OneHub Saigon – an international Grade A, campus-style, integrated business park located in Saigon Hi-Tech Park. Source: Ascendas Saigon Bund Company Limited

Asia's top US high-tech investor, creating over 5000 highly skilled jobs since 2010.

### SAMSUNG ANNOUNCED 3 BILLION INVESTMENT PLANS IN VIETNAM

Samsung has announced its plans to invest up to US\$ 3 billion to develop its plants in Vietnam, including a US\$ 2 billion one. The South Korean conglomerate has so far invested around US\$ 11 billion to date in Vietnam and is the country's largest single investor.

### NATIONAL STRATEGY FOR 4TH INDUSTRIAL REVOLUTION

In December 2020, Prime Minister Nguyen Xuan Phuc promulgated Decision No. 2289/QĐ-TTg implementing the National Strategy on the Fourth Industrial Revolution to 2030 and setting out ambitious goals for the country. Of note, some of these objectives include maintaining Vietnam's WIPO Global Innovation Index (GII) among the top 40 countries in the world, reaching the top 50 of the E-Government Development Index, and having the digital economy accounting for about 30% of the nation's GDP. The decision also targets

to continue popularizing fiber-optic broadband Internet services; 5G cellular network services and forming a number of smart urban chains in key economic regions. The Decision include the following list of priority technologies: robotics, advanced materials, renewable energy, artificial intelligence, technology in medicine, IoT, big data and blockchain. We shall see what practical incentives will follow to support such goals.

### SELECTED EXPERIENCE

In 2020 Indochina Legal provided assistance to several software development and fintech solution companies, including foreign major players entering the Vietnamese market. We kept witnessing a steady growing demand for outsourced software services, including multinationals contemplating setting up subsidiary unit dedicated to servicing the group needs in IT and software developments. The Firm also assisted a mobile phone part manufacturer, after a relocation in Vietnam from China, a high tech laboratory equipment manufacturer and a next generation medical service provider in expending its activities in Ho Chi Minh City.

## DISPUTE RESOLUTION



NGUYEN QUOC TUAN



LE THUY ANH

**T**HE COVID-19 pandemic became an unprecedented challenge to all forms of dispute resolution, especially international arbitration. As many cross-border disputes arose from force majeure, contract termination, insurance and supply chain claims, alternative and hybrid ways to streamline the

process had to be found such as holding virtual hearings and otherwise moving from a once paper-heavy and in-person process to online platforms.

The parameters of remote arbitration hearings vis-à-vis confidentiality and data protection considerations also had to be determined. The use

of mediation and increased settlement rates as short-term cash-flow requirements appeared to take an increasing priority and likely protracted enforcement proceedings given the backlog of cases for the local courts and fewer assets to collect from the award debtors resulted from the economic crisis and market instability brought about by the pandemic.

### RECOGNITION OF FOREIGN DECISIONS AND AWARDS

The recognition of a foreign judgment in Vietnam is much challenging since Vietnamese courts do not recognize a foreign judgment or decision except as a general matter, if issued by a court in a country that has mutual legal assistance treaty on civil matters (MLAT) with Vietnam, as provided for in Article 118 of the LOB.

Vietnam's MLAT network, however, is almost barebones with the MLATs it has entered with its neighbors (Laos, Cambodia) and countries from the old Communist Bloc (i.e. Russia, China, Cuba) with one exception, France. For countries that do not have an MLAT with Vietnam, the possibility of recognition of a judgment is almost non-existent. Meanwhile although Vietnam is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the exequatur in the country of foreign awards remains a difficult and tedious process given Vietnam's reservations to the Convention, including recognition of awards only if not contrary to the vague and inconsistently interpreted fundamental principles of Vietnam.

### ARBITRATION

Indochina Legal, in cooperation with its Legalink colleague Edmund Kronenburg from Bradell Brothers LLP in Singapore, has received an arbitral award in February of this year, under the auspices of the International Chamber of Commerce (ICC) in Singapore, in our client's favor in a sale of goods dispute under the UN Convention on International Sale of Goods between a Vietnamese trader (as claimant) and the Dubai-based arm of our UK-headquartered client as respondent and counter-claimant.

During the height of the pandemic in 2020, the parties and the tribunal had to consider whether to delay the proceedings; proceed with limited in-person hearings, such as only for the merits hearing, with other applications being dealt with by way of a remote hearing or on pa-

per only; or proceed but only by way of remote hearings.

The conduct of remote hearings was made challenging, in terms of time zones, data sharing platforms and cybersecurity issues, in that the sole arbitrator was based in Singapore while the claimant's lead counsel was in London (given travel restrictions) with the rest of the claimant's legal team, witnesses and translators being both in Hanoi and Ho Chi Minh City, Vietnam.

### COURT PROCEEDINGS

Indochina Legal, in collaboration with the Vietnamese law office of our Partner, Lawyer Nguyen Quoc Tuan, has developed a niche practice in court proceedings. This practice revolves mainly around restructuring issues. In this regard, the Firm has the honor to serve on the Vietnamese panel of a leading investment bank. Indochina Legal is also active in tax disputes having assisted over the years international foreign invested enterprises in the challenge of tax decisions in relation with corporation income tax, value added tax, entitlement to tax incentives and tax arrears before courts in Ho Chi Minh City, Binh Duong and Dong Nai. Other areas of the Firm's litigation practice comprise construction, real estate, commercial, labor and shareholder disputes.

— THE PANDEMIC HAS BEEN AN UNPRECEDENTED CHALLENGE TO ALL FORMS OF DISPUTE RESOLUTION, ESPECIALLY INTERNATIONAL ARBITRATION.

## CORPORATE SOCIAL RESPONSIBILITY



Baking and pastry training session, French Bread-Pastry Making School. DR

**A**S A WAY of giving back to the community, the Firm has been involved in the following:

### PRO BONO

Indochina Legal volunteers its services to provide general legal assistance to clients with limited means on a large scope of family matters, from domestic violence to inheritance, and on immigration law.

### THE FRENCH BREAD-PASTRY MAKING SCHOOL

Indochina Legal provides general corporate/commercial assistance to Institut européen de coopération et de développement (IECD) for its French Bread-Pastry Making Schools, a social initiative providing orphans and young people from very modest background with an apprenticeship-based training. The Firm assisted the implementation of the schools as social enterprises, which rely on business activities as main source of income, rather than donations or grants. Thus, the schools are self-sustainable, covering the training operating costs through the products made by the apprentices. IECD created its first school in Hue in 1999, followed by a second one in Ho Chi Minh City in 2016 and its third one in Yangon, Myanmar in 2017.

### COVID-19 FUNDS

Promoting solidarity and resilience, Indochina Legal brought its support to the COVID-19 Disease Prevention Fund of the Central Committee of the Fatherland Front. The fund is aimed to help those directly involved in the prevention of the pandemic and treatment of patients, acquire medical equipment as well as support patients.

The Firm also participated to the CCI France-Vietnam Solidarity Committee in order to help vulnerable expatriates to get back to their home countries.

### POUSSIERES DE VIE

Indochina sponsors Poussières de Vie, a non-profit organization established in 2002 and operating under the control of PACCOM, a Vietnamese governmental organization that manages humanitarian associations. Poussières de Vie has for mission to integrate disadvantaged people into society by financing and managing a wide range of educational, cultural, professional, agricultural and health care projects in Ho Chi Minh City and Kon Tum province. The non-profit raises funds through charitable events, sponsorship by foundations and partnerships with businesses in Vietnam.

### DIOXIN REMEDIATION

In the course of the Vietnam War, the U.S. military sprayed around 20 million gallons (76 000 m<sup>3</sup>) of defoliants and herbicides, including an estimated 12 million gallons (46,6 m<sup>3</sup>) of Agent Orange, over 7 million acres of southern Vietnam. To this day, elevated levels of dioxin, a highly toxic chemical contained in such defoliants, remain in soils and sediments. Vietnam has planned to decontaminate the country's soil by 2030. Indochina Legal is honored to assist Trigon Associates, Prime Contractor selected by the United States Agency for International Development (USAID) and Vietnam Mission to provide architect and engineering services related to dioxin remediation at the Bien Hoa Airbase, the largest dioxin contamination hotspot in Vietnam and therefore in the world. The Dioxin Remediation at Bien Hoa Airbase Area, one of the highest priorities, started last year and is expected to take a decade.



The Ho Chi Minh City Supreme People's Court. Source: Picfair

Portraits / Yan Lervat Digital

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Indochina Legal is a multi-cultural Vietnam based law firm providing client advocacy of international standards in diversified transactional and litigation work. Founded in 2007, the firm integrates legal practice of over 15 years in Vietnam.

Indochina Legal acts as a correspondent firm for a number of international and regional law firms and is a member of Legalink, an international network of independent law firms.

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*View from Thu Duc City motorway interchange to Ho Chi Minh City East Bank. Photo by Thai Dũng Nguyễn.*

