

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

**I. Overview**

In 2010, Vietnam has successfully made the official transition from a “low income” to “middle income” country. To a large extent, Vietnam has achieved this by leveraging its key economic advantages, among them its relatively low-cost work force, natural resources, favorable geographical location, political stability and its own attractiveness as a largely untapped new market with a huge domestic potential. In the past, Vietnam has also received large amounts of Official Development Assistance (“ODA”) from a variety of bilateral and multilateral sources.

EuroCham believes that Vietnam cannot expect its current competitive advantages to last indefinitely: Wages rise, natural resources are finite and ODA to Vietnam will eventually be reduced or discontinued altogether. EuroCham believes that the key to sustainable long-term economic development is to shift from basic low added-value exports to more sophisticated and high added-value exports, in particular in the innovative high-tech sectors. Therefore, Vietnam’s focus for 2011 should again be on the economy’s competitiveness, whilst at the same time creating sustainable long-term solutions for the country.

EuroCham believes that Vietnam’s ability to maintain high economic growth rates over the longer term depends on whether the Vietnamese government takes and maintains action now in several key areas. One such area, for example, is infrastructure. However, as much as Vietnam needs modern roads, seaports, power plants and other infrastructure to sustain its economic growth over the longer term, Vietnam also needs to encourage a “culture of innovation” which values creativity and innovative thinking. Without this, Vietnam risks falling

into the “middle income trap”; the inability to arise out of an economy based on cheap labour and low-technology manufacturing methods to value-added knowledge-intensive and innovation-based manufacturing for domestic consumption and export. Indeed, Vietnam’s future ability to graduate to “high income country” status largely depends on this.

## **II. Investment Licensing**

EuroCham member companies have experienced that the approval process for investing and setting up businesses in Vietnam is often still difficult and time-consuming: For many foreign companies, the complexity of administrative procedures and the sometimes uncoordinated and inconsistent implementation of laws and regulations between different authorities can present a serious hindrance to running a successful business in Vietnam. We note that the obligation for the investor to approach in sequence a number of government agencies renders the process unduly time consuming.

Vietnam has recently combined the application processes for obtaining a business license and a tax registration. This is a good first step. We recommend that beyond this, Vietnam moves to a comprehensive “one-stop shop” approval for business registration and investment licensing. It would then be the responsibility of the relevant ministry to coordinate with other government bodies where necessary. In many ASEAN countries, such as Thailand, Indonesia, Singapore and Malaysia, this mechanism has proved extremely useful and effective. In this context, we like to remind of the simple rule that “time is money”: Investors who have to wait for an investment license for five or six months in Vietnam (rather than five or six weeks in other countries in the region) are not only losing time, but money.

In this context, we welcome that the Government has issued Decree 102/2010/ND-CP on 1st October 2010 guiding certain provisions of the Law on Enterprises (and replacing Decree 139 of 5th September 2007), which went into effect on 15th November 2010. Most importantly, Decree 102 clarifies that companies established in Vietnam with foreign ownership of up to 49% can enjoy the same investment rules and conditions as those applicable to local companies. Concurrently, those with foreign ownership of more than 49% will be subject to the same conditions as foreign owned entities. This should make the acquisition and operation of companies with less than 49% foreign ownership easier.

With regards to the “Economic Needs Test” (ENT), Decision 10 has generally opened distribution services to foreign services providers as of January 1st, 2009. However, over the last two years we have observed that the establishment of 100% foreign-owned capital companies in the distribution sector remains subject to significant administrative obstacles.

Whilst we welcome the government's recent draft decree on Retail Services, we note that more detailed provisions of the draft are required. In particular, the definitions of wholesale/retail services as well as the criteria for applying the ENT still need to be clarified in more detail.

### **III. Intellectual Property Rights (IPR) Protection**

Creating a “culture of innovation” and respect for ideas requires a legal system for protecting intellectual property rights (“IPR”) that is not only substantively sound, but also reliable and robust in its implementation and enforcement: EuroCham recommends that the Vietnamese Government continues on all levels its efforts to raise awareness about the value of IPR protection. It is crucial to realize that IPR serve as an incentive for many European and foreign companies to research and develop their products further and thereby benefitting the consumers in the long run. In particular, IPR encourage the development of new products and protect innovation that is so crucial for Vietnam's shift towards more high-end value-added products. We welcome the government's modifications of the Intellectual Property Law and Criminal Code regarding criminal sanctions connected to IP infringements that have come into effect in 2010. These new rules and their strict application are of paramount importance for foreign investors in Vietnam.

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

### **IV. Infrastructure and Energy**

It is estimated that Vietnam needs around 70-80 billion US\$ investment in the road-, rail- and seaport infrastructure sector in the coming 5-10 years alone, and more than 120 billion US\$ if one includes energy infrastructure. Developing its infrastructure will be one of Vietnam's major tasks to reach regional competitiveness and be further integrated into global supply chains. With regards to sea port infrastructure, we have seen good progress, particularly for the Cai Mep and Thi Vai seaports, where dredging at 14 meters has will bring these ports closer to

international standards. However, it is important for Vietnam to have a clear national strategy for seaports: Vietnam probably needs 4-5 good ports in the south, 2-3 big ports in the north and maybe 1-2 in the central region. We believe that with 11-12 good ports, Vietnam will be more efficient than by having 50 – 60 small ports scattered among the different provinces. It is also crucial to look at the entirety of the supply chain, so that access roads are developed and ready at the same time as the ports.

We believe that in line with Vietnam developing more commercially viable projects for investors, involvement of both the financial and technical expertise of the foreign private sector will be key to keeping up with the massive demand in the infrastructure and energy area. Public Private Partnerships (PPP) projects will be of key importance to upgrade Vietnam's infrastructure as the country integrates further into the world economy. However, foreign investors will only be attracted to invest in PPP if they can secure a reasonable return on their investment. In other words, projects have to be commercially viable and lucrative to prospective investors. We welcome the Vietnamese Government's and the Ministry of Planning and Investment's recent new regulations to develop and refine the regulatory framework governing pilot PPP projects and contracts.

With regards to energy and power supply, Vietnam's installed capacity is currently just over 18,500 MW and annual power production is approximately 95,000GWh per annum. At just over 1000kwh per capita, Vietnam has one of the lowest electricity consumption rates in Asia. However, with GDP growth of approximately 6-7% per annum the consumption of electricity is growing rapidly at a rate of approximately 12-15% per annum. The construction of new power plant capacity in the Vietnam is not keeping pace with demand and this is resulting in a shortfall in power supply, especially at times of peak demand. The situation is particularly serious during the dry season, due to lower availability of the hydro-electric power plants, which make up around 40% of the country's installed capacity.

Given that substantive private investment will be needed in the years to come, it is important that the regulatory framework is further improved to be attractive to private investors. In particular, Vietnam should reduce the dominance of EVN by allowing other players in the market, thereby building up a fully competitive market in terms of electricity generation, wholesale and retail markets sooner as planned yet (until 2024). We note that the current energy price is too low to attract investors to the energy, power and electricity industries: Only higher but realistic prices combined with increased efficiency of service providers will enable businesses to generate operating surpluses to finance capital expenditure, and thus allow these to operate on a commercially viable and sustainable level.

## **V. Human Resources Development**

According to experts, more than 65% of Vietnam's workforce is still unskilled and 78% of the 20 to 24 years olds are either unskilled or skill-strapped. Within ASEAN, Vietnam ranks in the lower half of the human resources development. Therefore, improving and upgrading its workforce is one of Vietnam's key tasks to meet the needs of rapidly changing labor markets at home and abroad. Further, the capacity and quality of vocational education needs to be improved: Vocational education and training often does not take into account the needs of the companies operating in Vietnam. EuroCham's member companies are already spending large amounts to send Vietnamese staff to their overseas headquarters to train them appropriately at modern facilities and equipment. Our European member companies are taking the financial risk that the employee will not return or leave the company shortly after receiving the valuable training. EuroCham acknowledges that Vietnam has realized the urgency of improving its labour force. However we note that despite ongoing reform efforts, many Vietnamese - that are able to afford it - keep on seeking for better education outside Vietnam.

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

In this context we note that annually adjusting minimum wages in two-digit numbers and beyond the anticipated inflation levels adds to the rising overall cost of employing workforce in Vietnam. At the same time, minimum wages are likely to keep more young people unemployed, therefore hurting exactly the people who need to be integrated into the labour market the most. We therefore recommend that if minimum wages are adjusted at all, adjustments should be decided carefully, and the anticipated inflation rate should serve as a cap rather than a minimum adjustment.

With regards to compulsory health insurance for foreign employees, the vast majority of foreign employees are already covered by an existing health plan that is mostly paid for already by the foreign company. It is unlikely that any foreigner is willing to cancel their existing international health insurance in favor of a compulsory (and only domestic) Vietnamese health insurance scheme that will in most cases not cover as broad as their existing international

policies. Accordingly, the compulsory health insurance scheme implemented by the Vietnamese government is mostly only an additional cost of doing business for most of the foreign companies in Vietnam. It is unfortunate that this scheme has already been implemented by the Vietnamese government. EuroCham strongly recommends that the compulsory health insurance for foreign employees at least offer clear opt-out provisions for employees that are sufficiently covered by other health insurance schemes. Such opt-out should be granted upon evidencing of an existing foreign health plan.

## **VI. Administrative Reform (Project 30)**

EuroCham is happy to contribute to the Administrative Procedures Simplification Project (Project 30) as member of the Advisory Council for Administrative Procedures Reform (“ACAPR”) made up of 15 members. We note that the Vietnamese government has reached some major achievements of Project 30: With Resolution 25/ND-CP dated June 2nd 2010; the government has approved the simplification of the first package of 258 APs affecting a wide range of business activities. The government has further passed Decree 63/2010/ND-CP effective since 14th October 2010, setting up a “post-Project 30 mechanism” to filter the flow of new APs as well as the establishment of a new agency on controlling APs. We believe that whilst these results are promising, big challenges lie ahead: In particular, to realize successful simplification of 258 priority APs, ministries and agencies now need to implement AP reforms in a drastic and comprehensive manner: In particular, more than 15 laws and ordinances, and more than 100 decrees, circulars and ministerial decisions have to be revised. This is a huge task and the success of Project 30 will largely depend on the consistent implementation.

It seems to us that whilst Project 30 is still implemented, other administrative procedures are introduced, thereby counter-acting the good progress of Project 30. For example, Circular 24/2010/TT-BCT on “automatic import licensing” entered into effect on July 12th, 2010, requiring importers of a large number of commodity imports to submit the automatic import license on customs clearance under Circular 24. Under Circular 24, the time limit for the issuance of the automatic import license has been lengthened to 7 days. With both the application and issuance of the automatic import license required to be done by regular post/mail, an application is now likely to take an estimate of 10-working-day, a triple of the time required for the prior existing declaration requirement. Circular 24 further introduces that the automatic import license will only be valid for 30 days; this means reapplication is a must for any logistic changes regarding the same lot of goods. Again, we note that simplifying rather than increasing administrative burdens would attract more foreign investment.

In this context, EuroCham and the European business community see with concern that the Vietnamese government has passed in August Circular 122/2010/TT-BTC on price stabilizations that went into effect on October 1st. According to Circular 122, producers of coal, formula milk, oil and gasoline, cement, steel, liquefied gas, fertilizer and other items have to declare various prices of their products, including import, trading, retail and suggested retail prices. It appears that businesses in Vietnam are now facing more and new administrative requirements as a result of this Circular. We believe that this is against the spirit and objectives of Project 30, and will add substantial costs and uncertainty to the private sector doing business in Vietnam. We maintain our belief that the first principle of price stabilization is to let the market stabilize the price based on the rule of 'supply and demand'! We propose to set aside the Circular 122 and concentrate efforts on alternative ways to keep prices in check and at the same time ensuring Vietnam's graduation to "Market Economy Status" under EU rules.

## **VII. Summary**

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

We finally encourage the Vietnamese Government to continue its good cooperation with the foreign private sector to address the above issues, as well as to maximize the efficiency of throughput at existing facilities. We welcome any comment on the suggestions contained here and are happy to provide further advice or expertise to aid in the consideration or implementation of the changes proposed here. We look forward to working with the Government of Vietnam and all our members and partners, both Vietnamese and European, to maximize their success in an ever more vibrant Vietnam!

I thank you for your attention!

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