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A BRIEFING FOR
AMERICAN BUSINESSES
LOOKING TO INVEST IN VIETNAM

Valerie Clemen*

I. INTRODUCTION

With over 84 million people, Vietnam is one of the largest underdeveloped markets in Asia.¹ Set to join the World Trade Organization later this year, Vietnam has become increasingly attractive to foreign investors.² As of May 2006, foreign buying made Vietnam's tiny stock market the best-performing market in the world.³ U.S. companies have invested in the country since diplomatic relations between the United States and Vietnam were reestablished in 1995.⁴ The United States exported $1.2 billion in goods and $3.3 billion in private commercial services (excluding military and government) to Vietnam in 2003 and 2004, respectively.⁵ While this is a substantial figure, there remains plenty of room for growth as Vietnam is only the 57th largest export market for U.S. goods.⁶ This note will provide the essential information for any American business contemplating expansion into Vietnam. It begins with an overview of Vietnam: the country, her people, and the general business climate. The next section will cover the major trade agreements between

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5. National Trade Estimate Report - Vietnam, U.S. FED NEWS, Mar. 30, 2005. All dollar amounts in this article are in U.S. dollars, unless otherwise indicated.
6. Id. Compare CIA, supra note 1 (the United States is Vietnam's biggest export partner, followed by Japan, China and Australia).
the United States and Vietnam, including the U.S.-Vietnam Bilateral Trade Agreement and changes to Vietnamese laws making the country more favorable to foreign investors. The final section addresses the risks associated with doing business in the country, including its ongoing battle to fight corruption and graft.

II. VIETNAM: AN OVERVIEW

As with many rapidly developing countries, Vietnam is a clash of time periods. Water buffalo, cyclos, motorcycles and cars can typically be found competing for space on partially paved roads, all making their way past neon signs and blaring televisions. Numerous vendors line the roads, selling everything from freshly pressed sugarcane juice to motorcycle tires to cell phones. Follow those roads to the market and the rest of the locals can be found selling all the essentials for a well-stocked and well-appointed Vietnamese home. Apparently, everyone in Vietnam who is not a farmer is an entrepreneur. Leadco, a leading law firm in Hanoi, processes incorporation documents for 20 to 30 start-ups per month, most of them being started by young entrepreneurs with limited capital.

Even with the increasing capitalist fervor, most Vietnamese remain farmers. Sixty-five percent of the labor force works in agriculture, forestry and fisheries. Vietnam is the world's second largest exporter of pepper and coffee, and is generally either the second or third largest exporter of rubber, tea and rice. However, despite the portion of the labor force working in agriculture, the agricultural sector contributes just 23% of the nation's GDP. The industrial sector, on the other hand, contributes 39% of the nation's GDP. The major subsectors of the industrial sector include steel products, garments, footwear, cement, and vehicle assembly. The last big GDP contributor is investment, which amounted to 32.3% of the GDP in 2002. This figure has risen sharply over the past decade; in 1990,
the share of investment in GDP was only 11%. In 2005, Vietnam received $5.8 billion in foreign investment.

Vietnam's government system remains communist. The Communist Party is the only political party in Vietnam, and it controls the executive branch and the election process for the National Assembly, the highest legislative body. National elections are held every five years for the 498-member National Assembly, which appoints the president and the cabinet. The judiciary branch, although not directly controlled by the Communist Party, is greatly influenced by the Party, as approximately 90% of appointed judges are party members.

In 1986, Vietnam announced doi moi, a plan to reform social and economic policies in order to rejuvenate the economy. After two years of inactivity on the proposed plan, the Vietnamese government put into practice several accelerated reform measures. Those measures included abolishing official price controls for nearly all goods and services, pricing consumer goods sold through state outlets at the free market level, and devaluing the Dong (the Vietnamese unit of currency) to bring the official rate in line with the prevailing market rate. Doi moi opened up the Vietnamese economy to foreign investment, which is why the policy is also called the "open door policy."

Since Vietnam initiated doi moi, poverty has dramatically decreased and the country has experienced rapid growth. In the most recent five-year period, the economy has grown at an average rate of 7.5% per year. Vietnam's leaders are hoping to maintain that pace of growth for the next five years, in addition to other goals that include becoming a "primarily

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15. Id.
19. Id.
22. Id.
23. Id.
24. Id. at 143.
industrialised country" by 2020.\textsuperscript{27} In June 2005, the Vietnamese Prime Minister Phan Van Khai, accompanied by a 200-strong delegation of businessmen and government officials, visited the United States hoping to bolster bilateral trade and investment.\textsuperscript{28} Prime Minister Khai met with Microsoft chairman Bill Gates and senior executives from Boeing and Nike, rang the bell to start trading at the New York Stock Exchange, visited Harvard University, and met with President Bush at the White House.\textsuperscript{29} Less than a year later, Bill Gates visited Vietnam, and the President, Prime Minister, and Deputy Prime Minister took time from the most important Communist Party meeting in five years to meet with him.\textsuperscript{30} Hundreds of Vietnamese climbed trees and pushed through police lines to see him with their own eyes.\textsuperscript{31} This is the perfect example of the priority the Vietnamese have put on making their country a major player in the international marketplace. As an official in the Ministry of Planning put it, "It is a very clear sign of the new mood of society and the people. Everybody wants to be like Bill Gates."\textsuperscript{32}

Another example of the shift in the Communist Party is an awards ceremony organized by the Ministry of Planning and Investment and the Vietnam Economic Times to honor outstanding enterprises funded by foreign direct investment called the "Golden Dragon Awards."\textsuperscript{33} Among the 2005 award winners were global brands like Ford, Honda, Toyota, Mercedes-Benz, Lever, Shell, Citigroup, Hewlett-Packard, Sony and Samsung.\textsuperscript{34} Taiwan has been the biggest foreign investor in Vietnam, followed by Singapore and Japan.\textsuperscript{35}

Vietnam is continuing to make changes to encourage foreign investment. In January 2005, it adopted the Provincial Competitiveness Index (PCI), which measures the strengths and weaknesses of provincial

\textsuperscript{27} \textit{Id.}
\textsuperscript{28} The PRS Group, \textit{supra} note 4.
\textsuperscript{29} \textit{Id.}
\textsuperscript{30} Mydans, \textit{supra} note 2 (the important meeting was the Communist Party Congress that only occurs every five years, in which the Party plans and develops goals for the country over the next five years).
\textsuperscript{31} Mydans, \textit{supra} note 2.
\textsuperscript{32} Mydans, \textit{supra} note 2.
\textsuperscript{33} \textit{Sixty FDI Enterprises in Vietnam Receive Golden Dragon Awards}, ASIA PULSE NEWS, Jan. 23, 2006 (there were 60 award winners in total, out of the 5,000 foreign-funded enterprises operating in Vietnam).
\textsuperscript{34} \textit{Id.}
\textsuperscript{35} The PRS Group, \textit{supra} note 4.
economic governance.\textsuperscript{36} The PCI project, funded by USAID (United States Agency for International Development) in coordination with the Vietnam Chamber of Commerce, provincial governments, and industry, sends thousands of questionnaires to every province asking the private sector for their evaluations in nine areas, including local leadership, access to land, informal changes and transparency.\textsuperscript{37} The resulting PCI assessment is used to rank each province's business-friendliness, taking into account advantages and disadvantages in infrastructure, human resources, and market size and location in order to compare the provinces equally.\textsuperscript{38} The public report has resulted in large metropolitan provinces making efforts at reform so that they may improve their PCI.\textsuperscript{39}

The various changes made by Vietnam are continuing to pay off. By July 2005, foreign direct investment in the country had reached $3.2 billion and by the end of August 2005, Vietnam had 5,617 foreign-investment projects, with the total capitalization of these projects at $48 billion.\textsuperscript{40} Southern Vietnam had the lion's share of the investment, with 1,733 projects worth $11.8 billion in Ho Chi Minh City and 666 projects, valued at $8.2 billion in the southern province of Dong Nai.\textsuperscript{41} Hanoi received 596 projects, valued at $8.8 billion.\textsuperscript{42}

Southern Vietnam has been much better than the northern region at adapting to the re-introduction of capitalism. This may be in large part due to the fact that the south lived under communism only after 1975, whereas the north has lived under communism since 1954.\textsuperscript{43} Therefore, those in the south have a more recent experience with capitalism, and also have ties to overseas Vietnamese, known as \textit{viet kieu}, who left the south during or immediately after the war.\textsuperscript{44} There are an estimated 2.7 million \textit{viet kieu} living in 90 different countries worldwide: 1.3 million in the United States,
300,000 in France, 250,000 in Australia and 180,000 in Canada. In 2005, *viet kieu* remitted officially $4 billion to family and friends in Vietnam. In addition, the south has better infrastructure, having been spared much of the American bombing during the war. For these reasons, the south has accounted for much of the growth in foreign investment and increased industrial output. However, the north is making strides to adopt the business-minded ways of its southern countrymen. One northern province has begun creating easier methods for new investments to be approved and has set up an investment-promotion website. In addition, the north has incentives that the south cannot offer, such as cheaper labor and less congestion of the infrastructure. Finally, northerners, in general, are no less entrepreneurial than southerners; the streets of Hanoi are lined with numerous vendors throughout the day.

Over 90% of the population can read and write, and approximately half of the population was born after the Vietnam War ended 31 years ago. English is increasingly favored as a second language and is often taught at the high school level. Many companies are drawn to Vietnam for this very reason: a large, young and literate population available for work at low wages. In Hanoi and Ho Chi Minh City, pay packages in foreign-owned factories start at $45 a month. This is a bargain even compared to China, where factory hands can earn more than $275 a month. Low cost for skilled workers is one of the main reasons why Intel recently chose Vietnam over China, Malaysia and the Philippines to build its new

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47. Id.

48. Id. (17% of national output, 30% of foreign investment and 40% of exports are attributed to Ho Chi Minh City, even though it account for only 9% of the country's population. Include the neighboring provinces bumps the share of national output to 40% and exports to 70%).

49. Id.

50. Id.

51. Id.

52. CIA, *supra* note 1; Mydans, *supra* note 2.


54. *Trouble at the Mill; Vietnam, supra* note 16.

55. Frederick Balfour and Hiroko Tashiro, *Good Morning, Vietnam: Intel's Deal to Build a Factory is Likely to Spur More Western Investment*, BUSINESS WEEK, Mar. 13, 2006, at 50 (labor shortages in some regions of China have caused labor costs to rise).
The new test and assembly plant is being built in Ho Chi Minh City and will be completed next year, eventually employing 1,200 workers. Simple assembly has been established in Vietnam for several years, with Nike subcontractors employing 130,000 people in Vietnam. Intel's investment marks a step-up for Vietnam, expanding beyond clothing and footwear assembly to high-tech manufacturing. Other recent high-tech commitments include Canon Inc, Nidec Corp, Fujitsu Ltd., and AES Corp.

Another advantage Vietnam has over some of its neighbors is cheaper shipping to the United States. Shipping from Ho Chi Minh City is 6% to 8% cheaper than from Thailand and Indonesia. Although shipping from other ports in China are slightly cheaper, many companies desire flexibility in their supply lines. Having their products coming out of other countries besides China furthers this goal; positioned just south of China, Vietnam is a convenient alternative source.

Vietnam is also attractive to foreign investors because of its low rate of market saturation. Approximately 90% of retail spending is done at small local markets. More recently established supermarkets, of which there are now 90, experience average sales rate increases of 20%. For many retailers, this is an opportunity to get the small local market shoppers to buy their food and goods from supermarkets instead. Another plus for Vietnam is the low cost of entry for retail businesses; the average rental rates for retail space is much lower than many surrounding Asian nations. As GDP rises, incomes of Vietnamese citizens increase, allowing for

56. Id. (Intel has a $605 million investment license for the new factory in Ho Chi Minh City, the largest American investment in Vietnam by a non-oil company).
57. Id.
58. Id.
59. Id. (Nidec Corp. will be building two electronic component plants costing a total of $940 million, Fujitsu Ltd. has invested $200 million for manufacturing circuit boards for personal computers and phones, and Virginia-based AES Corp. is negotiating to build a power plant in northern Vietnam that may cost up to $1 billion).
60. Id.
61. Id.
62. Id.
64. Id.
65. Id.
66. Id. (China, Hong Kong, Singapore, Taiwan and Thailand all have much higher average rental rates for retail space).
additional spending in retail establishments. Over the next five years, the Vietnamese government hopes to create eight million jobs for its people by continuing to open up its economy to foreign investment.67

Finally, infrastructure within Vietnam continues to improve to support developing industries. The road network has increased in quality and more than doubled in length since 1990.68 Electricity is available in all urban areas and in 88% of rural households, and improved water supplies are accessible to 49% of the population, up 23% from 1993.69 Access to hygienic latrines still is not close to Western standards, but is now available to 25% of the population, compared to only 10% in 1993.70 Total investments in infrastructure have been close to 10% of GDP in recent years; this high level will help the infrastructure to continually improve.71

III. LAWS PASSED AND INTERNATIONAL TRADE AGREEMENTS ENTERED IN SUPPORT OF FOREIGN INVESTMENT

Since doi moi was put into effect, Vietnam has been working diligently to become a member of the global business community. It has signed 87 bilateral trade agreements, 350 development cooperation agreements and 48 agreements on investment promotion.72 According the Ministry of Trade, over 35,000 companies are engaged in export, 965 times the number of companies doing the same in 1986.73 Furthermore, only 4,300 of those companies are state-owned enterprises.74

The U.S.-Vietnam Bilateral Trade Agreement (BTA) went into effect on December 10, 2001, extending normal trade relations to Vietnam, subject to annual renewal.75 A comprehensive agreement, the BTA covered key issues in its six chapters, addressing trade in goods and services, intellectual property rights, investment, business facilitation, and

67. Mydans, supra note 2.
69. Id.
70. Id.
71. Id.
72. Id.
73. Id.
74. Id.
transparency.\textsuperscript{76} Under the "Trades In Goods" chapter of the BTA, enterprises funded by U.S. nationals and production and manufacturing companies can now engage in trading of most products and enter into joint ventures with Vietnamese partners to engage in trade of all products, so long as the Vietnamese partner holds a 51\% or more share in the venture.\textsuperscript{77} At six years after the effective date of the BTA, the Vietnamese partner can hold a minimum 49\% share.\textsuperscript{78} At seven years after the effective date, or December 10, 2008, U.S. companies can then establish wholly-owned trading companies in Vietnam.\textsuperscript{79} Import licensing, customs valuation and fees, technical standards and sanitary/photosanitary measures and state trading are all to be adjusted to comply with WTO standards and rules.\textsuperscript{80}

The "Trade In Services" chapter covers numerous service sectors.\textsuperscript{81} Legal, accounting, architectural, engineering, construction related, health related and computer related service firms can be wholly-owned by U.S. firms.\textsuperscript{82} Advertising and market research firms currently can have a 49\% U.S. equity share, which may increase to 51\% on December 10, 2006, and 100\% on December 10, 2008.\textsuperscript{83} Wholesale distributors currently may have a 49\% U.S. equity; six years after the effective date, U.S. equity may be 100\%.\textsuperscript{84} However, retail distributors are limited to a single outlet; additional outlets are allowed only on a case-by-case basis.\textsuperscript{85} Non-bank and leasing company providers can be 100\% U.S. owned, but other banking services are subject to more restrictions on the amount of U.S. equity allowed, the minimum capital requirements and other issues such as ATMs and credit card issuance.\textsuperscript{86} Hotels and restaurants can be 100\% U.S. owned, although

\begin{thebibliography}{99}
\bibitem{77} National Trade Estimate Report - Vietnam, supra note 5.
\bibitem{78} Summary of Key Provisions, supra note 76.
\bibitem{79} National Trade Estimate Report - Vietnam, supra note 5.
\bibitem{80} Summary of Key Provisions, supra note 76.
\bibitem{81} Id.
\bibitem{82} Id. (in addition to the 100\% U.S. equity allowed for health and related social services, there is also a minimum investment of $20 million for a hospital, $2 million for a clinic and $1 million for a specialty unit).
\bibitem{83} Id.
\bibitem{84} Id.
\bibitem{85} Id.
\bibitem{86} Id.
\end{thebibliography}
hotels require a parallel investment to build a hotel. The telecommunications services remain a more protected sector, with a 49% maximum U.S. equity in basic telecom and voice telephone service joint ventures.

The chapter on investment granted expropriation protection for U.S. investments in Vietnam, established a right to investor/state dispute settlement, and phased out investment screening and discriminatory pricing. These changes were very important in increasing the amount of U.S. investment in Vietnam because they provided more security to those investing in the country. Likewise, the promises of increased transparency in the BTA also increased investor confidence. The transparency provisions required Vietnam to give advance notice and publication of all laws, regulations or other administrative procedures relating to any matter covered in the BTA, and an indication of their effective dates. The provisions also explicitly state that all laws, regulations and administrative procedures are to be applied uniformly, impartially and reasonably.

In requiring Vietnam to meet WTO standards in several areas and creating standards that would allow for increased investor confidence in Vietnam, the BTA was a giant step forward for Vietnam's WTO membership goals and the rapid growth of their economy over the past five years. The next big step for Vietnam will be entry into the WTO, which is expected to occur in November 2006.

The road to accession into the WTO has been a long one for Vietnam. The country officially filed papers for accession on January 4, 1995, and since January 31, 1995, there has been a Working Party (created by the

87. Id. (travel agencies and tour operators can be joint ventures with 51% U.S. equity, until December 10, 2006, at which point there is no limit on U.S. equity).
88. Id.
89. Id. (the chapter also included a commitment by Vietnam to phase out all trade-related investment measures, such as local content requirements, that were inconsistent with WTO rules).
90. Id.
91. Id.
92. Id.
WTO General Council) for Vietnam's accession.\textsuperscript{94} It has met eleven times over the years, helping to develop Vietnam's plan of accession and helping it to reach bilateral agreements with WTO member countries (like the U.S.-Vietnam BTA analyzed above) and take steps to reform internal laws and economic policies.\textsuperscript{95} In May 2006, the United States concluded bilateral negotiations with Vietnam, the final country to do so before it proceeds with the final steps necessary to joining the WTO.\textsuperscript{96} A country seeking membership into the WTO is required to reach bilateral trade agreements with individual member nations.\textsuperscript{97} Promises made in those individual agreements are then extended to all other members of the WTO.\textsuperscript{98} In the agreement reached on May 14, 2006, between the United States and Vietnam, Vietnam made several concessions that are very favorable to U.S. companies. The highlights include: duties of 15\% or less on 94\% of manufactured goods exported by U.S. companies, duties of 0-5\% on construction equipment, pharmaceuticals and aircraft, duties of 15\% or less on three-fourths of U.S. agricultural exports, acceptance of U.S. systems of inspecting beef, pork and poultry, and substantial commitments to open up services sectors in the areas of telecom, distribution, financial services, and energy services.\textsuperscript{99}

The May 2006 bilateral agreement is dependent upon Congress granting Vietnam permanent normal trade relations.\textsuperscript{100} Vietnam currently has conditional normal trade relations with the United States, the condition for annual renewal being Vietnam's compliance with the freedom of emigration requirement.\textsuperscript{101} The condition dates back to the Jackson-Vanik Amendment of the Trade Act of 1974, which applied to various countries with non-market economies, like Vietnam.\textsuperscript{102} Congress must pass

\begin{itemize}
  \item \textsuperscript{95} Id.
  \item \textsuperscript{96} Id.
  \item \textsuperscript{97} Id.
  \item \textsuperscript{98} Id.
  \item \textsuperscript{100} Id.
  \item \textsuperscript{102} Id.
\end{itemize}
legislation removing Vietnam from the Jackson-Vanik requirements to establish permanent normal trade relations, or invoke the non-application provision of Article XIII of the WTO Agreement. The non-application provision satisfies the requirement that WTO members grant, on a reciprocal basis, immediate and unconditional most-favored nation treatment to all other WTO members. Either one or the other of the two procedures has been done in the past for other Jackson-Vanik countries, including Bulgaria, China, Hungary, Lithuania, Slovakia, and the Ukraine, among others. Some members of the Senate strongly support granting Vietnam permanent normal trade relations; in referring to such legislation, Montana Democratic Senator Max Baucus recently stated, "I intend to push this issue in the Senate and hope we can complete this process before the August recess."

Once all the bilateral agreements have been reached, the Working Party will adopt Vietnam's accession package. Two-thirds of WTO members must then agree to adopt Vietnam's accession package. Vietnam will then become a member of the WTO 30 days after its National Assembly passes legislation implementing commitments the country made in its accession package and ratifies the WTO accession package. Many Ministries of the Vietnamese government are keeping current lists of laws and revisions that will be enacted prior to accession; they have submitted over 200 draft laws and decrees to members of the Working Party as a result of those efforts.

Entry into the WTO, which now has a total of 149 member countries, would give Vietnam greater access to the markets of member countries and provide Vietnam with legal protection against trade barriers imposed by

103. Id.
104. Id.
105. Id. (other Jackson-Vanik countries that Congress extended permanent normal trade relations to include Albania, Czech Republic, Estonia, Georgia, Krygyzstan, Latvia, Mongolia and Romania).
107. WTO Accession Chronology, supra note 94.
108. Id.
109. Id. (specifically, the "acceptance" of the WTO accession package by the National Assembly has to be deposited with the WTO Director General; 30 days following that deposit, Vietnam would become a member of the WTO).
110. Id.
member countries. Most importantly, it would further legitimize the Communist Party's commitment to shift Vietnam from a socialist, centrally-run economy to a market-based economy. After Vietnam and the United States first reestablished diplomatic relations, more than $2 billion in investment flowed into the country from U.S. investors on belief that Vietnam would become the next "Asian Tiger." By 1999, this number had fallen to $500 million because bureaucratic and legal barriers imposed by the Vietnamese government had created difficulties and frustrations for investors. With entry into the WTO, investors can now be confident that their investments will be protected and procedures will be more transparent because Vietnam has agreed to adhere to international rules. Investor confidence is key to increasing foreign investment. Increasing investment by way of high-tech manufacturing will also result in technology and management skills being transferred to the Vietnamese labor force, which will help support the country's transition to an industrial economy. WTO entry would also end quotas on the amount of textile products that it can export to the United States. The WTO eliminated the quota system last year, which has made Vietnam one of the few countries upon which quota limitations can be imposed.

Vietnam's entry into the WTO will benefit the United States in many ways. First, it ensures that Vietnam will be bound by the international rules of law in regards to trade. This would provide a dispute settlement mechanism; the United States could use the WTO's instruments instead of relying on Vietnamese courts. Second, the United States' relations with the Southeast Asian region would be strengthened if Vietnam becomes part of the WTO. Southeast Asia boasts a population of 570 million and a combined GDP of $2.7 billion (which has been consistently rising). The market potential is substantial and U.S. firms can only benefit from increased access to the region.

111. Blustein, supra note 106.
113. Id.
114. Id.
115. Blustein, supra note 106.
116. Blustein, supra note 106.
118. Id.
119. Id.
120. Id.
In addition to the BTA and new laws being drafted for entry into the WTO, Vietnam has also adopted new policies in regards to viet kieu. This has created great business opportunities for viet kieu interested in returning to Vietnam. Not only are they completely familiar with the language and the culture, they are now being welcomed back to Vietnam by Communist Party officials eager for their help in increasing the nation's economic power. At the Party's five-yearly Congress in April, the foreign minister extended an invitation for viet kieu to return to Vietnam: "We invite them to come home . . . we know they can play a big role in the future development of the country."\footnote{Leaders Roll Out Welcome Mat, supra note 46.} Approximately 350,000 viet kieu return to Vietnam each year for leisure, business and investment purposes.\footnote{Business and Investment Vietnam, supra note 45 (350,000 is the average number of viet kieu who returned between 2000 and 2005).} In the most recent constitution adopted by the Vietnamese government, there is a requirement that the state protect the "legitimate rights" of viet kieu.\footnote{ECONOMIST INTELLIGENCE UNIT, Country Report, Oct. 5, 2005 (the most recent constitution was adopted in 2001; Vietnam has had five constitutions, adopted in 1946, 1959, 1980, 1992 and 2001).} Last year, the Communist Party passed a resolution making it easier for viet kieu to buy property and start businesses.\footnote{Leaders Roll Out Welcome Mat, supra note 46.} The National Assembly's Committee for External Relations is working with groups of viet kieu to address obstacles they face in coming back to Vietnam, such as nationality, repatriation and residence cards.\footnote{Vietnam NA Meet, Discuss Viet Kieu Policies, THAI PRESS REP., Jan. 25, 2006.}

IV. RISKS REMAIN

The PRS Group's most recent International Country Risk Guide ranks Vietnam 72nd on the list of the safest countries to do business in.\footnote{The PRS Group, International Country Risk Guide - Vietnam, Dec. 1, 2005, Table 1 County Risk, Ranked by Composite Risk Rating.} That ranking puts Vietnam in the "Low Risk" category, along with the United States, which is 51st on the list.\footnote{Id.} The Economist Intelligence Unit has a positive forecast for Vietnam, expecting real GDP growth to remain strong in Vietnam, mostly due to an expanding private sector.\footnote{ECONOMIST INTELLIGENCE UNIT, Country Forecast, Aug. 22, 2005.} The 2005 A.T. Kearney Global Retail Development Index reported that in a poll of retailers, Vietnam ranked eighth among the world's emerging markets in
terms of desirability. The only other Asian nations that ranked higher were China and India. With WTO accession on the horizon, Vietnam will become an increasingly safe investment choice, as it will be held to the international rules once it becomes a member. However, there are still substantial risks that should be taken into consideration such as corruption and graft, the poor protection of intellectual property rights and the harsh criminal and weak civil justice mechanisms.

Corruption and graft are a serious factor foreign investors need to consider. A study by the government's internal affairs committee found that 69% of Vietnamese business people and 64% of the general public considered the country's most serious problem to be corruption. The study also found instances of officials using their positions to buy land and other assets at cheap prices, take kickbacks on project contracts, give lucrative contracts to family companies and embezzle money. The Vietnamese government has recognized the problem as a grave threat to its legitimacy; a senior delegate has even stated that it has become more common and organized and is spreading across all areas of government. Officials are often poorly paid and find it difficult to resist temptation. Even at the very low level of minor permits or approval of land sales, "fees" for "expedited processing" are not uncommon. While this author was working in Vietnam, this type of "fee" request was commonplace. Not paying the fee could result in a 30-day delay; paying the fee would provide next-day service.

In the past few years, there have been instances of officials illegally selling garment export quotas, illegally exporting oil to Cambodia, and misconduct while tendering for an oil refinery. The most recent embarrassment to the Vietnamese government involved nearly 200

129. Field, supra note 63.
130. Id.
131. Another risk worth mentioning here is traffic: it is the biggest danger for foreigners as nationwide at least thirty people die each day from transportation-related injuries. State Department Issues Consular Information Sheet on Vietnam, U.S. FED NEWS, Jan. 6, 2006. This is no surprise, with streets and roads clogged with motorcycles, cars, buses, trucks, bicycles, pedestrians and cyclos, even in smaller cities.
133. Id.
134. Manh Alive, supra note 25.
135. Id.
136. Id.
employees of the Ministry of Transport betting a total of 4 million pounds (nearly $7.5 million) worth of ministry money on European football matches. A director of one of the Ministry's subdivisions had placed sizeable bets on various games, losing 1 million pounds within a single month and lavishing winnings on his mistresses. Computer logs showed that the rest of the nearly 200 gambling civil servants had also placed bets online with funds earmarked for bridges and roads. The money was mostly from low interest loans and grants by the World Bank and the Japanese government. The director has been jailed on charges of gambling, deliberated wrongdoing and offering bribes. Vietnam's second and third most senior figures, the President and the Prime Minister, are both expected to be replaced shortly as a result of the scandal.

The one good thing to come of the gambling fiasco is that it has revitalized efforts to tackle the country's problem with graft and corruption. Steps had been taken prior to the scandal to reduce corruption in government, such as legislation that was passed in November 2005 that required government officials and their close relatives to file asset declarations. The general secretary Nong Duc Manh—the most senior official in the Vietnamese government—has pledged to be tougher on corruption in his second term five-year term, which just began at the end of April 2006.

With the current state of corruption within the Vietnamese government, a company investing in Vietnam must be prepared to deal with officials who will use their power to extort bribes. The antibribery provisions of the U.S. Foreign Corrupt Practices Act prohibits payment, or the offer or promise of payment, to foreign officials for the purpose of obtaining new business or retaining business. A foreign official is defined as any public official of any rank or position, including candidates for foreign political office. U.S. parent corporations may be held liable for any

137. Id.
139. Id.
140. Kazmin, supra note 132.
141. McGirk, supra note 138.
142. Manh Alive, supra note 25.
143. Kazmin, supra note 132.
144. Manh Alive, supra note 25.
146. Id.
intermediaries or foreign subsidiaries that act on their behalf. The only explicit exception is for payments "to facilitate or expedite performance of a 'routine governmental action'. Examples of routine governmental actions that are provided in the statute include obtaining permits, licenses or other official documents, processing governmental papers, providing police protection, mail service, phone service and power/water supply, among others. It is under this exception that the payment of many fees may fall; it would be advisable for any business to retain counsel to determine the legality of any such payments.

Intellectual property rights protection is one area where Vietnam needs to make significant improvement. The BTA requires the Vietnamese government to provide effective remedies to prevent and deter infringement of intellectual property rights. However, despite having signed several international agreements (in addition to the BTA) regarding the protection of patent, literary and artistic works, Vietnam has a poor record for enforcing any of the legal reforms that have been made to protect intellectual property rights. Trademark and copyright infringement is widespread and enforcement of intellectual property rights ranges from problematic to non-existent in certain categories of products. Piracy rates for software, music, and videos run as high as 92%. In the author's own experience visiting eight different cities in central and southern Vietnam, every single CD, DVD or computer games shop sold pirated products. All of the shops were located in main shopping areas, in open sight.

One important factor that goes along with doing business in any country is becoming subject to the laws of that country. The right to due process in Vietnam is quite different than in the United States and other countries. Take for example the recent experience of Danish businessman Kim Brix Andersen, who was suspected of being involved in a multi-million dollar fraud case. In October of 2003, seven police officers

147. Id.
148. Id.
149. Id.
entered Andersen's Ho Chi Minh City hotel room with cameras rolling while they examined and seized his belongings.\textsuperscript{155} He was taken to police headquarters for investigation and then incarcerated in a Ho Chi Minh City prison, without being charged for a crime.\textsuperscript{156} Andersen spent 16 months in jail.\textsuperscript{157} In Denmark, Andersen would have had the constitutional right to have his case presented in court within 24 hours.\textsuperscript{158} Under Vietnamese law, a person can be detained as long as two years without any right to due process.\textsuperscript{159} Andersen did eventually get out of prison, but with the help of the Danish Ambassador, who flew to Vietnam to deliver Andersen his passport and escort him to the international airport, where a flight to Denmark awaited him.\textsuperscript{160}

Most businesses are unlikely to get into the same type of trouble as Andersen while doing business in Vietnam. However, even for civil disputes, it is important to be aware of the current status of the justice system. The judiciary is the weakest branch of the Vietnamese government, and is dealing with an increasing backlog of unsettled civil lawsuits.\textsuperscript{161} There are few lawyers and only basic trial procedures.\textsuperscript{162} Judges do not have to have a law degree or a minimum amount of professional experience.\textsuperscript{163} Being a police college or security college graduate or promising to obtain law qualifications is sufficient for judicial candidates.\textsuperscript{164} Newly appointed district judges receive a salary equivalent to $30.25 per month.\textsuperscript{165} This low salary can be reasonably attributed to the lack of education/expertise and corruption that are problematic in the Vietnamese judiciary.\textsuperscript{166} The quality of the judiciary, on average, is evidenced by the number of "wrong and unjust judgments"; in 2002, corrections were made to 31.2\% of criminal judgments and 46\% of civil judgments.\textsuperscript{155-166}

\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Id.
\textsuperscript{158} Id.
\textsuperscript{159} Id.
\textsuperscript{160} Id.
\textsuperscript{161} ECONOMIST INTELLIGENCE UNIT, supra note 123.
\textsuperscript{162} Id.
\textsuperscript{163} Nicholson and Quang, supra note 20, at 9. While there is a specific criteria for persons desiring to become a judge, it is not required due to the limited number of candidates who meet all of the requirements. A Resolution adopted by the National Assembly in May 1993 explicitly allows the persons not meeting all of the criteria to be appointed as judges.
\textsuperscript{164} Id.
\textsuperscript{165} Id. at 25.
\textsuperscript{166} Id.
According to the World Bank Group, enforcing a contract in Vietnam takes 37 procedural steps and an average of 343 days, at a cost of 30.1% of the total debt.\textsuperscript{168} While this is more efficient than the averages for countries in the East Asia & Pacific region, it is far below the average for the 30 member countries of the Organization for Economic Cooperation and Development (OECD).\textsuperscript{169} In OECD countries, enforcing a contract entails an average 19.5 procedural steps and 225.7 days, at a cost of 10.6% of the total debt.\textsuperscript{170} Given the local options for handling disputes, it would be worthwhile to attempt resolving the matter through an alternative dispute resolution process or with the assistance of the office of the local trade representative.

V. CONCLUSION

As the number of ties between the United States and Vietnam increase, the safety and security of investing in Vietnam also increases. The Communist Party of Vietnam today has nowhere near the hesitation of the Party in 1995 in moving the country towards a market-based economy, which is evidenced in all of the reforms and agreements that Vietnam has entered into over the past decade. Vietnam is committed to becoming a dominant economic player in Southeast Asia, and is moving as quickly as possible in making its country suitable for even the most cautious investor. With a large, youthful and educated workforce and an underdeveloped market, Vietnam is in a position to serve and be served. Vietnam is an ideal location for businesses to establish manufacturing operations for production of goods for export and for businesses to establish service industries to cater to a growing and increasingly prosperous population. While there are several risks involved with investing in Vietnam, a diligent business will do proper research and create company policies that reduce those risks dramatically. With WTO accession in the near future, Vietnam is once again poised to become the next "Asian Tiger." Vietnam is assuredly now open for business.

\textsuperscript{167} Id. at 28.


\textsuperscript{169} Id.; Organisation for Economic Co-operation and Development, http://www.oecdwash.org/ (last viewed May 8, 2006) (OECD is the international organization of the industrialized, market-economy countries, which includes the United States, United Kingdom, Japan, Australia and Germany).

\textsuperscript{170} The World Bank Group, \textit{supra} note 168.