



**Vietnam Chamber of Commerce and Industry
Center for WTO and Economic integration**

REPORT

**REVIEW VIETNAM'S LEGAL FRAMEWORK AGAINST COMMITMENTS
UNDER EUROPEAN UNION - VIETNAM FREE TRADE AGREEMENT (EVFTA)
ON INVESTMENT**

INTRODUCTION

At the beginning of December 2015, the European Union and Vietnam announced the conclusion of negotiations for the European Union - Vietnam Free Trade Agreement (EVFTA), one of the two largest new-generation free trade agreements of Vietnam. With a broad coverage of various trade and trade-related sectors at and behind countries' borders, EVFTA is forecasted to have a significant impact on Vietnam's legal framework and economic institutions in the coming time.

Investment is one of the committed sectors that could have direct effects and make considerable changes to the situation of Vietnam's current domestic legislations and policies during EVFTA implementation process. The principles of investment liberalization and protection based on European standards are higher than that of Vietnam's current ones. In addition, Vietnam's market access commitments in service sectors for EU's investors under EVFTA are significantly broader than that under WTO. Therefore, it is necessary to review Vietnam's investment-related legislations against EVFTA commitments to clarify differences and make amendments of Vietnam's legal framework for a purpose of achieving compatibility.

The review of Vietnam's legal framework against EVFTA commitments on Investment is conducted by Vietnam Chamber of Commerce and Industry (VCCI) with analyses about the compatibility of Vietnam's legal framework against commitments from the perspectives of its firms. From this, recommendations are made to guarantee the conformity to the Agreement in the most beneficial ways for firms.

This Review belongs to a series of reviews of Vietnam's legal framework against EVFTA commitments on five important aspects (including Investment, Government procurement, Intellectual property, Customs and trade facilitation, and Transparency). All of these reviews are carried out by Vietnam Chamber of Commerce and Industry (VCCI) in the Program titled "The readiness of Vietnam's legal framework in implementing EVFTA" with the supports of the Embassy of the United Kingdom of Great Britain and North Ireland in Vietnam.

This Review report is expected to be a good and useful information source for the process of reviewing the legal framework for EVFTA enforcement of the Government, and also considered a meaningful reference for the Congress's authorities in the process of approving, directing, implementing and controlling the EVFTA implementation.

Vietnam Chamber of Commerce and Industry expresses its thanks to the Embassy of the United Kingdom of Great Britain and North Ireland in Vietnam for their supports in the implementation of this meaningful program./.

TABLE OF CONTENT

	Page
Introduction	2
Section 1	6
Summary about results of the Review	
<i>I. Targets and situation of the Review</i>	6
<i>II. Coverage of the review</i>	8
1. About commitments on Investment in EVFTA	8
2. About Vietnam's Investment-related legislations	8
<i>III. Summary about results of the Review and Recommendations</i>	10
1. The group of EVFTA's investment commitments that Vietnam's legal framework have been compatible with	10
Review results	12
Assessments and Recommendations	13
2. The group of EVFTA's investment commitments that Vietnam's legal framework have partly or totally been incompatible with	13
Review results	13
Assessment and Recommendations	15
Section 2	21
The detailed review table of Vietnam's legal framework against EVFTA commitments on Investment	

LIST OF ABBREVIATIONS

EVFTA:	European Union - Vietnam Free Trade Agreement
EU:	European Union
FTA:	Free Trade Agreement
ISDS:	Investor (foreign investor) - State (host country) Dispute Settlement
PLVN:	Vietnam's legal framework
TPP:	Trans-Pacific Partnership agreement
WTO:	World Trade Organization

Section 1

SUMMARY ABOUT RESULTS OF THE REVIEW

I. Targets and situation of the Review

On 2nd December 2015, the official conclusion of negotiations for European Union - Vietnam Free Trade Agreement has been made. The text of the Agreement, announced on 1st February 2016 with 24 chapters, implies a new generation agreement with a very broad coverage from traditional trade sectors (such as goods, services, etc) to the trade sectors that have been committed by Vietnam for the first time (such as State-owned enterprises, Government procurement, etc), and even non-trade but closely linked to trade issues (such as environment, sustainable development, etc). The commitment and liberalization levels under the Agreement are also much higher than that under previous free trade agreements signed by Vietnam, and approximately equivalent to that under Trans-Pacific Partnership (TPP).

With its coverage and commitment levels, EVFTA is forecasted to have a significant impact on Vietnam's legal and economic institutions in the coming time. The commitments under EVFTA raise the need of adjusting Vietnam's legal framework to guarantee its seriously conforming and enforcing specific obligations in many sectors. In turn, this change expectedly creates a new institution reform wave for Vietnam, which helps enhance the quality of the legal system, improve business environment, set up a good base for sustainable development and bring considerable benefits for domestic investors and their foreign partners especially from European Union.

One of the committed aspects which is considered to directly and substantially affect Vietnam's legal system under EVFTA is the institution on Investment - a collection of principles and requirements for the Government's measures, policies and legislations on market access, treatment and protection of EU's investors.

From the perspectives of EU, as a big foreign investor in the world and in Vietnam as well, EU is regarded to set up demanding requirements on market access and protection for its investors in Vietnam. In addition, as a developed partner, EU itself has had a system of market access and investment protection standards that are considered to be higher than the average levels under WTO being currently applied by Vietnam. From the perspectives of Vietnam, the country, on one side, has its own demand for self-improving its investment environment to attract more foreign and domestic investors. On the other side, the country has to maintain an essential policy atmosphere for its actions towards public utility, and maintain a certain market level for its domestic

investors against foreign ones. Therefore, EVFTA commitments on investment, compromising the above investment -related requirements of Vietnam and EU, are higher than the current levels of Vietnamese legislations, and raise the need for the adjustment of Vietnam's domestic legal framework to guarantee its serious conforming and enforcing specific obligations under EVFTA.

To prepare for this above-mentioned process, the review of Vietnam's current legal framework against specific commitments under EVFTA on investment is the first specially necessary step. This brings a good foundation to specify different and incompatible institutions and regulations of domestic legislations against EVFTA commitments on investment, supporting the analyses of suitable enforcement solutions and the proposals of adjusting and amending legal system in conformity with EVFTA.

According to Vietnam's process of negotiating and approving international agreements, this kind of review is certainly carried out by relevant State authorities (Ministry of Justice and Ministry of Investment and Planning) for the country's implementing its obligations under EVFTA.

Nevertheless, the active review from the perspectives of firms in this case is very important because of the following reasons:

- In many cases, commitments could be explained and implemented in various ways. This Review, made from the perspectives of firms, specifies and proposes the most beneficial way for firms.
- Although the principle of EVFTA commitments on investment does just require Vietnam's obligations for EU's investors, in some specific cases, Vietnam's treatment under EVFTA for all investors is better for its firms. The Review, made from the perspectives of firms, allows to specify these above situations and to make corresponding recommendations.

The purposes of the Review are to make (i) detailed comparisons between Vietnamese legislations and particular obligations, commitments on investment under EVFTA; (ii) assessments about the situation of domestic legislations compared with EVFTA's requirements (to see if Vietnam's legal framework is compatible with obligations and requirements under EVFTA or not), about current law application principles, and about demands for self-improvement of Vietnam in general and its firms in particular; and (iii) proposals of EVFTA - implementing measures from the perspectives and benefits of firms.

II. Coverage of the Review

1. About commitments on Investment in EVFTA

Under EVFTA, institutions on Investment are in Section II, Chapter 8 on Trade in Services - Investment and E-Commerce, and Annex 8d on Schedule of commitments for Cross border supply of services and Establishment (General annex for all cross border investment and supply of services under EVFTA).

Institutions on investment, under EVFTA commitments, are categorized into 4 groups:

- Commitments on investment liberalization principles
- Commitments on investment protection principles
- Commitments on State-investor dispute settlements
- Schedule of market access commitments

The Review of Vietnam's legal framework against investment commitments under EVFTA is based on the above 4 groups.

Due to the considerable overlap in the content (shared commitments) between investment and cross-border supply of services institutions under EVFTA, several parts in Section I, Chapter 8 (General definition) are analyzed in the Review. Moreover, others relating to services market access in Annex 8d will be taken into consideration in another review of services market access carried out by VCCI in the coming time.

Besides, it should be noticed that in other Chapters under EVFTA, there are also commitments applied for investment (for instance, Chapter 1 - Objectives and general definition, Chapter 15 - Trade and sustainable development, Chapter 17 - Institutional, general and final provisions, etc), or related to investment (for instance, Chapter 9 - Government procurement, Chapter 10 - State owned enterprises, enterprises granted special rights or privileges and monopolies, Chapter 11 -Competition policy, etc). These kinds of commitments are not analyzed in the Review because (i) either they are generally applied for all cases, not just for investment, hence, they should be mentioned in a general framework; (ii) or they have their own principles of preferentially applying specialized legislations, hence, they do not need to be reviewed from the principle of general investment under Investment Chapter.

2. About Vietnam's Investment-related legislations

Under Vietnamese legislations, investment issues are under the coverage of legal systems on investment (including general legislations and regulations on investment and specialized legislations on investment institutions).

Until the time of the Review (March 2016), Vietnam has made lots of investment commitments with different partners, the most important of which are the ones under WTO (Trade - related investment measures - TRIMS and General agreement on trade in services - GATS). In addition, Vietnam has signed with other partners a wide range of bilateral and multilateral commitments on investment, from detailed ones (such as the United States - Vietnam bilateral trade agreement (BTA)), fairly detailed ones (such as ASEAN comprehensive investment agreement, Investment section of several free trade agreements, etc), to general commitments on investment protection in bilateral agreements on trade and/or investment protection. Regarding the partners from EU, so far, Vietnam has made commitments on bilateral investment protection separately with 21 country members.

In general, commitments on investment under WTO, the ones with the broadest coverage, become the base for investment standards under Vietnamese legislations to be designed. Other investment commitments of Vietnam for its partners are (i) lower than or equal to that under WTO (mainly focusing on market access) (in this case, it is not necessary to issue a particular document in the domestic legal system), or (ii) directly applied but not internalized into domestic legislations (mainly on State-foreign investor dispute settlement).

At the time of this Review, Vietnam's legal framework has just experienced a big change with Law on Investment and Law on Enterprises to be issued in 2014 and to come into effect simultaneously on 1st July 2015. A number of documents guiding the implementation of these two laws were issued sequentially and some are continuing to be drafted. Besides the system of regulations on investment generally applied for relevant activities in all sectors, in 4 specialized sectors (securities, oil and gas, banking and finance), any investment-related provisions (if available) will be preferentially adopted. Moreover, regarding specialized sectors, although there are no provisions about specific investment procedures, documents and conditions for all subjects, there may be particular ones just for foreign investors in the system of specialized legislations.

About the range of documents to be analyzed, in reality, in Vietnam's legal framework, there are many documents in different levels providing the similar legal issues/institutions (for example, about the issues of investment procedures, conditions or protection, there are provisions under all levels of Law, Decree and Circular. Apart from direct regulations, there are also similar ones under Law on Enterprises, Law on Expropriation, etc). This Review does just focus on documents containing direct and most broadly/highly covered

provisions about the analyzed issues. It does not list any indirectly related regulations, or repeat other rules with higher legal validity.

III. Summary about Results of the Review and Recommendations

Results of the review about Vietnam's legal framework against EVFTA commitments on investment regarding specific obligations are as follows:

1. The group of EVFTA's investment commitments that Vietnam's legal framework have been compatible with

Review results

The detailed review presents the compatibility of Vietnam's legal framework with a majority of investment commitments under EVFTA on both liberalization and protection.

At the time of concluding EVFTA negotiations in December 2015, concerning market access and investment protection principles, the highest restrictive level that Vietnam has to adopt is the one under WTO commitments as of December 2007 (as the country officially joined WTO). This level is lower than that under EVFTA, which seems to be a surprising finding for the Review (if only this aspect is considered).

Nevertheless, if the development of Vietnam's legal framework on investment is carefully looked into, the conformity of quite many committed obligations under EVFTA to the country's current legislations is reasonable and explainable.

At first, the duration, during which Vietnam carried out the process of making Law on Investment in 2014, was also the one, during which the country joined TPP and EVFTA negotiations (including the negotiations on investment). The State agencies, which were in charge of negotiating about investment in these Agreements, were also the one taking responsible for the issuance of this Law. As a result, Vietnamese law makers have been familiar to commitments under EVFTA and similar ones under TPP. Therefore, that they anticipatedly included the negotiated principles (accepted by Vietnam) in Law on Investment is understandable.

Secondly, about the content, a large number of points in the investment principles under EVFTA (and TPP) were withdrawn and developed from the corresponding ones under WTO. That Vietnam has improved its investment environment in compliance with WTO's investment standards has played a key role in raising its attractiveness and making a big contribution to the consecutive increase in its foreign investment inflows in the past decade. Consequently, it is not too surprising to understand about the

acknowledgement of "follow WTO" investment principles of Vietnamese law makers (in their efforts of administrative reforms and business environment improvement) in the country's investment law even as Vietnam has been bound by investment commitments under EVFTA.

Thirdly, despite the fact that investment principles under EVFTA theoretically just bind Vietnam in its treatment to EU's investors and investment, in many cases, the general application of these principles for all investors is beneficial for improving and raising the attractiveness of Vietnam's investment environment to domestic and international investors. Hence, that the country's unilateral inclusion in its domestic legislations (Law on Investment in 2014) as a system generally applied for all investors (not just EU's ones) is understandable.

In particular, Vietnam's legal framework has totally met the following obligations under EVFTA on investment:

- Chapter I (General provisions):

Regarding objectives of commitments on investment, and exceptions and coverage of Laws on labor and immigration, Vietnamese legislations are totally compatible with EVFTA .

Regarding definitions, Vietnamese legislations are totally compatible with EVFTA for the definitions of National and Juridical persons ("Organization" under Vietnamese legislations), Enterprise ("Economic organization" under Vietnamese legislations), Establishment ("Setting up an economic organization, acquisition/creation of branch or representative office of foreign economic organization in Vietnam" under Vietnamese legislations), Operation ("All after-establishment investment activities including the sale or disposal of the investment" under Vietnamese legislations), Services ("Provision of services" under Vietnamese legislations), and Measure ("Legal regulations or administrative measures" under Vietnamese legislations).

- Chapter II (Investment)

- + Article 2 (Market access - MA): Market access obligations in conformity with the Schedule of Commitments

- + Article 3 (National treatment - NT): National treatment obligations in investment operation in all sectors (regardless of whether sectors are included in the Schedule of Commitments or not)

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- + Article 5 (Schedule of specific commitments): Market access obligations follow the conditions, ways, restrictions, etc in the Schedule of Commitments
 - + Article 6 (Performance requirements – PR): The obligation of not applying measures relating to the listed performance requirements
 - + Article 13 (Scope of investment protection)
 - + Article 14 (Treatment of investment): The obligations of according fair and equitable treatment (FET), full protection and security
 - + Article 16 (Expropriation): Cases of nationalization and expropriation; principles of specifying compensations in those cases; adoption of land-related legislations; compulsory license; rights to claim and sue of investors
 - + Article 17 (Transfer): The obligation of acknowledging rights, and principles of legal transfers relating to an investment
 - + Article 18 (Subrogation): The obligation of acknowledging the subrogation of legal transactions

Assessments and Recommendations

It is clearly seen that Vietnam's current legislations are mostly compatible with EVFTA's commitments on investment about principles of investment liberalization and protection developed from the corresponding ones under WTO. That means Vietnamese legislations are getting closer and reaching to international liberalization and protection standards. What needs taking care of next is just the efficiency of implementing these standards.

For example, about the fair and equitable treatment (FET), full protection and security for investors and their investments, despite Vietnam's acknowledgment of these standards (providing with full administrative, civil and criminal, and claim proceedings for investors to protect their own rights and settle disputes), there is a big gap between the actual implementation and expectations from/requirements of these provisions (with many unsolved cases of tribunals, and lasting and ineffective implementation of awards issued by tribunals).

For these obligations, as implementing EVFTA, Vietnam does not need to adjust or amend anything included in its current legislations.

However, the implementation of obligations relating to treatment standards in investment should be specially noticed (Article 14, Chapter of Investment).

1. The group of EVFTA's investment commitments that Vietnam's legal framework have partly or totally been incompatible with

Review results

The group of commitments that Vietnam's legal framework has partly or totally been incompatible with just comprises of a smaller quantity of separate commitments (not key institutions, but just detailed provisions) than that in the other group that the country's framework have been compatible.

This group of "incompatible" commitments, in fact, is categorized into 3 smaller subgroups of being totally incompatible, partly incompatible and non-compulsorily compatible.

(i) The totally incompatible subgroup

According to results of the Review, Vietnamese legislations are totally incompatible with EVFTA's commitments on investment in the following issues:

- Chapter I (General provisions)

Vietnamese legislations are incompatible with the definitions of Shipping companies (under the coverage of the Agreement), and Investment (Under Vietnamese legislations, there are just separate definitions about assets, investment capital, and investment project)

- Chapter II (Investment)

- + Article 1 (Scope and definitions): The coverage of investment liberalization principle (investor, investment, and excluded service sectors)

- + Article 3 (National treatment - NT): The obligation of not requiring investors to resell or dispose their investment in the listed sections in Annex NT, Chapter 8

- + Article 4 (Most favored nations – MFN): The obligation of applying Most favored nation treatment to EU's investors and investment (application of MFN under TPP, FTA VN-EFTA, RCEP on the establishment of an investment; MFN on all operations of an investment excluding some special cases)

- + Article 14 (Treatment of investment): The obligation of not breaching State-investor agreements by administrative or juridical decisions in provided cases

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- + Article 15 (Compensation): The obligation of making non-discrimination compensations for investors whose investments suffer losses owing to war or other armed conflict, etc; The obligation of making compensations for losses due to unnecessary/unreasonable nationalization/expropriation
 - + Section 3 Chapter of Investment: Investor-State Dispute Settlement (ISDS)

(ii) The partly incompatible subgroup

According to results of the Review, Vietnamese legislations are partly incompatible with EVFTA's commitments on investment in the following issues:

- Chapter I (General provisions)

Vietnamese legislations are partly incompatible with EVFTA's definitions of Nationality of Economic organization, Economic organization controlled/owned by other entities, Dependent company, Services supplied and activities performed in the exercise of governmental authority (under Vietnamese legislations, there is only a definition of public-utility services), Measures (the measures taken by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities are not under the coverage of Vietnamese legislations), Investors (the case that an entity "seeks to make an investment" is not regarded as investor under Vietnamese legislations).

The number of definitions that are different between Vietnamese legislations and the Agreement is substantial. This is not too difficult to understand due to the fact that most of these definitions are used to specify subjects and objects under the coverage of the Agreement (hence, it is impossible for those definitions to be exactly the same as the ones designed for the general and broad application for all entities under Vietnamese legislations)

- Chapter II (Investment)

- + Article 2 (Market access -MA): The obligation of not adopting or maintaining the listed measures for investors or their investments, who/which are under the coverage of Schedule of commitments

- + Article 3 (National treatment - NT): The obligation of National treatment on the establishment of an investment in sectors just committed under EVFTA, but not under WTO

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- + Article 16 (Expropriation): Commitments on specifying interest rates in cases of deferred compensations, and commitments on indirect expropriation

(iii) The non-compulsorily compatible subgroup

According to results of the Review, some commitments have not been included in Vietnamese legislations because they could be commitments on rights (it Vietnam has the right to decide if it implements or not), or recommended commitments (Vietnam could non-compulsorily implement), or scheduled commitments (Vietnam does not have to immediately implement). As a result, although there are no corresponding provisions under Vietnamese legislations, these above commitments are not classified to the "incompatible" subgroup. This non-compulsorily compatible subgroup includes the following commitments:

- Article 1: Scope and definitions
- Article 13bis: Investment and regulatory measures/objectives
- Article 20: Relationship with other relevant agreements between Vietnam and EU country members

Assessments and Recommendations

Except Investor-State Dispute Settlement (ISDS), most of EVFTA's commitments that Vietnam's legal framework have partly or totally been incompatible with are just separate and detailed provisions (not key principles), and they mainly belong to two categories on which solutions are based:

(i) For the category of "incompatible" commitments just specifically provided under EVFTA

This category is comprised of commitments relating to specific issues just provided under EVFTA (for instance, commitments on terms specifically applied for EVFTA, coverage of commitments on investment under EVFTA, MFN principle for EU, market access as committed for EU, ISDS for EU's investors in Vietnam, etc).

It is usual and logic that Vietnam's general legislations on investment do not cover these above issues. In these cases, what the country needs to do is just adjusting its legislations to be compatible with EVFTA just for partners from EU, but not other countries (including Vietnamese and non-EU subjects).

The recommendation for this category of "incompatible" commitments is to set up a Suggested Law on Implementing EVFTA on Investment.

About the content, this Suggested Law on Implementing EVFTA on Investment just covers the issues specifically applied by Vietnam for EU partners as follows:

- Coverage and specific terms for EU partners (in fact, under EVFTA, there are some terms which are clear and detailed enough to be directly applied according to Article 6.3 under the current Law of Treaties. However, because of the fact that the other terms need internalized into domestic legislations and a Suggested Law on Implementing EVFTA on Investment is recommended to be issued by this Review for this purpose of internalization, it is unnecessary to specify terms just applied for EU partners, but include all terms in a provision of such above Suggested Law.)
- Market access commitments specifically applied for EU partners (including investment conditions for EU's investors in particular sectors) in the Schedule of commitments in Annex 8d
- Some content-related obligations currently specifically applied by Vietnam just for partners from EU, but not other countries as follows:
 - + Commitments in Article 3 (National treatment - NT): The obligation of not requiring investors to resell or dispose their investment in the listed sections in Annex NT, Chapter 8
 - + Commitments in Article 4 (Most favored nations – MFN): The obligation of applying Most favored nations treatment to EU's investors and investment (application of MFN under TPP, FTA VN-EFTA, RCEP on the establishment of an investment; MFN on all operations of an investment excluding some special cases)
 - + Commitments in Article 14 (Treatment of investment): The obligation of not breaching State-investor agreements by administrative or juridical decisions in provided cases
 - + Commitments on ISDS (at least about the commitments of legal validity of ISDS awards in Vietnam)
- Vietnam should also consider the adjustment of its general legislations to apply some of these commitments (except MFN and ISDS) for its domestic investors (but not for all foreign investors). This guarantees that domestic investors could at least be treated equivalently to EU ones.
- In addition, it is noticed that under EVFTA, the issues of Services and Investment be simultaneously negotiated and provided. Although in this Review on Investment, the Suggested Law on implementing EVFTA just regards the issue of Investment, actually both Investment and Services should be together considered in the process of EVFTA implementation.

Therefore, a common Suggested Law on both Investment and Services should be issued. The specific commitments on Services included in the above common Suggested Law will be clarified in the Review of Vietnamese legal framework against EVFTA commitments on Services (to be carried out in the coming time).

About the ways to internalize the Schedule of Commitments in Annex 8d into domestic legislations

Regarding the market access commitments in the Schedule of Commitments in Annex 8d, this internalization of these commitments into Vietnam's legal systems could be actually implemented via two ways as follows:

- either these commitments are included in the Suggested Law on implementing EVFTA;
- or a Congress resolution is set up to directly apply the Schedule of Commitments in Annex 8d (this Congress decree is an "internalization" of the Schedule of Commitments in its nature).

In a normal condition, in comparison with the other way, the setting up of a Resolution to directly apply commitments is convenient, fast and it does not affect current situation of domestic legislations (to the extent that there is no new legislations to be issued).

Nevertheless, concerning the specific content in the Schedule of Commitments, the way of direct application is unsuitable at least due to the following reasons:

- The market access commitments in the Schedule are "not clear and detailed enough" to be directly applied according to Article 6.3 under the Law of Treaties (owing to the variation in understanding conditions and ways of applications for each commitment in the Schedule);
- There are similar commitments on services market access under WTO and EVFTA (The Schedule of Commitments - Cross border supply of services). In addition, in reality, for a purpose of internalizing the commitments under WTO into domestic legislations, Vietnam has made a considerable adjustment to its specialized legislations even if disputes about the ways of understanding and internalizing commitments still exist. The similar situation will occur for EVFTA if adjustments are about to be made. Therefore, the way of direct application seems to be impossible.
- From the perspectives of implementation, both the way that market access in specific service sectors is carried out and the condition on which it depends are closely linked to the process of organization to implement (at least from the view of State agencies). As a result, it is not

easy to directly apply the commitments, but a (even many) guidance(s) is on request.

Therefore, it is necessary to internalize investment conditions for EU's investors in sectors specified in the Schedule of Commitments into a Suggested Law on implementing EVFTA on Investment and Services, and it is impossible to include this Schedule in a Resolution for direct application of commitments.

Concerning this Schedule of Commitments, although the inclusion of market access commitments into a Suggested Law on implementing EVFTA on Investment could entirely solve the above mentioned implementation issues from legal perspectives, it is still essential to carry out a *Review of Vietnam's legislations on services business against EVFTA commitments on services market access* for improving the transparency and facilitation of the implementation process for both EU's investors and Vietnamese authorized agencies.

About the legal validity, this Suggested Law will replace specialized legislations providing investment conditions (applied to foreign investors) in the cases of EU's investors.

For this above characteristics, this Suggested Law on implementing EVFTA on Investment is regarded as a law (called Omnibus Bill) actually used to review and revise many legislations and regulations simultaneously.

Although the usage of Omnibus Bill has been unknown in Vietnam previously, for this case, it is considered to be faster, more effective and feasible way than the reviewing and amending each of the particular legislations on market access of service sectors committed under EVFTA, but not under WTO due to the following reasons:

At first, it is impossible for Vietnam to apply the Schedule of Commitments directly. Especially the Schedule in Annex 8d clarifies that it is invalid to directly implement the commitments included in this Schedule.

Secondly, it is also impossible for Vietnam to adjust each of its specialized legislations on investment conditions for foreign investors to be compatible with EVFTA commitments in general. From law making perspectives, if that adjustment is carried out, Vietnam has to unilaterally offer all WTO partners the market access level applied for EU partners (due to the fact that investment conditions for foreign investors in specialized legislations, if available, are generally applied for all investors regardless of their nationalities). This certainly makes negotiations on market access for EU (including the trade-offs of the two parties to achieve market access

agreements) non-sense, especially for EU partners (because investors or investments from EU enjoy no more favorable conditions than ones from other countries).

Regarding the aim to simultaneously amend many specialized legislations (mainly at the levels of Law, Ordinance, or Decree) on investment conditions applied for investors, the Suggested Law on Implementing EVFTA on Investment (Omnibus) should be a Law-level document for replacing all specialized legislations for specific investors from EU.

(ii) For the category of "incompatible" commitments on investment liberalization and protection possibly generally applied for many subjects

This is comprised of commitments that Vietnamese legislations are not compatible with EVFTA about investment liberalization (National treatment in the establishment, operation of an investment, etc), investment protection (compensation, expropriation, etc). These above commitments are not specified particularly for EVFTA (meaning that they could be generally applied without making any institutional confuses or concerns).

For this category, although implementing commitments is just Vietnam's obligation for EU partners, but not for other countries' ones or even domestic investors, the general implementation of these commitments (if possible) will improve the country's investment environment in accordance with international standards, enhancing investors' beliefs and attracting more capital into Vietnam. All of these principles are considered to really raise investment efficiency for foreign investors in Vietnam, leading to the increase in the general investment efficiency for the whole economy.

Moreover, most of these commitments on non-discrimination and investment protection do not go far beyond the current standards and they are totally suitable with the directions of reforming and improving investment environment. Hence, the inclusion of these commitments into the general legal system does not basically impose a too heavy or shocking implementation burden for Vietnam's present organizations. In addition, the implementation of the above provisions could make a considerable contribution to speeding up the process of enhancing business and investment environment in Vietnam in accordance with the country's current directions.

As a result, for this category, the recommended solution is to amend relevant domestic legislations (at least including the Law on Expropriation, Law on State Compensation, and documents guiding Law on Investment and Law on Enterprises) to be compatible with the commitments under EVFTA.

(iii) For the category of commitments relating to Investor-State Dispute Settlement (ISDS)

In comparison with the others, there is a very special point in this category of commitments as follows:

- About the content, apart from a small number of specific commitments which are in correlation with domestic legislations (such as commitments on the legal validity, acknowledgement and implementation of ISDS awards in Vietnam), most of the commitments in Section of ISDS exist parallel and unrelated to the domestic legislations on arbitration and reconciliation. Each system has its own specific coverage that does not overlap or conflict with the other.
- About the implementation, during the process of carrying out the due procedures and filing conditions, relevant parties (plaintiff, subjects of dispute settlements, etc) could apply and directly cite these ISDS commitments without any care about if they have been internalized into domestic legislations or not.

Therefore, for this category, the recommended solution is to maintain the current situation, meaning that there is no need to amend relevant domestic legislations for internalization or directly apply ISDS commitments.

In conclusion

The Review of Vietnamese legal framework against EVFTA commitments shows that in general Vietnamese legislation has been compatible with EVFTA's standards on investment liberalization and protection. The differences are mainly on detailed and separate commitments or specific issues belonging to EVFTA.

The recommended solutions are (i) Setting up and Issuing 01 Suggested Law on Implementing EVFTA on Investment relating to market access commitments and other specific ones for EU's partners (the principle of MFN, commitments on legal validity of ISDS awards, etc), (ii) Amending Vietnam's general legislations to include EVFTA's commitments relating to investment protection, and (iii) Maintaining the current situation of ISDS commitments.

Results of the Review also clarify the necessity of carrying out the Review of Vietnamese specialized legislations against EVFTA's commitments on market access in service sectors./.

Section 2

DETAILED REVIEW OF VIETNAMESE LEGAL FRAMEWORK AGAINST EVFTA COMMITMENTS ON INVESTMENT

CAM KẾT EVFTA	VIETNAM LEGAL FRAMEWORK	ASSESSMENTS AND RECOMMENDATIONS
CHAPTER I GENERAL PROVISIONS		
Article (...) Objectives, coverage and definitions		
1. The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive liberalisation of trade in services and investment and for cooperation on e-commerce	No regulations	<p>Assessments: This is the Agreement's own issue which is not related to domestic legislations</p> <p>Recommendations: No recommendations for any amendments of legislations</p>
2. Consistent with the provisions of this Title, each Party retains the right to adopt, maintain and enforce measures necessary to pursue legitimate policy objectives such as the protection of society, the environment and public health, the integrity and stability of the financial system, the promotion of security and safety, and the promotion and protection of cultural diversity.		<p>Assessments: This is to acknowledge the rights, not compulsory obligations of parties under EVFTA</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - No recommendations for any amendments of legislations - These rights acknowledged under this Agreement should be noticed in the process of issuing

		investment regulations to be used as necessary
3. This Title shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis. Nothing in this Title shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits ¹ accruing to any Party under the terms of a specific commitment in this Chapter and its Annexes.	Legislations on Labour Legislations on Entry, exit, transit and residence Legislations on Investment	<p>Assessments: This is the coverage applied for commitments on investment, cross-borders trade in services and e-commerce under the Agreement. Vietnam Laws on Labor and Immigration relating to the listed issues in Para 3 are not required to comply with provisions of this Chapter under the Agreement</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - No recommendations for amending general legislations on labor and immigration - For legislations on investments, recommendations (if available) related to the movement of natural persons in specific sectors will be made clear in relevant parts
4. For purposes of this Title:		
(a) a 'natural person of the EU' means a national of one of the Member States of the European Union in accordance with	Law on Nationality	<p>Assessments: EVFTA regards the national of Vietnam in accordance with its legislation, hence</p>

¹ The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

its legislation and a 'natural person of Viet Nam' means a national of Viet Nam in accordance with its legislation;		there is no need for further review Recommendations: No recommendations for any amendments of legislations
(b) 'juridical person' means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;	<p>Civil Code 2005, Civil Code 2015 Law on Enterprises 2014 Article 84 Civil Code 2005 (Only have effect before 1/7/2017)</p> <p>Legal persons</p> <p>An organization shall be recognized as a legal person when it meets all the following conditions:</p> <ol style="list-style-type: none"> 1. Being established lawfully; 2. Having a well-organized structure; 3. Possessing property independent from that of individuals and other organizations, and bearing its own liability with such property; 4. Independently entering into legal relations in its own name. <p>Article 74 Civil Code 2015 (Have effect from 1/7/2017)</p> <p>Juridical persons</p> <ol style="list-style-type: none"> 1. An organization shall be recognized as a juridical person if it meets all of the following conditions: <ol style="list-style-type: none"> a) It is legally established as prescribed 	<p>Assessments:</p> <p>There are more restrictions about juridical persons under Vietnamese legislations than the listed forms of those juridical persons under EVFTA, including:</p> <ul style="list-style-type: none"> - About conditions to be a juridical person: Under EVFTA, the condition is just legal entity (established lawfully) while according to Vietnamese legislations, requirements include having a well-organized structure; possessing property independent from that of individuals and other organizations, and bearing its own liability with such property; independently entering into legal relations in its own name. - About forms, different from EVFTA, according to Vietnamese legislations, sole proprietorship is not a juridical person; trust, corporation or partnership is not automatically a juridical person.

	<p>in this Code and relevant laws;</p> <ul style="list-style-type: none"> b) It has an organizational structure prescribed in Article 83 of this Code; c) It has property independent from other natural and juridical persons and bears liability by recourse to its property; d) It participates independently in legal relations in its own name. <p>2. Every natural or juridical person has the right to establish a juridical person, otherwise provided for by law.</p> <p>Law on Enterprises</p> <p>Article 47. 2</p> <p>A multi-member limited liability company has a legal status from the issuance date of the Certificate of Business registration.</p> <p>Article 73.2.</p> <p>A single-member limited liability company has its legal status from the issuance date of the Certificate of Business registration. Article 110. 2.</p> <p>A joint-stock company has its legal status from the issuance date of the Certificate of Business registration</p> <p>Article 172. 2.</p>	<p>According EVFTA, the definition of "juridical person" is equivalent to that of "organization" (under Vietnamese legislations, there is no definition of "organization" but "economic organization" mentioned in the Investment Law. This definition of "economic organization" is limited to the investment activities that engage in business operations, hence it has not such a wide coverage as under EVFTA.</p> <p>However, due to EVFTA's provision of "...under applicable law", meaning that the final decisions are of Vietnamese legislations, hence, on principle, Vietnamese legislations are compatible with this commitment.</p> <p>Recommendations:</p> <p>No recommendations for any amendments of legislations regarding juridical person</p>
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	<p>A partnership has its own legal status from the issuance date of the Certificate of Business registration.</p> <p>Article 188.1</p> <p>Business corporations and general companies of various economic sectors are groups of companies that are related to each other through ownership of shares, stakes, or other kinds of connection. A business corporation or a general company is not a type of business entity, does not have a legal status, and is not required to apply for establishment registration as prescribed by this Law.</p> <p>Article 183.1.</p> <p>A private company is a enterprise owned by an individual who is responsible for its operation with all of his/her property.</p> <p>Law on Investment</p> <p>Article 3.16.</p> <p>Business organization means an organization established and run in accordance with Vietnam's laws. Business organizations include companies, cooperatives, cooperative associations, and other organizations that make business investments.</p>	
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<p>(c) a 'juridical person of the EU' or a 'juridical person of Viet Nam' means a juridical person set up in accordance with the laws of a Member State of the European Union or of Viet Nam respectively, and engaged in substantive business operations² in the territory of the EU or of Viet Nam, respectively;</p>	<p>Law on Enterprises</p> <p>Article 4.9.</p> <p>Vietnamese company means any enterprise that is established or registered under Vietnam's law and has its headquarter located in Vietnam.</p> <p>Law on Investment</p> <p>Article 3.</p> <p>14. Foreign investor means an individual holding a foreign nationality or an organization established under foreign laws and making business investment in Vietnam.</p> <p>15. Vietnamese investor means an individual holding Vietnamese nationality or a business organization whose members or shareholders are not foreign investors.</p> <p>16. Business organization means an organization established and run in accordance with Vietnam's laws. Business organizations include companies, cooperatives, cooperative associations, and other organizations</p>	<p>Assessments:</p> <ul style="list-style-type: none"> - The general concept of "economic organization" under Vietnamese legislations is equivalent to that of "organization" in this Para under EVFTA (both just regard the entity engaging in business operations) - Under EVFTA, the identification of the nationality of organizations (EU or Vietnam) is based on two conditions: set up in accordance with the legislations of a Member State of the European Union or of Viet Nam, and engaged in substantive business operations in the territory of the EU or of Viet Nam. Meanwhile, under Vietnamese legislations, apart from the accordance with legislations, other conditions are different from those under EVFTA (such as the requirement of "having a headquarter in
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² In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU-Party understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the laws of Viet Nam and having only its registered office or central administration in the territory of Viet Nam, the EU Party shall only extend the benefits of this agreement if that juridical person possesses an effective and continuous economic link with the territory of Viet Nam.

	<p>that make business investments.</p>	<p>Vietnam" for "Vietnamese enterprises, or of "having operations in accordance with Vietnamese legislations" for "economic organization").</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - The definition of "EU's economic organization" should be included in the Article of Coverage in the Suggested Law implementing EVFTA commitments on Investment (this document makes clear provisions only applied to cases under the coverage of this Chapter of EVFTA). - The definition of "Vietnam's economic organization" in accordance with EVFTA is not necessarily included in this Suggested Law implementing EVFTA commitments on Investment because it is just applied for EU's investors
(d) Notwithstanding the preceding paragraph, shipping companies established outside the EU or Viet Nam and controlled by nationals of a Member State of the EU or of Viet Nam, respectively, shall also be covered by the provisions of this Title, with the exception of Section 2 (Investment Protection) and of Section 3 (Resolution of Investment Disputes), if their vessels	<p>Vietnam Maritime Code 2005 (Only have effect before 01/7/2017)</p> <p>Article 12. Vietnamese seagoing vessels</p> <p>1. Vietnamese seagoing vessels are vessels which have been entered into the Vietnam National Register of Ships or have been granted provisional permits for flying the Vietnamese flag by foreign based Vietnamese diplomatic</p>	<p>Assessments:</p> <ul style="list-style-type: none"> - There are no provisions about EU's shipping companies - Regarding Vietnam's shipping companies, all entities mentioned in this Para (d) under EVFTA are totally not considered to be organizations of Vietnamese nationality in accordance with Vietnamese legislations and the

<p>are registered in accordance with their respective legislation, in that Member State or in Viet Nam and fly the flag of a Member State or of Viet Nam;</p>	<p>missions or consulates.</p> <ol style="list-style-type: none"> 2. Vietnamese seagoing vessels are entitled and obliged to fly the Vietnamese flag. 3. Only Vietnamese seagoing vessels may fly the Vietnamese flag. <p>Article 13. Shipowners</p> <ol style="list-style-type: none"> 1. Shipowners are owners of seagoing vessels. <p>Law on Enterprises</p> <p>Article 4.9.</p> <p>Vietnamese company means any enterprise that is established or registered under Vietnam's law and has its headquarter located in Vietnam.</p>	<p>country's commitments (including EVFTA)</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - The provision about "EU's shipping companies should be included in the Article of Coverage in the Suggested Law implementing EVFTA commitments on Investment <p>It is noticed that regarding the content, this definition is clear and detailed enough to be directly apply. Nevertheless, with the recommendation of setting up a Suggested Law implementing EVFTA commitments on Investment, this definition should be still included in the Suggested Law for a purpose of convenient and consistent implementation (relevant subjects do not need to read both the Agreement and the Suggested Law at the same time)</p> <ul style="list-style-type: none"> - The definition of "Vietnam's shipping companies" in accordance with EVFTA is not
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		necessarily included in this Suggested Law implementing EVFTA commitments on Investment because it is just applied for EU's investors as previously mentioned
(...) A juridical person is: (i) "owned" by natural or juridical persons of one of the Member States of the EU or of Viet Nam if more than 50 per cent of the equity interest in it is beneficially owned by persons of that/a Member State of the EU or of Viet Nam respectively; (ii) "controlled" by natural or juridical persons of one of the Member States of the EU or of Viet Nam if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.	<p>Law on Enterprises</p> <p>Article 189. Parent company and subsidiaries</p> <p>1. A company is considered parent company of another company if the former company:</p> <ul style="list-style-type: none"> a) Owns more than 50% of charter capital or total ordinary shares of the other company; b) Is entitled to directly or indirectly decide the designation of a majority of or all of Members of the Board of Directors, the Director/General Director of the other company; c) Is entitled to decide amendments to the other company's charter. 	<p>Assessments:</p> <ul style="list-style-type: none"> - Under Vietnamese legislations, an economic organization "owned" or "controlled" by other persons is not directly, but just indirectly defined via the provision of parent firms and their affiliates - The definition of an economic organization "owned" by natural or juridical persons under Vietnamese legislations is equivalent to that under EVFTA (with the same criterium of 50 per cent of capital) - About the criterium of "have the power to name a majority of directors", the definition of an economic organization "controlled" by natural or juridical persons under Vietnamese legislations is similar to that under EVFTA. However,

		<p>the point of "legally direct its actions" is just provided under EVFTA, but not mentioned under Vietnamese legislations</p> <p>Recommendations:</p> <p>Despite being available, provisions under Vietnamese legislations regarding this Para are indirect and not entirely compatible to those under EVFTA, hence suitable recommendations are:</p> <ul style="list-style-type: none"> - The provision about an economic organization "owned" or "controlled" by EU's natural or juridical persons as mentioned in this commitment should be included in the Definition article (relating to subject coverage) of the Suggested Law implementing EVFTA commitments on Investment - The provision about an economic organization "owned" or "controlled" by Vietnam's natural or juridical persons is not necessarily included in this Suggested Law implementing EVFTA commitments on Investment because it is just applied for EU's investors as
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		previously mentioned
(e) an 'enterprise' means a juridical person, branch ³ or representative office set up through establishment, as defined under this article;	<p>Law on Enterprises</p> <p>Article 4.7.</p> <p>Enterprise means an organization that has its own name, assets, office, and is registered in accordance with law to do business.</p> <p>Article 45. Branches, representative offices, and business locations of the enterprise</p> <p>1. A branch is a unit dependent on the enterprise and obliged to perform part or all of the enterprise's functions, including representation under authorization. The business lines of the branch must be consistent with those of the enterprise.</p> <p>2. A representative office is a unit dependent on the enterprise and obliged to represent the enterprise's interests under authorization and protect such interests Article 46.</p> <p>Establishment of branches, representative offices</p> <p>1. Every enterprise is entitled to establish a branch or representative office, whether at home or overseas. A</p>	<p>Assessments:</p> <ul style="list-style-type: none"> - While juridical person, branch or representative office is included in "enterprise" under EVFTA, they are regarded as different entities under Vietnamese laws and not categorized under the same concept of "enterprise" - The meaning of "set up through establishment" together with "branch" or "representative office" is ambiguous. However, this could be understood as branches or representative offices of foreign enterprises (Only in this case, procedures of establishment and "certificate of establishment" are provided under Vietnamese legislations. In contrast, for branches and representative offices of Vietnamese enterprises, the procedures of registration and "certificate of operation registration" are provided although the term of

³ For greater certainty, a branch of a legal entity of a non-Party shall not be considered as an enterprise of a Party

	<p>enterprise may establish one or multiple branches/representative offices in an administrative division.</p> <p>2. When establishing a branch/representative office in Vietnam, the enterprise shall submit an application for establishment of the branch/representative office to a competent business registration authority in charge of the administrative division where the branch/representative office is situated. The application consists of:</p> <ul style="list-style-type: none"> a) A notification of the branch/representative office establishment; b) A copy of the Establishment Decision and minutes of the meeting about the branch/representative office establishment; a copy of the ID card/passport or ID paper of the head of the branch/representative office. <p>3. The business registration authority shall examine the validity of the application and issue the Certificate of Branch/Representative Office Registration within 03 working days from the day on which the application is received. If the application is rejected,</p>	<p>establishment is still regarded. This way of understanding is also compatible with the definition of "establishment" in Para (g). It could be understood under this Para as well as the coverage under EVFTA to be Vietnam's obligations to subjects from EU.</p> <p>Recommendations:</p> <p>In the Suggested Law implementing EVFTA commitments on Investments (to be explained in Recommendation on Article 2 – Market Access), "enterprises" mentioned under EVFTA commitments are replaced by "economic entity, branch and representative office of EU's economic entity in Vietnam"</p>
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	<p>the enterprise must be notified in writing. The notification must provide explanation and necessary adjustments/supplementation (if any).</p> <p>Decree No. 72/2006/NĐ-CP of July 25, 2006, detailing the Trade law's regulations on representative offices, branches of foreign businesses in Vietnam</p> <p><i>Article 2: Rights for establishment of representative offices, branches of foreign businesses in Vietnam.</i></p> <ol style="list-style-type: none">1. Foreign businesses can establish their representative offices in Vietnam (hereinafter "Representative offices") in accordance with Articles 16, 17, 18 and 22 of the Commercial Law and the regulations as specified in the Decree.2. Foreign businesses can establish their branches in Vietnam (hereinafter "Branches") in accordance with Vietnam's commitments in international agreements that the country is a member to carry out goods purchasing activities and other activities directly related to goods purchasing in	
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	<p>accordance with Articles 16, 19, 20 and 22 of the Commercial Law and the regulations as specified in the Decree.</p> <p>Minister of Trade, based on international agreements that Vietnam is a party, is assigned to declare and provide instructions to goods purchasing and other related to good purchasing activities carrying out by branches of foreign businesses in Vietnam.</p> <p>3. Representative offices, branches are subsidiaries of foreign businesses. cannot establish representative offices, branches affiliate to representative offices, branches.</p> <p><i>Article 3. Agencies in charge of licensing establishment of representative offices, branches</i></p> <p>1. The Ministry of Trade is responsible for issuance, re-issuance, modification, supplement, renewal and revocation of Licence for establishment of branches to operate in the fields as specified in sub-Article 2, Article 2 of the Decree.</p>	
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	2. Local Departments of Trade, Departments of Trade and Tourism (jointly known as Departments of Trade) are in charge of issuance, re-issuance, modification, supplement, renewal and revocation of Licence for establishment of representative offices	
(f) 'subsidiary' of a juridical person of a Party means a juridical person which is controlled by another juridical person of that Party in accordance with its domestic laws ⁴ ;	<p>Law on Enterprises</p> <p>Article 189. Parent company and subsidiaries</p> <p>1. A company is considered parent company of another company if the former company:</p> <ul style="list-style-type: none"> a) Owns more than 50% of charter capital or total ordinary shares of the other company; b) Is entitled to directly or indirectly decide the designation of a majority of or all of Members of the Board of Directors, the Director/General Director of the other company; c) Is entitled to decide amendments to the other company's charter. 	<p>Assessments:</p> <p>Subsidiary is defined in a narrower scope under this Para (f) of EVFTA (just one criterium of "is controlled") than under Vietnamese legislations (apart from "is controlled", there are other two criteria)</p> <p>Recommendations:</p> <p>The definition of "subsidiary" (or "dependent company") in such a narrow scope as in this Para (f) should be included in the Suggested Law implementing EVFTA commitments on Investment</p>
(g) 'establishment' ⁵ means the setting up, including the acquisition of, a juridical person and/or creation of a	No relegations	<p>Assessments:</p> <p>There is no specific definition about "establishment" under Vietnamese</p>

⁴ For further clarity, a subsidiary of a juridical person of a Party may also refer to a juridical person which is a subsidiary of another subsidiary of a juridical person of that Party.

⁵ For greater certainty, this does not include operation of investment as defined in (i)

branch or a representative office in Viet Nam or in the EU respectively;		<p>legislations, however, every element included in the definition under Para (g) is provided in Vietnamese legislations</p> <p>Recommendations:</p> <p>In the Suggested Law implementing EVFTA commitments on Investment, "establishment" under EVFTA commitments should be replaced by "setting up an economic organization, acquisition/creation of branch or representative office of EU's economic organization in Vietnam"</p>
(h) 'economic activities' include activities of an industrial, commercial and professional character and activities of craftsmen, but do not include activities performed in the exercise of governmental authority;	<p>Law on Investment Article 3.5. Business investment means an investor's investing capital to do business by establishing a business organization; making capital contribution, buying shares or capital contributions to a business organization; making investments in the form of contracts or execution of investment projects</p> <p>Law on Enterprises Article 4.16. Business means the continuous execution of one, some, or all of stages of the investment process such as manufacturing, selling products or</p>	<p>Assessments:</p> <p>Under Vietnamese legislations, there is no definition about "economic activities". However, other definitions such as "business investment" and "business" are quite similar to "economic activities" under EVFTA. In particular, all of them exclude "activities performed in the exercise of governmental authority"</p> <p>Recommendations:</p> <p>No recommendations for any amendments of legislations</p>

	<p>services on the market to earn profit.</p> <p>Commercial Law 2005</p> <p><i>Article 3.1. Interpretation of terms</i></p> <p>In this Law, the following terms shall be construed as follows:</p> <p>1. Commercial activities mean activities for the purpose of generating profits, including: sale and purchase of goods, provision of services, investment, commercial promotion and other activities for the profit purpose.</p>	
(i) the 'operation' ⁶ of an investment includes the conduct, management, maintenance, use, enjoyment, sale or other form of disposal of the investment;	<p>No definition on operation of an investment</p>	<p>Assessments: Under Vietnamese legislations, there is no terms equivalent to the definition of "operation" of an investment, although there are still provisions to cover elements included in the definition under Para (i) of EVFTA.</p> <p>Recommendations: Due to its role to the identification of scope and limitation of EU investors' rights, the definition exactly mentioned in the commitment (comprised of footnote 6) should be included in the Suggested Law implementing EVFTA</p>

⁶ For greater certainty, this does not include steps taking place at the time of or before the procedures required for making the related investment are completed in accordance with the applicable laws.

		commitments on Investment.
(j) 'services' include any service in any sector except services supplied in the exercise of governmental authority;	<p>Law on Commerce 2005</p> <p>Article 3.9. Provision of services means commercial activities whereby a party (hereinafter referred to as the service provider) is obliged to provide a service to another party and receive payment; the service-using party (hereinafter referred to as the customer) is obliged to pay to the service provider and use the service as agreed.</p>	<p>Assessments:</p> <p>Under Vietnamese legislations, there is no general definition of "services", but just "provision of services". Because this "provision of services" excludes "services supplied in the exercise of governmental authority" (as mentioned in Para (k) of this article under EVFTA), the way of understanding about services under Vietnamese legislations is considered to be compatible with that under EVFTA.</p> <p>Recommendations:</p> <p>No recommendations for any amendments of legislations</p>
(k) 'services supplied and activities performed in the exercise of governmental authority' means services supplied or activities performed neither on a commercial basis nor in competition with one or more economic operators;	<p>Decree No. 130/2013/NĐ-CP</p> <p>1. Public-utility products and services are identified as products and services when they fully satisfy the following criteria:</p> <p>a/ Being products and services essential to the socio-economic life of the country or the population community of a territorial area which the State needs to ensure for common interests or for national defense and security maintenance;</p>	<p>Assessments:</p> <p>Under Vietnamese legislations, there is no definition of "services supplied and activities performed in the exercise of governmental authority", but just "public-utility services" which has a narrower scope than under EVFTA (despite having some common features). In particular, while the definition under EVFTA presents clear criteria of "neither on a commercial basis nor in competition with one or</p>

	<p>b/ The cost of production and provision of these products and services under the market mechanism can hardly be compensated for;</p> <p>c/ They are produced and supplied under orders placed, or according to plans assigned, by competent agencies or organizations, or through biddings with prices or charges prescribed by the State.</p> <p>Law on Bidding</p> <p>Article 4.39.</p> <p>Public products and services mean the essential products and services for economic-social life of country, population communities or assurance of national defense and security which the State must organize implementation in the fields: Health, education - training, culture, information, communications, science – technology, natural resources - environment, transport and other fields as prescribed by Government. Public products and services include the public-interest products and services, and services for public career.</p>	<p>more economic operators", it is quite general (just face "difficulty in competition", but not "no competition")</p> <p>Recommendations: The definition should be included in the Suggested Law implementing EVFTA commitments on Investment</p>
(I) cross-border supply of services means the supply of a service: (i) from the territory of a Party into the territory	No regulations	<p>Assessments: Under Vietnamese legislations, there is no provision about this issue. This is just</p>

<p>of the other Party (ii) in the territory of a Party to the service consumer of the other Party;</p>		<p>the point to clarify the scope under EVFTA in relevant issues, hence, it is not necessary for Vietnamese legislations to be compatible with.</p> <p>Recommendations:</p> <p>No recommendations for any amendments of legislations</p>
<p>(m) a 'service supplier' of a Party means any natural or juridical person of a Party that supplies a service;</p>	<p>Law on Commerce 2005</p> <p>Article 3.9. Provision of services means commercial activities whereby a party (hereinafter referred to as the service provider) is obliged to provide a service to another party and receive payment; the service-using party (hereinafter referred to as the customer) is obliged to pay to the service provider and use the service as agreed.</p> <p>Article 6. 1. Traders include lawfully established economic organizations and individuals that conduct commercial activities in an independent and regular manner and have business registrations.</p>	<p>Assessments:</p> <p>Vietnamese legislations are compatible with EVFTA regarding this Para</p> <p>Recommendations:</p> <p>No recommendations for any amendments of legislations</p>
<p>(n) a 'measure' means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;</p>	<p>No regulations</p>	<p>Assessments:</p> <p>Under Vietnamese legislations, there are no general terms to present the "measure" as defined in Para (n) although there are still specific terms for each element included in this definition of "measure".</p>

		<p>Recommendations: No recommendations for any amendments of legislations</p>
(o) 'measures adopted or maintained by a Party' means measures taken by: (i) central, regional or local governments and authorities; and (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;	No regulations	<p>Assessments: Under Vietnamese legislations, there are no terms to present the "measures adopted or maintained by a Party" as defined in Para (o). In reality, laws, regulations, rules, procedures, decisions and actions are considered to be measures taken by central or local governments or authorities, not by non-governmental bodies in the exercise of powers delegated by central or local governments or authorities</p> <p>Recommendations: The subject of "measures" should be clarified in accordance with EVFTA (the inclusion of measures taken by non-governmental bodies in the exercise of powers delegated by central or local governments or authorities need to be stressed and clearly noticed) as the definition of "measures" is provided in the Suggested Law implementing EVFTA commitments on Investment</p>

<p>(p) 'investment'⁷ means every kind of asset which is owned or controlled, directly or indirectly, by investors of one Party in the territory⁸ of the other Party, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk and for a certain duration. Forms that an investment may take include:</p> <ul style="list-style-type: none"> (i) tangible or intangible, movable or immovable property, as well as any other property rights, such as leases, mortgages, liens, and pledges; (ii) an enterprise, shares, stocks and other forms of equity participation in an enterprise including rights derived therefrom; (iii) bonds, debentures, and loans and other debt instruments, including rights derived therefrom; (iv) turnkey, construction, management, production, concession, revenue-sharing, and other similar 	<p>Law on Investment 2014</p> <p>Article 3. Interpretation of terms</p> <p>2. Investment project means a collection of proposal to make midterm or long-term capital investment in business in a particular administrative division over a certain period of time.</p> <p>5. Business investment means an investor's investing capital to do business by establishing a business organization; making capital contribution, buying shares or capital contributions to a business organization; making investments in the form of contracts or execution of investment projects.</p> <p>18. Capital means money and other assets used invested in business.</p> <p>Civil Code 2015</p> <p>Article 105. Property</p> <p>1. Property comprises objects, money, valuable papers and property rights.</p> <p>2. Property includes immovable</p>	<p>Assessments:</p> <p>Under Vietnamese legislations, there is no definition of "investment" but just "capital", "investment project" and "business investment (activities)". The concept of "assets" under Vietnamese Civil Code covers almost all forms of investment mentioned under EVFTA. However, this concept is not just limited to the nature and purpose of business activities as mentioned in the definition of "investment" under EVFTA. The combination of definitions of "capital" in Vietnamese Law on Investment and "assets" in Vietnamese Civil Code make Vietnamese legislations compatible with EVFTA regarding this Para. However, the definition of "investment" under EVFTA has a direct impact on Vietnam's obligations towards investments under the coverage of EVFTA, hence, it is difficult for Vietnam to clarify its obligations in particular cases if there are no equivalent terms or definitions.</p> <p>Recommendations:</p>
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⁷ For the purpose of the definition of investment, enterprise does not include representative office. For greater certainty, the fact that a representative office is established in the territory of a Party is not in itself considered that there is an investment.

⁸ For greater certainty, territory shall include exclusive economic zone and continental shelf, as provided in the United Nations Convention on the Law of the Sea (UNCLOS)

<p>contracts;</p> <p>(v) claims to money, or to other assets or any contractual performance having an economic value; For greater certainty, "claim to money" does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural or juridical person in the territory of a Party to a natural or juridical person in the territory of the other Party, or financing of such contract other than a loan covered by subparagraph (iii), or any related order, judgement, or arbitral award.</p> <p>(vii) intellectual property rights as defined in Chapter Y of this Agreement [Intellectual Property] and goodwill; Returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments.</p>	<p>property and movable property. Immovable property and movable property may be existing property or off-plan property.</p>	<p>The definition of "investment" with specific points as mentioned in this Para (p) should be included in Article of Definition in the Suggested Law implementing EVFTA commitments on Investment</p>
<p>(q) an 'investor' means a natural person or a juridical person of a Party that seeks to make⁹, is making or has already made an investment in the territory of</p>	<p>Law on Investment Article 3: Interpretation of terms 13. Investor means an organization or individual that makes business</p>	<p>Assessments: The definition of "investor" under Vietnamese legislations is incompatible with that under EVFTA at two following</p>

⁹ For greater certainty, the Parties understand that an investor that "seeks to make" an investment refers to an investor of any other Party that has taken active steps to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or license.

<p>the other Party.</p>	<p>investments. Investors include Vietnamese investors, foreign investors, and foreign-invested business organizations.</p> <p>14. Foreign investor means an individual holding a foreign nationality or an organization established under foreign laws and making business investment in Vietnam.</p> <p>15. Vietnamese investor means an individual holding Vietnamese nationality or a business organization whose members or shareholders are not foreign investors.</p> <p>16. Business organization means an organization established and run in accordance with Vietnam's laws. Business organizations include companies, cooperatives, cooperative associations, and other organizations that make business investments.</p> <p>17. Foreign-invested business organization means a business whose members or shareholders are foreign investors.</p>	<p>points:</p> <ul style="list-style-type: none"> - Vietnamese legislations have narrower scope than EVFTA as follows: Under Vietnamese legislations, "investor" is the entity that "makes business investment activities" (meaning that he/she implements certain activities as being an investor, for instance submitting investment registration documents on investor's own name). Meanwhile, under EVFTA, "investor" is not just the entity who "is making or has already made" but "seeks to make" an investment (according to footnote 9, "seek to make" means taking active steps to make an investment, such as "channelling resources or capital in order to set up a business, or applying for permits or license". In other words, an entity who is just in the process of raising capital is considered as an investor and has rights and obligations of an investor under EVFTA. - Vietnamese legislations have
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		<p>broader scope than EVFTA as follows: Investor is considered together with an investment under EVFTA's coverage, while under Vietnamese legislations, investor is not limited to this coverage.</p> <p>Recommendations: The definition of "investor" as mentioned in this Para (q) should be included in Article of Definition in the Suggested Law implementing EVFTA commitments on Investment</p>
(r) 'returns' means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and all other lawful income.	<p>Law on enterprises income tax</p> <p>Article 3. Taxable incomes</p> <p>1. Taxable incomes include income from goods and service production and business activities and other incomes specified in Clause 2 of this Article.</p> <p>2. Other incomes include incomes from the transfer of capital, the right to capital contribution; incomes from transfer of real estate, project of investment, the right to participate in project of investment, the transfer of the right to explore, extract, and process minerals; incomes from the right to use property and property ownership, including incomes from intellectual</p>	<p>Assessments: Vietnamese legislations are not entirely compatible with EVFTA about this Para: <ul style="list-style-type: none"> - Under Vietnamese legislations on investment, there is just a concept but not a definition of "return" - Under Vietnamese legislations on tax, there is a definition of "taxable income" listing many similar but not equivalent-to-EVFTA points (due to the difference in the purpose) <p>Recommendations: The definition of "returns" as mentioned in this Para (r) should be included in Article of Definition in the Suggested</p> </p>

	property right; incomes from transferring, leasing, and liquidating assets, including valuable papers; incomes from interest on deposit, capital loan, sale of foreign currency; revenues from written off bad debts that are repaid; revenues from debts of unidentified debtors; omitted incomes in previous years, and other incomes, including incomes from business outside Vietnam.	Law implementing EVFTA commitments on Investment
(s) With the exception of Chapter II, Section 2 on Investment Protection, government procurement is dealt with by Chapter on public procurement and nothing in this Title shall be construed to limit the obligations of the Parties under Chapter X on public procurement or to impose any additional obligation with respect to government procurement. For greater certainty, measures with respect to government procurement that are in compliance with Public Procurement Chapter shall not be considered a breach of the provisions in Section II on Investment Protection.	No regulations	<p>Assessments: This is to identify the coverage of commitments under EVFTA and not related to domestic legislations.</p> <p>Recommendations: The content provided in this Para (s) should be included in Article of Coverage or of Law Application in the Suggested Law implementing EVFTA commitments on Investment</p>
(t) Subsidies are dealt with by Chapter on competition and state aid. The	No regulations	<p>Assessments: This is to identify the coverage of</p>

<p>provisions of this Title, except for Article (Performance Requirements) and Chapter II, Section 2 on Investment Protection, do not apply to subsidies granted by the Parties¹⁰¹⁰. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, (i) in the absence of any the Party's specific commitment to the investor under law or contract to issue, renew, or maintain that subsidy or grant; or (ii) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy or grant shall not constitute a breach of Article (Performance Requirements) or a provision of Chapter II, Section 2 on Investment Protection.</p>		<p>commitments under EVFTA and not related to domestic legislations.</p> <p>Recommendations:</p> <p>The content provided in this Para (t) should be included in Article of Coverage or of Law Application in the Suggested Law implementing EVFTA commitments on Investment</p>
<p>CHAPTER II INVESTMENT SECTION 1 LIBERALISATION OF INVESTMENTS</p>		
<p>Article 1 Scope and definitions</p>		
<p>1. This Section applies to measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of an</p>	<p>Law on Investment Article 1. Scope This Law deals with business investments in Vietnam and outward</p>	<p>Assessments:</p> <p>Commitments under this Para of EVFTA are designed for a purpose of limiting the coverage which is applied</p>

¹⁰ The Parties understand that in the case of the EU, "subsidy" includes "state aid" as defined in the EU law and for Viet Nam, subsidy includes investment incentives, and investment assistance such as production site assistance, human resources training and competitiveness strengthening activities, such as assistance for technology, research and development, legal aids, market information and promotion.

investment by an investor of the other Party in the territory of the former Party.	<p>business investments.</p> <p>Article 2. Regulated entities</p> <p>This Law applies to investors, other organizations and individuals (hereinafter referred to as entities) involved in business investment.</p>	<p>particularly for this agreement, hence, they are not provided in Vietnamese legislations. However, regarding issues not provided under EVFTA, investments and investors under this agreement are also the subjects under Vietnamese legislations. Therefore, it is necessary to make clear this point to avoid the misunderstanding that investments and investors under EVFTA will not be the subjects under Vietnamese legislations.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - The content in this Article 1 of EVFTA, together with the definition of “investment” and “investors” in General Provisions of this Chapter should be included into the Article of Scope or Law Application in the Suggested Law implementing EVFTA commitments on Investment. <p>It is necessary to make clear in the Article of Law Application that investments and investors under EVFTA are subjected to provisions in the Suggested Law implementing EVFTA commitments on Investment and to Vietnamese law in case there's no specific provision in the Suggested Law.</p>
2. The provisions of this Section shall		Assessments:

<p>not apply to:</p> <ul style="list-style-type: none"> (a) audio-visual services; (b) mining, manufacturing and processing¹¹¹¹ of nuclear materials; (c) production of or trade in arms, munitions and war material; (d) national maritime cabotage¹²¹² and (e) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than: <p style="margin-left: 2em;">(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;</p> <p style="margin-left: 2em;">‘aircraft repair and maintenance services during which an aircraft is withdrawn from service’ mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from</p>		<p>Commitments under this Para of EVFTA are indeed the exceptions not covered under investment-related commitments in Section 2 of EVFTA (about Market access, National treatment, Most-favored nations and Performance requirements). Hence, they not provided under Vietnamese legislations.</p> <p>Recommendations:</p> <p>The content provided in this Para 2 of EVFTA should be included in Article of Scope in the sections of Market access, National treatment, Most-favored nations and Performance requirements principles in the Suggested Law implementing EVFTA commitments on Investment as exceptions.</p>
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¹¹ For greater certainty, processing of nuclear materials includes all the activities contained in UN ISIC Rev.3.1 code 2330.

¹² Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this chapter covers transportation of passengers or goods between a port or point located in Viet Nam or a Member State of the European Union and another port or point located in Viet Nam or that same Member State of the European Union, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in Viet Nam or Member State of the European Union.

<p>service and do not include so-called line maintenance.</p> <p>(ii) the selling and marketing of air transport services;</p> <p>‘selling and marketing of air transport services’ mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution.</p> <p>These activities do not include the pricing of air transport services nor the applicable conditions.</p> <p>(iii) computer reservation system (CRS) services;</p> <p>‘computer reservation system (CRS) services’ mean services provided by computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.</p> <p>(iv) groundhandling services;</p> <p>‘ground handling services’ mean the supply at an airport of the following services: airline</p>		
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<p>representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of an aircraft, aircraft servicing and cleaning; surface transport; flight operation, crew administration and flight planning. Ground handling services do not include security, aircraft repair and maintenance, or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems (v) airport operation services; ‘airport operation services’ mean the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services.</p>		
<p>Article 2 Market Access 1. With respect to market access through establishment and</p>	<p>Law on Investment Article 4. Application of the Law on Investment, relevant laws and</p>	<p>Assessments: 1. With respect to commitment in Para 1, Article 2</p>

<p>maintenance, each Party shall accord treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the schedule of specific commitments contained in Annexes [...] (lists of commitments on liberalisation of investments).</p> <p>2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its schedule of specific commitments contained in Annexes [...] (lists of commitments on liberalisation of investments) are defined as:</p> <ul style="list-style-type: none"> (a) limitations on the number of enterprises that may perform a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test; (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (c) limitations on the total number of 	<p>international agreements</p> <p>3. Where regulations of this Law and those of an international agreement to which the Socialist Republic of Vietnam is a signatory are inconsistent, the latter shall apply.</p> <p>Decree No. 118/2015/NĐ-CP Article 10. Implementation of regulations on investment conditions applied to foreign investors</p> <p>1. Investment conditions applied to foreign investors mentioned in Clause 6 Article 2 of this Decree include:</p> <ul style="list-style-type: none"> a) Ratio of the foreign investor's charter capital in a business organization; b) Investment method; c) Scope of investment; d) Vietnamese partners participating in the investment; <p>Other conditions specified in Laws, Ordinances, Decree, and international agreements on investment.</p> <p>2. Rules for applying investment conditions to foreign investors</p> <ul style="list-style-type: none"> a) A foreign investor that makes investment in various business lines must fulfill all conditions applied to these business lines; b) A foreign investor that is regulated by 	<p>- <i>In case that there are market access provisions contained in the Schedule of Commitments:</i></p> <p>According to Para 1, if commitments are available, the market access through establishment and maintenance follows the terms, limitations and conditions agreed. Vietnamese legislations are compatible with this point under EVFTA. In particular, as to Article 10 Decree 118/2015/NĐ-CP, in cases that there are market access commitments (announced on the national information gate on foreign investment), they will be applied for foreign investors.</p> <p>- <i>In other cases (no market access commitments)</i></p> <p>According to Para 1, at all cases, Vietnam accords treatment for investors no less favourable than that provided for under the terms, limitations and conditions agreed. However, due to the fact that there are no market access commitments for these "other" cases, Vietnam is permitted to decide market access on its own choice. Thus, Vietnamese legislations are compatible with EVFTA. In fact, , as to Article 10 Decree 118/2015/NĐ-CP, in these cases,</p>
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<p>operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;</p> <p>(d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;</p> <p>(e) measures which restrict or require specific types of legal entity or joint ventures through which an investor of the other Party may perform an economic activity.</p> <p>(f) limitations on the total number of natural persons that may be employed in a particular sector or that an investor may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test.</p>	<p>international agreements on investment that provide for different investment conditions may apply the investment conditions provided for in one of such international agreements and must fulfill the foreign investor's rights and obligations under the selected international agreement.</p> <p>c) With regard to sectors and sub-sectors excluded from commitments or not specified in Vietnam's WTO Schedule of commitments and other international agreements on investment, if investment conditions applied to foreign investors are already provided for in Vietnam's law, such Vietnam's law shall apply;</p> <p>d) Where a foreign investor in a territory that is not a WTO member makes investment in Vietnam, such investor shall apply the same investment conditions as investors in WTO members, unless otherwise prescribed by law and international agreements between Vietnam and such WTO members;</p> <p>dd) With regard to sectors and sub-sectors excluded from commitments or not specified in Vietnam's WTO</p>	<p>specific conditions provided in the specialized legislations (if available) or approved by the Ministry of Investment and Planning or the specialized ministry will be applied for foreign investors.</p> <p>2. With respect to commitments in Para 2 Article 2</p> <p>Commitments in this Para are only applied to the services sector included in the Schedule of Commitments with the two following points:</p> <ul style="list-style-type: none"> - In case that there are investment conditions provided in the commitments, these conditions need to be followed: Vietnamese legislations are compatible (as mentioned in the above Para 1) - Apart from these conditions provided in the commitments, Vietnam is not allowed to apply investment measures listed in Para 2: This point is to repeat the commitments provided in the Article XVI under GATS of WTO, with which Vietnamese legislations have been amended to comply. Therefore, Vietnamese legislations are compatible with commitments in this Para of EVFTA.
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	<p>Schedule of commitments and other international agreements on investment, if investment conditions applied to foreign investors are also not provided for in Vietnam's law, the investment registration authority shall consult with the Ministry of Planning and Investment and relevant Ministries;</p> <p>e) Where a foreign investor permitted to make investment in the service sectors and sub-sectors specified in Point dd of this Clause and they have been posted on National Foreign Investment Web Portal specified in Article 13 of this Decree, the investment registration authority shall consider deciding foreign investors' investment in the same business lines without consulting with Ministries.</p> <p>Article 13. Publishing of investment conditions applied to foreign investors</p> <p>1. The Ministry of Planning and Investment shall take charge and cooperate with other Ministries and ministerial agencies in reviewing and aggregating investment conditions applied to foreign investors according to Laws, Ordinances, Decrees, and</p>	<p>However, under EVFTA, Vietnam has commitments to EU in some new services sectors that are not committed in WTO (services provided by nurses, interdisciplinary R&D services, services relating to ships, building and cleaning services, packaging services, duplicating services, convention services...). For these cases, Vietnam still has the right to issue measures listed in the Para 2 for investors from all WTO, but not EU country members, leading to the incompatibility of general Vietnamese legislations to EVFTA.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - No recommendations for amending Vietnamese legislations on investment (both general legislations and specialized ones on committed services sectors) - As to commitments in Para 1: the operation of the national information gate on foreign investment should be specially noticed to make sure that information about investment conditions for EU investors is enough (for them to follow) and accurate (the information should be closely tied to
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	<p>international agreements on investors, and sectors and sub-sectors specified in Point e Clause 2 Article 10 of Decree in order to publish them on National Foreign Investment Web Portal.</p> <p>2. Investment conditions applied to foreign investors to be published as set out in Clause 1 of this Article include:</p> <ul style="list-style-type: none"> a) Business lines subject to conditions applied to foreign investors; b) Basis for application for investment registration to foreign investors; c) Contents of investment conditions applied to foreign investors as set out in Clause 1 Article 10 of this Decree; d) The sectors and sub-sectors specified in Point e Clause 2 Article 10 of this Decree. <p>3. The Investment conditions specified in Clause 2 of this Article shall be updated in the following cases:</p> <ul style="list-style-type: none"> a) Investment conditions applied to foreign investors are changed according to a Law, Ordinance, Decree, or international agreement on investment; b) The sectors and sub-sectors specified in Point e Clause 2 Article 10 of this Decree shall be adjusted according to the review result specified in Clause 1 of 	<p>Vietnam's commitments in Annexes about market access under EVFTA)</p> <ul style="list-style-type: none"> - As to commitment in Para 2: The commitments in Para 2 should be included in the Suggested Law implementing EVFTA commitments on Investment (the Annexes on Vietnam's services investment market access under EVFTA should be included as the Annexes of this Suggested Law). The Suggested Law will prevail over all concerned specific legislations and regulations in committed services sectors under EVFTA and it is only applied for EU investors or investments. <p><u>Further explanation</u></p> <p>Using the Suggested Law implementing EVFTA commitments on Investment as an Omnibus Law (to review and revise many legislations and regulations simultaneously) is a faster, more effective and feasible way (to compatibility) than the sequentially reviewing and amending specific legislations in services sectors for which Vietnam has just market access commitments for EU, but not for WTO members. Moreover, in principle,</p>
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	<p>this Article.</p> <p>4. The updates mentioned in Clause 3 of this Article shall be published on National Foreign Investment Web Portal following the procedures specified in Clause 3 Article 12 of this Decree.</p> <p>Legislations on Specific Services Sectors almost of which have specific conditions on foreign investment</p>	<p>Vietnam has no obligations of amending general legislations (also applied for all other partners), but just specific legislations applied for EU partners. Therefore, from the perspective of law-making techniques, if revising concerned specialized legislations to comply with EVFTA commitments, VN would offer unilaterally the same treatment for all other investors from other countries as for the ones from EU. From these above reasons, the Suggested Law implementing EVFTA commitments on Investment should be on a Law-level document in order to adjust simultaneously different regulations in specialized legislations for the specific subjects of EU investors.</p>	
Article 3 National Treatment	<p>1. In the sectors inscribed in the schedule of specific commitments in Annexes [...] (lists of commitments on liberalisation of investments of both Parties) and subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party and to their investments, with respect to establishment in its</p>	<p>Law on Investment</p> <p>Article 4. Application of the Law on Investment, relevant laws and international agreements</p> <p>3. Where regulations of this Law and those of an international agreement to which the Socialist Republic of Vietnam is a signatory are inconsistent, the latter shall apply.</p>	<p>1. With respect to commitments in Para 1 – National Treatment for the establishment of investment</p> <p>Assessments:</p> <p>Commitments in this Para are only applied to the services sector included in the Schedule of Commitments with the two following points:</p>

<p>territory, treatment no less favourable than that accorded, in like situations, to its own investors and to their investments.</p>	<p>Article 22. Investment in establishment of a business organization</p>	<ul style="list-style-type: none"> - Firstly, in case that there are investment conditions provided in the commitments, these conditions need to be followed: Vietnamese legislations are compatible with this requirement (as to Article 10 Decree 118/2015/NĐ-CP about the principle of applying investment conditions to foreign investors if commitments are available);
<p><i>Annex8d</i></p> <p><i>Investment procedures</i></p> <p><i>7. Unbound for any measure with respect to investment procedures applied to foreign investor or foreign invested economic entities, such as procedures relating to investment registration certificate of investment projects, and foreign exchange management procedures.</i></p>	<p>1. Investors may establish business organizations in accordance with law. Before establishing a business organization, the foreign investor must have an investment project and apply for a Certificate of investment registration following the procedures in Article 37 of this Law, and satisfy the following conditions:</p> <ul style="list-style-type: none"> a) The investor's charter capital satisfies the requirements in Clause 3 of this Article; b) The form of investment, operating scope, Vietnamese partners, and other aspects are conformable with the international agreements to which the Socialist Republic of Vietnam is a signatory. 	<ul style="list-style-type: none"> - Secondly, apart from investment conditions provided in the commitments, Vietnam shall accord to EU's investors and to their investments, with respect to establishment in Vietnam's territory, treatment no less favourable than that accorded, in like situations, to Vietnamese investors and to their investments.
<p>2. A Party shall accord, to investors of the other Party referred to in Article 13.1. (i) [(Section 2- Investment Protection, Art. Scope] and to their investments referred to in Article 13.1 (ii) [(Section 2- Investment Protection, Art. Scope], with respect to the operation of the investments, treatment no less favourable than that accorded in like situations to its own investors and to their investments.</p>	<p>Article 23. Investments made by foreign-invested business organizations</p>	<ul style="list-style-type: none"> + Concerning establishment procedures: under Vietnamese legislations, the establishment of the investment follows the procedures provided in Investment Law, Articles 22, 23, 25-28 and 37, which leads to a discrimination between domestic and foreign investors.
<p><i>Article 13.1</i></p>	<p>1. When establishing business organizations, contributing capital, buying shares or capital contributions of business organizations; making investments under business cooperation</p>	<ul style="list-style-type: none"> However, due to Vietnam's reservation for the Schedule of commitments in Annex 8d for all business sectors regarding investment procedures

<p>(i) investments by investors of a Party in existence in the territory the other Party as of the date of entry into force of this Agreement or made or acquired thereafter, made in accordance with applicable law¹³.</p> <p>(ii) investors of a Party that have already made an investment covered under (i) in the territory of the other Party, with respect to the operation of such investment.</p> <p>3. Notwithstanding paragraph 2, and subject to the Annex X (Annex on National Treatment) in the case of Viet Nam, a Party may adopt or maintain any measure with respect to the operation, management, conduct, maintenance, use, enjoyment and sale or other disposal of an investment referred to Article 13.1. (ii) [(Section 2- Investment Protection, Art. Scope] that is not inconsistent with the commitments inscribed in Annexes [...] (lists of commitments on liberalisation of investments of both Parties), where such measure is:</p>	<p>contracts in one of the following cases, the foreign investor must satisfy the conditions and follow investment procedures applied to foreign investors:</p> <ul style="list-style-type: none"> a) 51% of charter capital or more is held by foreign investors, or the majority of the general partners are foreigners if the business organization is a partnership; b) 51% of charter capital or more is held by the business organizations mentioned in Point a of this Clause; c) 51% of charter capital or more is held by foreign investors and the business organizations mentioned in Point a of this Clause. <p>2. Foreign-invested business organizations in other cases than those mentioned in Points a, b, and c of this Clause shall satisfy conditions and follow investment procedures applied to Vietnamese investors when establishing business organization, when making investment by contributing capital, buying shares, buying capital contribution of business organizations, when making investments under business cooperation contracts. Article</p>	<p>(meaning that Vietnam has no NT commitments about investment registration procedures), Vietnamese legislations are compatible with EVFTA. + Concerning other investment establishment - related issues (such as legal forms of investment, other conditions relating to human resources, etc): these are conditions provided in specialized legislations which are at present in compliance with WTO commitments. The broader coverage of EVFTA commitments than that of WTO (about the sectors and conditions) could result in the incompatibility of Vietnamese legislations to EVFTA (for example, there are sectors which are committed under EVFTA, but not under WTO).</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - No recommendations for general and specialized legislations applied for subjects from all countries; - An article on NT principle for investment procedures should be included in the Suggested Law implementing EVFTA commitments on
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¹³ For greater certainty, in the case that the investment is made in the territory of Viet Nam, “applicable law” refers to the laws and regulations of Viet Nam

<p>(a) a measure that is adopted on or before the entry into force of this Agreement;</p> <p>(b) a measure referred to in subparagraph (a) that is being continued, replaced or amended after the entry into force of this Agreement, provided the measure is no less consistent with paragraph 2 after being continued, replaced or amended than the measure as it existed prior to its continuation, replacement or amendment; or</p> <p>(c) a measure not falling within subparagraph (a) or (b), provided it is not applied in respect of, or in a way that causes loss or damage¹⁴ to, investments made in the territory of the Party before the entry into force of such measure.</p>	<p>36. Cases in which the Certificate of investment registration is required</p> <p>1. The Certificate of investment registration is required in the following cases:</p> <ul style="list-style-type: none"> a) Investment projects of foreign investors; b) Investment projects of the business organizations mentioned in Clause 1 Article 23 of this Article. <p>2. Cases in which the Certificate of investment registration is not required:</p> <ul style="list-style-type: none"> a) Investment projects of Vietnamese investors; b) Investment projects of the business organizations mentioned in Clause 2 Article 23 of this Article; c) Investment is made by contributing capital, buying shares, or buying capital contributions of business organizations. 	<p>Investment with two main points:</p> <ul style="list-style-type: none"> + In case of having commitments on investment establishment conditions and procedures, those commitments will be applied; + In case of having no commitments as mentioned above, (i) about investment procedures, the procedures for foreign investors provided under Vietnam's Investment Law will be applied; (ii) about other conditions relating to investment establishment, they will follow same conditions with domestic investors. <p>2. With respect to commitments on National Treatments in the operation of investment in general sectors</p> <p>Assessments:</p> <p>According to the commitments in this Para, Vietnam has the obligation of according to EU's investors and to their investments, with respect to operation</p>

¹⁴ For the purposes of sub-paragraph c), it is understood that factors like the fact that a Party has provided for a reasonable phase in period for the implementation of a measure or has made any other attempt to address the effects of the measure on investments made before its entry into force, shall be taken into account in determining whether the measure causes loss or damage to investments made before its entry into force.

<p>below, Viet Nam may adopt or maintain any measure with respect to the operation, management, conduct, maintenance, use, enjoyment and sale or other disposal of an investment referred to Article 13.1. (ii) [(Section 2-Investment Protection, Art. Scope)] that is not in conformity with paragraph 2, provided that such measure is not inconsistent with the commitments inscribed in Annexes [...] (lists of commitments on liberalisation of investments of both Parties). Viet Nam may not, under any measure adopted after the date of entry into force of this Agreement and covered by this Annex, require an investor of the EU, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.</p> <ul style="list-style-type: none"> 1. Newspapers and news-gathering agencies, printing, publishing, radio and television broadcasting, in any form 2. Production and distribution of cultural products, including video records 3. Production, distribution, and projection of television programmes and cinematographic works 		<p>in Vietnam's territory, treatment no less favourable than that accorded, in like situations, to Vietnamese investors and to their investments.</p> <p>- This is the principle provided at Article XVII Under GATS of WTO, with which Vietnamese legislations have been in compliance. However, while GATS requires the application of NT only in committed sectors, EVFTA does for all sectors except for the cases mentioned at this Para 3 and NT Annex under EVFTA's Chapter 8.</p> <p>Hence, there is a situation that Vietnamese legislations are not compatible with this commitment of EVFTA. It could be the case of National Treatment on the operation of investment between domestic and foreign investors in the sectors which are committed neither under WTO, nor in the Para 3, Article 3 and NT Annex under EVFTA's Chapter 8.</p> <p>Nevertheless, according to Para 3 Article 3 under EVFTA, this NT obligation doesn't need to follow standstill principle. In other words, from now until the date of official entry into force of this Agreement, Viet Nam still may</p>
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<p>4. Investigation and security</p> <p>5. Geodesy and cartography</p> <p>6. Secondary and primary education services</p> <p>7. Oil and gas, Mineral and natural resources exploration, prospecting and exploitation</p> <p>8. Hydroelectricity and nuclear power; power transmission and/or distribution</p> <p>9. Cabotage transport services</p> <p>10. Fishery and aquaculture</p> <p>11. Forestry and hunting</p> <p>12. Lottery, betting and gambling</p> <p>13. Judicial administration services, including but not limited to services relating to nationality</p> <p>14. Civil enforcement</p> <p>15. Production of military materials or equipment</p> <p>16. River ports, sea ports and airports operation and management</p> <p>17. Subsidies</p> <p>Note for legal scrubbing: List to be reviewed, with the presence of investment negotiators, in order to avoid overlaps with exclusions in the text.</p>		<p>retain or take new discrimination measures to EU investors' operations and these new measures could be retained even after that date provided that the treatment is no less favorable or it does not lead to damages for investors. With this reservation, Vietnamese legislations are still considered to be compatible with EVFTA.</p> <p>Recommendations</p> <p>No recommendations for amending any legislations to implement this Para 2, Article 3.</p> <p>3. With respect to commitments on National treatments in the management of investment in committed or reserved sectors under EVFTA</p> <p>Assessments:</p> <ul style="list-style-type: none"> - About NT commitments relating to investment operation in committed sectors under EVFTA, based on the current law application principle, Vietnamese legislations are compatible with EVFTA - About reserving the rights to apply
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		<p>discriminatory measures in the sectors mentioned in NT Annex of Chapter 8: this is right of Vietnam (not obligation), hence, Vietnamese legislations are considered to be compatible with EVFTA</p> <ul style="list-style-type: none"> - About the obligation of not requiring investors to resell or dispose their investment in the sectors listed in NT Annex of Chapter 8: there are no equivalent provisions under Vietnamese legislations, hence, Vietnamese legislations are incompatible with EVFTA <p>Recommendations</p> <ul style="list-style-type: none"> - An article on the restraint on Vietnam from requiring investors to resell or dispose their investment in the sectors listed in NT Annex of Chapter 8 should be included in that Suggested Law implementing EVFTA commitments on Investment (under the form that "the Government commits not to force investors to...")
Article 4 Most Favoured Nation Treatment	No regulations	<p>Assessments:</p> <p>This Article 4 basically deals with the</p>

<p>1. Each Party shall accord to investors of the other Party and to their investments as regards the establishment of an enterprise in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors and their investments under free trade agreement the former Party is negotiating on [17 July 2015].</p> <p>2. Each Party shall accord to investors of the other Party and to their investments as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors and investments of any non-Party</p> <p>3. Paragraph 1 and 2 shall not apply to the following sectors: - Communication services, except for Postal services (CPC...) and Telecommunication services (CPC..); - Cultural, Sports and Recreational services; -Fishery and aquaculture; -Forestry and hunting; - Mining, including oil and gas.</p> <p>4. Paragraph 2 shall not be construed to oblige a Party to extend to the investors of the other Party or their investments the benefit of any</p>		<p>relations between investment-related commitments under EVFTA and those that Vietnam makes for other partners as follows:</p> <ul style="list-style-type: none"> - About investment treatment related to the establishment of an enterprise, branch or subsidiary committed by Vietnam for TPP, VN-EFTA and RCEP country members (FTAs on negotiations on 17th July 2015), Vietnam also accords to EU's investors/investments similar treatment, except for commitments relating to Investors-State Dispute Settlement - Investment treatment that Vietnam accords to EU's investors/investments regarding their operation is not less favorable than the treatment that it accords to any partners, except for the international agreements that entered into force before the entry into force of EVFTA - Exceptions for both principles: (i) discrimination in the sectors listed in Para 3; (ii) discrimination under ASEAN, EU agreements; (iii) double taxation treaties; (iv) agreements relating to the acknowledge of certificate, license, etc in services sectors
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<p>treatment granted pursuant to any bilateral, regional and/or international agreements that entered into force before the entry into force of this Agreement</p> <p>5. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to the investors of the other Party or their investments the benefit of:</p> <ul style="list-style-type: none"> (a) any treatment granted as part of a process of economic integration, which includes commitments to abolish substantially all barriers to investment among the parties to such a process, together with the approximation of legislation of the parties on a broad range of matters within the purview of this Agreement¹⁵. (b) any treatment resulting from any international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation. (c) any treatment resulting from measures providing for the recognition of qualifications, licences or prudential 		<p>Recommendations:</p> <ul style="list-style-type: none"> - No recommendations for amending general applicable legislations (because this is not an issue covered by domestic legislations) - An article of MFN principle should be included (with the clarification of 3 relevant agreements) and relevant exceptions should be listed in the Suggested Law implementing EVFTA commitments on Investment - Commitments on the establishment of an enterprise, branch or subsidiary of foreign investors under TPP should be reviewed for the purpose of including these commitments in the Suggested Law implementing EVFTA commitments on Investment
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¹⁵ Within this paragraph and for greater certainty, the ASEAN Economic Community and the European Union are falling within this concept of “a process of economic integration”.

<p>measures in accordance with Article VII of the General Agreement on Trade in Services or its Annex on Financial Services</p> <p>6. "For greater certainty, the 'treatment' referred to in paragraphs 1 and 2 does not include international dispute resolution procedures or mechanism, such as those included in Section 3, provided for in any other bilateral, regional and/or international agreements. Substantive obligations in such agreements do not in themselves constitute 'treatment' and thus cannot be taken into account when assessing a breach of this Article. Measures by a Party pursuant to those substantive obligations shall be considered treatment. This Article shall be interpreted in accordance with Annex XX (MFN)</p> <p>Annex [] Most Favoured Nation Treatment</p> <p>Article ...(MFN) shall be interpreted in accordance with Article ... (Scope and Definitions) and the principle of ejusdem generis.</p>		
Article 5 Schedule of specific	Law on Investment	With respect to market access in

<p>commitments</p> <p>The sectors liberalised by each of the Parties pursuant to this Section and the terms, limitations, conditions and qualifications referred to in Articles 3 and 4 are set out in the schedules of commitments included in Annexes [lists of commitments on liberalisation of investments].</p>	<p>Article 4. Application of the Law on Investment, relevant laws and international agreements</p> <p>3. Where regulations of this Law and those of an international agreement to which the Socialist Republic of Vietnam is a signatory are inconsistent, the latter shall apply.</p> <p>Decree No. 118/2015/NĐ-CP</p> <p>Article 10. Implementation of regulations on investment conditions applied to foreign investors</p> <p>Article 13.</p> <p>1. The Ministry of Planning and Investment shall take charge and cooperate with other Ministries and ministerial agencies in reviewing and aggregating investment conditions applied to foreign investors according to Laws, Ordinances, Decrees, and international agreements on investors, and sectors and sub-sectors specified in Point e Clause 2 Article 10 of Decree in order to publish them on National Foreign Investment Web Portal.</p> <p>2. Investment conditions applied to foreign investors to be published as set out in Clause 1 of this Article include:</p> <p>a) Business lines subject to conditions</p>	<p>committed services sectors, the law application principle guarantees the compatibility of Vietnamese laws with EVFTA commitments as follows:</p> <ul style="list-style-type: none"> - In case that there are market access commitments contained in relevant Annexes of EVFTA, they will be applied (These commitments are notified on the national information gate (this information gate is inferred to announce regulations similar to these commitments) on foreign investment) - In case that there are no market access commitments under EVFTA, commitments under WTO (also announced on the above gate) will be applied. <p>Recommendations:</p> <p>Similar to the recommendations above mentioned for Article 2, Chapter 8 under EVFTA</p>
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	<p>applied to foreign investors;</p> <p>b) Basis for application for investment registration to foreign investors;</p> <p>c) Contents of investment conditions applied to foreign investors as set out in Clause 1 Article 10 of this Decree;</p> <p>d) The sectors and sub-sectors specified in Point e Clause 2 Article 10 of this Decree.</p> <p>3. The Investment conditions specified in Clause 2 of this Article shall be updated in the following cases:</p> <p>a) Investment conditions applied to foreign investors are changed according to a Law, Ordinance, Decree, or international agreement on investment;</p> <p>b) The sectors and sub-sectors specified in Point e Clause 2 Article 10 of this Decree shall be adjusted according to the review result specified in Clause 1 of this Article.</p> <p>4. The updates mentioned in Clause 3 of this Article shall be published on National Foreign Investment Web Portal following the procedures specified in Clause 3 Article 12 of this Decree.</p> <p>Legislations on Specific Services Sectors almost of which have specific conditions on foreign investment</p>	
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<p>Article 6 Performance Requirements</p> <p>1. In the sectors inscribed in its schedule of specific commitments in Annexes [lists of commitments on liberalisation of investments of both Parties] and subject to any conditions and qualifications set out therein, neither Party may impose, or enforce any of the following requirements, mandatory or enforceable under domestic law or under administrative rulings, in connection with the establishment or operation of any investment of an investor of a Party or of a non-Party in its territory:</p> <ul style="list-style-type: none"> (a) to export a given level or percentage of goods or services; (b) to achieve a given level or percentage of domestic content; (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory; (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; 	<p>Law on Investment</p> <p>Article 10. Assurance of business investment</p> <p>1. Investors are not required by the State to satisfy the following requirements:</p> <ul style="list-style-type: none"> a) Give priority to buying, using domestic goods/services; or only buy, use goods/services provided by Vietnamese producers/service providers; b) Achieve a certain export target; restrict the quantity, value, types of goods/services that are exported or produced/provided in Vietnam; c) Import a quantity/value of goods that is equivalent to the quantity/value of goods exported; or balance foreign currencies earned from export to meet import demands; d) Reach a certain rate of import substitution; dd) Reach a certain level/value of domestic research and development; e) Provide goods/service at a particular location in Vietnam or overseas; g) Have the headquarter situated at a location requested by a competent authority. 	<p>Assessments:</p> <p>Vietnamese laws are compatible with EVFTA at this Article 6:</p> <ul style="list-style-type: none"> - About the obligation of not setting up requirements as listed for EU investors: Vietnamese laws have equivalent regulations generally applied for all sectors and not limited to the sectors under EVFTA commitments - About the obligation of not setting up the conditions as listed for the enjoyment of favorable investment treatment: under Vietnamese laws, the criteria for the enjoyment of favorable investment treatment are based on location, business operation sector, capital size, utilized labor size and they do not belong to the prohibitions under EVFTA. Moreover, these criteria are generally applied and not limited to the sectors under EVFTA commitments - About cases provided at Paras 3-6 of this Article: these are about rights, not obligations for Vietnam. In reality, Vietnam is also taking advantages of several rights (for instance, the requirements about origin to enjoy favorable customs treatment, conditions to enter State trade and investment
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<p>(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;</p> <p>(f) to transfer technology, a production process or other proprietary knowledge to a natural person or enterprises in its territory; or</p> <p>(g) to supply exclusively from the territory of the Party a good produced or a service provided by the investment to a specific regional or world market.</p> <p>2. In the sectors inscribed in its schedule of specific commitments in Annexes [lists of commitments on liberalisation of investments of both Parties] and subject to any conditions and qualifications set out therein, neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any of the following requirements:</p> <p>(a) to achieve a given level or percentage of domestic content;</p>	<p>Article 15. Forms and beneficiaries of investment incentives</p> <p>2. Beneficiaries of investment incentives:</p> <ul style="list-style-type: none"> a) Projects of investment in the business lines given investment incentives specified in Clause 1 Article 16 of this Article; b) Investment projects in the administrative divisions given investment incentives specified in Clause 2 Article 16 of this Article; c) Any project in which the capital investment is at least VND 6,000 billion, or at least VND 6,000 billion is disbursed within 03 years from the day on which the Certificate of investment registration or decision on investment policies is issued; d) Any investment project in a rural area that employ at least 500 workers; dd) High-tech companies, science and technology companies, and science and technology organizations. <p>3. Investment incentives shall be given to new investment projects and expansion projects. The level of each type of incentives shall be specified by regulations of law on taxation and land.</p>	<p>promotion program, etc)</p> <p>Recommendations:</p> <p>No recommendations for any amendments of legislations (both general legislations and the Suggested Law implementing EVFTA commitments on Investment)</p>
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<p>(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;</p> <p>(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;</p> <p>(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.</p> <p>3. The provisions of paragraph 1 shall not be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage in connection with any investment in its territory on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.</p> <p>The provisions of paragraph 1 (f) shall not be construed to prevent the application of a requirement imposed</p>	<p>4. Regulations in Points b, c, and d Clause 2 of this Article do not apply to mineral extraction projects; projects to manufacture/sale of goods/services subject to special excise tax according to the Law on special excise tax, except for car manufacturing.</p> <p>Article 16. Business lines and administrative divisions given investment incentives</p> <p>1. Business lines given investment incentives:</p> <ul style="list-style-type: none"> a) High-tech activities, high-tech ancillary products; research and development; b) Production of new materials, new energy, clean energy, renewable energy; productions of products with at least 30% value added; energy-saving products; c) Production of key electronic, mechanical products, agricultural machinery, cars, car parts; shipbuilding; d) Production of ancillary products serving textile and garment industry, leather and footwear industry, and the products in Point c of this Clause; dd) Production of IT products, software products, digital contents; 	
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<p>or a commitment or undertaking enforced by a court, administrative tribunal or competition authority, in order to remedy an alleged violation of competition laws.</p> <p>3. The provisions of paragraph 1 subparagraphs (a), (b) and (c) and 2 (a) and (b), do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.</p> <p>4. For greater certainty, subparagraphs 2(a) and 2 (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.</p> <p>5. For greater certainty, paragraph 1 does not apply to any requirement other than the requirements set out in that paragraph.</p> <p>6. The provisions of this article shall not apply to measures adopted or maintained by a party in accordance with Art. III. 8 (b)) of the GATT"</p>	<p>e) Cultivation, processing of agriculture products, forestry products, aquaculture products; afforestation and forest protection; salt production; fishing and ancillary fishing services; production of plant varieties, animal breeds, and biotechnology products;</p> <p>g) Collection, treatment, recycling of waste;</p> <p>h) Investment in development, operation, management of infrastructural works; development of public passenger transportation in urban areas;</p> <p>i) Preschool education, compulsory education, vocational education;</p> <p>k) Medical examination and treatment; production of medicines, medicine ingredients, essential medicines, medicines for prevention and treatment of sexually transmitted diseases, vaccines, biologicals, herbal medicines, orient medicines; scientific research into preparation technology and/or biotechnology serving creation of new medicines;</p> <p>l) Investment in sport facilities for the disabled or professional athletes; protection and development of cultural</p>	
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	<p>heritage;</p> <p>m) Investment in geriatric centers, mental health centers, treatment for agent orange patients; care centers for the elderly, the disabled, orphans, street children;</p> <p>n) People's credit funds, microfinance institutions</p> <p>2. Administrative divisions given investment incentives:</p> <p>a) Administrative divisions in disadvantaged area or extremely disadvantaged areas;</p> <p>b) Industrial parks, export-processing zones, hi-tech zones, economic zones.</p>	
SECTION 2 INVESTMENT PROTECTION		
Article 13 Scope 1. The provisions in this Section shall apply to: (i) investments by investors of a Party in existence in the territory the other Party as of the date of entry into force of this Agreement or made or acquired thereafter, made in accordance with applicable law ¹⁶ .	No regulations	Assessments: This is the commitment relating to the coverage of EVFTA and it does not belong to domestic legislations Recommendations: No recommendations for amending general legislations

¹⁶ For greater certainty, in the case that the investment is made in the territory of Viet Nam, “applicable law” refers to the laws and regulations of Viet Nam

(ii) investors of a Party that have already made an investment covered under (i) in the territory of the other Party, with respect to the operation of such investment.		
<p>Article 13bis</p> <p>Investment and regulatory measures/objectives</p> <p>1. The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity</p> <p>2. For greater certainty, the provisions of this section shall not be interpreted as a commitment from a Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits.</p> <p>3. For greater certainty, nothing in this Section shall be construed as preventing</p>	<p>Law on Investment</p> <p>Article 6. Banned business lines</p> <p>1. The investments in the activities below are banned:</p> <ul style="list-style-type: none"> a) Trade in the narcotic substances specified in Appendix I hereof; n) Trade in the chemicals and minerals specified in Appendix I of this Law; c) Trade in specimens of wild flora and fauna specified in Appendix 1 of Convention on International Trade in Endangered Species of Wild Fauna and Flora; specimens of rare and/or endangered species of wild fauna and flora in Group I of Appendix 3 hereof; d) Prostitution; dd) Human trafficking; trade in human tissues and body parts; e) Business pertaining to human cloning. <p>2. The Government's regulations shall</p>	<p>Assessments:</p> <p>Commitments in Article 13bis regard rights, not compulsory obligations of Vietnam under EVFTA.</p> <p>In reality, there are some provisions under Vietnamese legislations about the use of several rights in investment control and management (Para 1). The rights provided in Para 2 and 3 play an importance role especially to the protection of Vietnam's benefits from the files/sues of EU investors under Investor-State Dispute Settlement (ISDS) regarding the change in domestic legislations affecting the investors' benefits. Therefore, during the process of EVFTA implementation, these rights need to be effectively applied.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - No recommendations for any amendments of legislations

<p>a Party from discontinuing the granting of a subsidy¹⁷ and/or requesting its reimbursement, or as requiring that Party to compensate the investor therefor, where such action has been ordered by one of its competent authorities listed in Annex x.</p> <p>Annex [] Annex on competent authorities mentioned in article 13bis (Investment and Regulatory Measures/Objectives) paragraph 4</p> <p>In the case of the EU, the competent authorities entitled to order the actions mentioned in article 13 bis paragraph 3 are the European Commission or a court or tribunal of a Member State when applying EU law on state aid. In the case of Viet Nam, the competent authorities entitled to order the actions mentioned in article 13 bis paragraph 3 are Government of Viet Nam or the Prime Minister of Viet Nam or a competent court</p>	<p>apply to production and use of products mentioned in Points a, b, and c Clause 1 of this Article during analysis, testing, scientific research, medical research, pharmaceutical production, criminal investigation, national defense and security protection</p> <p>Article 7. Conditional business lines</p> <p>1. Conditional business lines are the business lines in which the investment must satisfy certain conditions for reasons of national defense and security, social order and security, social ethics, or public health.</p>	<ul style="list-style-type: none"> - Rights in Article 13bis should be noticed to apply as necessary
<p>Article 14 Treatment of Investment</p> <p>1. Each Party shall accord fair and</p>	<p>No direct regulations Law on Investment</p>	<p>Assessments:</p> <p>1. About commitments on fair and</p>

¹⁷In the case of the EU, "subsidy" includes "state aid" as defined in the EU law. For Viet Nam, subsidy includes investment incentives, and investment assistance such as production site assistance, human resources training and competitiveness strengthening activities, such as assistance for technology, research and development, legal aids, market information and promotion.

<p>equitable treatment and full protection and security to investments and investors of the other Party in its territory in accordance with paragraphs 2 to 7.</p> <p>2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 where a measure or series of measures constitutes:</p> <ul style="list-style-type: none"> a. Denial of justice in criminal, civil or administrative proceedings; or b. Fundamental breach of due process in judicial and administrative proceedings; c. Manifest arbitrariness; or d. Targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or e. abusive treatment such as coercion, abuse of power or similar bad faith conduct. or f. A breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of this Article. <p>3. Treatment not listed in paragraph 2 can also constitute a breach of fair and equitable treatment where the Parties have so agreed in accordance with the</p>	<p>Article 5. Policies on business investment</p> <ol style="list-style-type: none"> 1. Investors are entitled to make investments in the business lines that are not banned in this Law. 2. Investors may decide their business investments on their own in accordance with this law and relevant laws; may access and make use of loan capital, assistance funds, land, and other resources as prescribed by law. 3. The ownership of assets, capital, income, another the lawful rights and interests of investors are recognized and protected by the State. 4. The State shall treat investors equitably; introduce policies to encourage and enable investors to make business investment and to ensure sustainable development of economic sectors. 5. International agreements on business investment to which Socialist Republic of Vietnam is a signatory are upheld by the State. <p>Law on Civil Procedure 2004 (only have effect before 01/7/2016)</p> <p>Article 2. Effect of the Civil Procedure Code</p>	<p>equitable treatment (FET) and full protection and security</p> <p>These commitments under FTAs usually cover a very broad and general scope, hence, in reality, many investors have tried to explain those regulations in a way that is beneficial for them but causes damages to host countries. However, FET commitments in this Article 14 under EVFTA are clearly specified, reducing the above considerable threats for Vietnam.</p> <p>From legal perspectives, with the limitations as mentioned in Article 14, Vietnamese legislations are basically compatible with EVFTA in the Paras 2-4, 6 of Article 14 via:</p> <ul style="list-style-type: none"> - the principles to guarantee the rights to access to justice and protect benefits through criminal, civil or administrative proceedings; - the principles to guarantee the rights to proceed or obtain fair justice in relevant procedures. <p>From practical perspectives, it is noticed that commitments in Article 14 regard the real outcomes of measures (legal framework, administrative measures, decisions for the files, etc) such as clear</p>
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<p>procedures provided in Article X.6 (Amendments).</p> <p>4. For greater certainty, 'full protection and security' refers to the Party's obligations to act as may be reasonably necessary to protect physical security of investors and covered investments.</p> <p>5. Where a Party has entered into a written agreement with investors of the other Party or their investments referred to in Article 13 [Scope of section II Investment Protection] that satisfies all of the following conditions, that Party shall not breach the said agreement through the exercise of governmental authority. The conditions are:</p> <ul style="list-style-type: none"> (i) the written agreement is concluded and takes effect after the date of entry into force of this Agreement¹⁸; (ii) the investor relies on that written agreement in deciding to make or maintain an investment referred to in article in Article 13. 1 (i) [Scope of section II Investment Protection] other than the written agreement itself and 	<p>Article 4. Right to request courts to protect legitimate rights and interests</p> <p>Article 5. Involved parties' right to decision-making and self-determination</p> <p>Criminal Code 2003 (only have effect before 01/7/2016)</p> <p>Article 2, Article 3, Article 4, Article 5, Article 6, Article 7, Article 8, Article 9.</p> <p>Law on Complaint</p> <p>Article 3, Article 4, Article 5</p>	<p>discrimination with unreasonable evidences or obvious bias, etc.</p> <p>In reality, Vietnam is facing many problems regarding the real efficiency of the protecting rights, benefits and assets of investors due to the shortcomings in organization and capacities of the justice authorities (wrong justice and filing delay etc.). If these problems are not early coped with especially in the cases relating to EU investors, real breaches to the commitments in Article 14 could occur despite the fact that Vietnamese legislations have already been compatible with EVFTA.</p> <p>2. With respect to the obligation of not breaching State-investor agreements by administrative or juridical decisions in Para 5 under EVFTA, there are no provisions about this under Vietnamese legislations, hence, Vietnamese legislations are incompatible with EVFTA</p> <p>About the procedure in the Annex to Para 5: This belongs to the ISDS procedures and is not covered by</p>
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¹⁸For greater certainty, a written agreement that is concluded and takes effect after the entry into force of this Agreement does not include the renewal or extension of an agreement in accordance with the provisions of the original agreement, and on the same or substantially the same terms and conditions as the original agreement, which has been concluded and entered into force prior to the entry into force of this Agreement.

<p>the breach causes actual damages to that investment;</p> <p>(iii) the written agreement¹⁹ creates an exchange of rights and obligations in connection to the said investment, binding on both parties; and</p> <p>(iv) the written agreement does not contain a clause on the settlement of disputes between the parties to that agreement by international arbitration.</p> <p>6. When applying the above fair and equitable provisions, a Tribunal will take into account whether a Party made a specific representation to an investor to induce an investment referred to in Article 13. 1 (i) [Scope of section II Investment Protection], that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain that investment, but that Party subsequently frustrated.</p> <p>7. A breach of another provision of this Agreement, or of a separate international agreement, does not in itself establish that there has been a</p>		<p>domestic legislations.</p> <p>3. Para 6 mentions commitments about the way of explaining ISDS arbitration obligations, hence, commitments are not covered by domestic legislations.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - An article about obligations at Para 5, Article 14 should be included in the Suggested Law implementing EVFTA commitments on Investment. Besides, procedures and conditions could be provided together as in Annex to Para 5 (The coverage of these provisions is just limited to investors from specific member countries of EU which are listed in the Annex) - The process of implementation should be taken care to guarantee the abiding commitments in this Article (It is also necessary to note that in the process of settling ISDS cases, Vietnam needs clear criteria to supervise the implementation of relevant parties' obligations to minimize the threat of being sued)
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¹⁹ Written agreement means an agreement in writing, entered into by a Party with an investor of the other Party or their investment, referred to in Article 13 [Scope of section II Investment Protection], and negotiated and executed by both Parties, whether in a single instrument or multiple instruments.

breach of this Article.

Annex []

**Understanding on the application of
paragraph 5 of the article x
[Treatment of Investment]**

1. Notwithstanding the condition set forth in paragraph 5(i) of the article 14 [Treatment of Investment], an investor referred to in paragraph 3(a)(i) who has a dispute that falls into the scope of Section 3 with the Party with whom it has entered into the written agreement that is concluded and has taken effect before the entry into force of this Agreement can claim the benefit of paragraph 5 of Article 14 [Treatment of Investment] in accordance with the procedures and conditions set forth in this annex.

2. Written agreements that are concluded and have taken effect before the entry into force of this Agreement and fulfill the conditions set out in this paragraph can be notified within 1 year from the date of the entry into force of this Agreement:

a. Such written agreements must satisfy all conditions set forth under ii) - iv) in

paragraph 5 of Article 14 [Treatment of Investment]; and

b. Such written agreements were entered into either:

(i) by Viet Nam with investors of the EU Member States specified under paragraph 8 or their investments, referred to in Article 13. [Scope of section II Investment Protection]; or

(ii) by one of the EU Member States specified under paragraph 8 with investors of Viet Nam or their investments, referred to in Article 13. [Scope of section II Investment Protection].

3. The procedure for notifying the written agreements referred to in paragraph 1 shall be as follows:

a. Notification shall include:

(i) the name, nationality and address of the investor who is a party to the written agreement referred in paragraph 1 being notified and the nature of the investment of that investor, and, where the written agreement is entered into by the investment of that investor, the name, address and place of incorporation of the investment;

<p>(ii) a copy of the written agreement, including all of its instruments.</p> <p>b. The written agreements shall be notified in writing to the competent authority designated below:</p> <ul style="list-style-type: none"> (i) in the case of Viet Nam: the Ministry of Planning and Investment of Viet Nam. (ii) in the case of the EU: the European Commission. <p>4. The notification referred to in paragraph 1 does not create any substantive rights to the investor who is a party to that notified written agreement or their investment.</p> <p>5. The competent authorities will compile in a list the written agreements that have been notified in accordance with the above procedure.</p> <p>6. Should a dispute arise in connection with one of the above notified written agreements, the relevant competent authority shall verify if the agreement satisfies all conditions set forth under ii) - iv) in paragraph 5 of the article 14 [Treatment of Investment] and procedures set forth in this Annex.</p> <p>7. On the basis of that verification, should those requirements referred to</p>		
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<p>in paragraph 6 of this Annex not be met, the claim that paragraph 5 of Article 14 applies to the written agreement shall not be admissible.</p> <p>8. The EU Member States referred to in this understanding are NL, RO, UK, AT, DE, ES</p>		
<p>Article 15 Compensation for losses</p> <p>1. Investors of a Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Party shall be accorded by the latter Party, with respect to restitution, indemnification, compensation or other form of settlement, treatment no less favourable than that accorded by the latter Party to its own investors or to the investors of any third country.</p> <p>2. Without prejudice to paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party resulting from:</p> <ul style="list-style-type: none"> (a) requisitioning of their investment or a part thereof by the latter's armed forces or authorities, or (b) destruction of their investment or a 	<p>Law on Investment (Article 9) Law on Enterprises (Article 5)</p> <p>Law on Compulsory Purchase and Requisition of Property Article 4, Article 5, Article 19, Article 35-39</p> <p>Law on state compensation liability Article 6, Article 7</p>	<p>Assessments:</p> <p>1. About Para 1 Article 15</p> <p>Under Vietnamese laws, there is no specific provision about compensation for losses owing to war or other armed conflict suffered by investors, but just about the guarantee of investors' rights regarding their asset losses owing to the State's expropriation for the reason of security.</p> <p>However, due to the fact that commitments at Article 1 under EVFTA do not require Vietnam to set up measures or regulations about compensations, but just apply these in a non-discrimination way, basically Vietnamese laws are compatible with EVFTA.</p> <p>2. About Para 2 Article 15</p> <ul style="list-style-type: none"> - Vietnamese laws on expropriation just mention the expropriation and compensation in the "very necessary"

<p>part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation; shall be accorded prompt, adequate and effective restitution or compensation by the other Party.</p>		<p>case; Vietnamese legislations on State's compensation exclude the damages made during emergency cases. Hence, Vietnamese legislations are incompatible with EVFTA because they do not cover the cases provided in Para 2, Article 15 under EVFTA</p> <ul style="list-style-type: none"> - It is noticed that commitments at this Para present the requirement of "prompt, adequate and effective restitution or compensation" - showing the real efficiency perspective. <p>Recommendations:</p> <ul style="list-style-type: none"> - In spite of being committed for EU, these obligations are suitable and meaningful for all investors/investments if generally applied. Therefore, an amendment for relevant legislations (Laws on State compensation, Laws on Expropriation) should be made to include these regulations. - In case if the amendment of the above general legislations are not made immediately, or this principle of compensation for losses is not applied in a broad extent, an article about the content provided in Article 15 should be included in the Suggested Law
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		implementing EVFTA commitments on Investment (to guarantee at first the implementation of EVFTA)
<p>Article 16 Expropriation</p> <p>1. Neither Party shall directly or indirectly nationalise, expropriate or subject to measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as 'expropriation') the investments of investors of the other Party except:</p> <ul style="list-style-type: none"> (a) for a public purpose; (b) under due process of law; (c) on a non-discriminatory basis; and (d) against payment of prompt, adequate and effective compensation. <p>For greater certainty, this paragraph shall be interpreted in accordance with Annex X on Expropriation.</p> <p>2. Such compensation shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became public knowledge, whichever is earlier, plus interest at a reasonable rate established</p>	<p>Article 9 Law on Investment</p> <p>Article 5 Law on Enterprises</p> <p>Article 2, Article 3, Article 5, Article 18, Article 19, Law on Compulsory Purchase and Requisition of Property</p>	<p>Assessments:</p> <p>1. About the principle of expropriation:</p> <p>Vietnamese legislations are compatible with EVFTA (regarding the prompt compensation/payment principle, despite the fact that there are clear provisions about the method and duration of compensation under Vietnamese legislations, this regards the efficiency of implementation, leading to the difficulty in identifying the compatibility level).</p> <p>2. About the principle of valuating the compensation:</p> <ul style="list-style-type: none"> - About the time of valuating the compensation: Vietnamese legislations are compatible with EVFTA (even provisions under Vietnamese legislations are more beneficial for investors than those under EVFTA) - About interest rate in case of deferred payment: there is no provision under

<p>on a commercial basis, from the date of expropriation until the date of payment. Such compensation shall be effectively realisable, freely transferable in accordance with Article 17 (Transfers) and made without delay.</p> <p>3. Notwithstanding Paragraphs 1 and 2, in the case the Socialist Republic of Viet Nam is the expropriating Party, any measure of direct expropriation relating to land shall be: i) for a purpose in accordance with the applicable domestic legislation²⁰ and ii) upon payment of compensation equivalent to the market value, while recognising the applicable domestic legislation</p> <p>4. The issuance of compulsory licenses in relation to intellectual property rights, to the extent that such issuance is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreements ('TRIPS Agreement'), does not constitute expropriation for the purposes of paragraph 1) of this Article.</p> <p>5. An affected investor shall have a right, under the law of the expropriating</p>		<p>Vietnamese legislations, hence, Vietnamese legislations are incompatible with EVFTA</p> <p>3. About land: Because principles under EVFTA are in accordance with the applicable domestic legislation, Vietnamese legislations are compatible with EVFTA</p> <p>4. About compulsory licenses: This is a right, not an obligation, hence, Vietnamese legislations are compatible with EVFTA</p> <p>5. About the right to claim, sue of investors regarding this issue: Vietnamese legislations about claims and sues are compatible with EVFTA</p> <p>6. About direct and indirect expropriation concepts: There are no such provisions about this under Vietnamese legislations. Moreover, according the Law of Expropriation, Vietnam does not accept indirect expropriation as defined in the commitments, hence, Vietnamese legislations are incompatible with EVFTA</p>
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²⁰The applicable domestic legislation is Viet Nam's Land Law no. 45/2013/QH13 and Decree 44/2014/NĐ-CP Regulating Land Prices, as at the date of entry into force of this Agreement

<p>Party, to prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party.</p> <p>Annex [] Expropriation</p> <p>The Parties confirm their shared understanding that:</p> <ol style="list-style-type: none"> 1. Expropriation referred to in Article 16.1 may be either direct or indirect: <ol style="list-style-type: none"> a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure. b) indirect expropriation occurs where a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure. 2. The determination of whether a measure or series of measures by a Party, in a specific factual situation, constitutes an indirect expropriation requires a case-by-case, fact-based 		<p>Recommendations:</p> <p>Vietnamese legislations are basically compatible with EVFTA about expropriation except for the regulations regarding interest rate for deferred payments and indirect expropriation. In spite of being committed for EU, these obligations are suitable and meaningful for all investors/investments if generally applied. Therefore, an amendment for relevant legislations (Laws on State compensation, Laws on Expropriation) should be made to include these regulations.</p>
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<p>inquiry that considers, amongst other factors:</p> <ul style="list-style-type: none"> a) the economic impact of the measure or series of measures, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred; b) the duration of the measure or series of measures by a Party or of its effects; c) the character of the measure or series of measures, notably their object, context and intent. <p>3. For greater certainty, except in the rare circumstances where the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures or series of measures by a Party that are designed to protect legitimate public policy objectives do not constitute indirect expropriation.</p>		
<p>Article 17 Transfer</p> <p>Each Party shall permit all transfers relating to an investment to be made in a freely convertible currency, without restriction or delay and at the market</p>	<p>Article 11 Law on Investment</p>	<p>Assessments:</p> <p>Vietnamese legislations are basically compatible with EVFTA but they are not as detailed as EVFTA about this:</p> <ul style="list-style-type: none"> - Vietnamese legislations just

<p>rate of exchange applicable on the date of transfer. Such transfers include:</p> <ul style="list-style-type: none"> (a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment; b) profits, dividends, capital gains and other returns, proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment; c) interest, royalty payments, management fees, and technical assistance and other fees; (d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement; (e) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment. (f) payments made pursuant to art. X ['Expropriation'] and Y ['Compensation for Losses']. g) payments of damages pursuant to an award issued by a tribunal under Chapter X Investor to State Dispute Settlement. 		<p>acknowledge the right of transfers in general, while EVFTA stresses on the requirements of transfers (freely convertible currency, without restriction or delay and at the market rate of exchange applicable on the date of transfer)</p> <ul style="list-style-type: none"> - About transferred assets, Vietnamese legislations just mention 3 broad groups, while EVFTA clarifies components of each group. <p>Recommendations:</p> <p>No recommendations for adjusting general legislations or adding more provisions in the Suggested Law implementing EVFTA commitments on Investment</p> <p>However, in order to increase transparency, regulations about the principle of transfers, and kinds of assets and returns allowed to be transferred should be clarified in the documents guiding Investment Law (if available).</p>
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<p>Article 18 Subrogation</p> <p>If a Party, or an agency thereof, makes a payment under an indemnity, guarantee or contract of insurance it has entered into in respect of an investment made by one of its investors in the territory of the other Party, the other Party shall recognise the subrogation or transfer of any right or title or the assignment of any claim in respect of such investment. The Party or the agency shall have the right to exercise the subrogated or assigned right or claim to the same extent as the original right or claim of the investor. Such rights may be exercised by the Party or an agency thereof, or by the investor only if the Party or an agency thereof so authorises.</p>	<p>No direct regulations Civil Code</p>	<p>Assessments: There is no provision about this issue under Vietnamese legislations. In addition, under Vietnamese Civil Code (regarding assets and civil transactions), there are no regulations to be barriers to the subrogation of any rights of any legal transactions between State authorities and other subjects</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - No recommendations for any amendments of legislations - An article about the principle of Article 18 (if necessary) could be included in the Suggested Law implementing EVFTA commitments on Investment (for the purpose of clarifying but not changing the current general legislations)
<p>Article 19 Termination</p> <p>In the event that the present Agreement is terminated pursuant to Article X [16-Duration] in Chapter [Final Provisions]], the provisions of this Section and those of Chapter II Section 3 (Resolution of Investment Disputes) shall continue to be effective for a further period of 15 years from the date of termination, with respect to investments made before the</p>	<p>No regulations</p>	<p>Assessments: This is about the enforcement of EVFTA, not covered by domestic legislations.</p> <p>Recommendations: No recommendations for any amendments of legislations</p>

date of termination of the present Agreement, unless the Parties agree otherwise.		
<p>Article 20 Relationship with other Agreements</p> <p>1. Upon the entry into force of this Agreement, including this Chapter, the agreements between Member States of the European Union and Viet Nam listed in Annex (Y) (Parties to prepare a list of BITs and survival clauses) including the rights and obligations derived therefrom, shall cease to have effect and shall be replaced and superseded by this Agreement²¹.</p> <p>2. In the event of the provisional application in accordance with paragraph 4 of Article X. 15 (Entry into Force) of this Agreement, including this Chapter, the application of the provisions of the agreements listed in Annex (Y), as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. In the event the provisional application of this Agreement is terminated and this Agreement does not</p>	No regulations	<p>Assessments: This is about the enforcement of EVFTA, not covered by domestic legislations.</p> <p>Recommendations: No recommendations for any amendments of legislations</p>

²¹For greater certainty, the Parties share the understanding that the “survival clauses” listed in Annex Z of the Agreements listed in Annex Y shall also cease to have effect.

enter into force, the suspension shall cease and the agreements listed in Annex Y shall have effect. 3. Notwithstanding paragraphs 1 and 2, a claim may be submitted pursuant to the provisions of an agreement listed in Annex (Y), in accordance with the rules and procedures established in the agreement, provided that: (i) the claim arises from an alleged breach of provisions of that agreement that took place prior to date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, prior to the date of entry into force of this Agreement, and (ii) no more than three (3) years have elapsed from the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, from the date of entry into force of this Agreement until the date of submission of the claim. 4. Notwithstanding paragraphs 1 and 2, if the provisional application of this Agreement, including this Chapter, is terminated and this Agreement, including this Chapter, does not enter		
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into force, a claim may be submitted pursuant to the provisions of this Agreement, in accordance with the rules and procedures established in this Agreement, provided that:

(i) the claim arises from an alleged breach of provisions of this Agreement that took place during the period of the provisional application of this Agreement, and

(ii) no more than three (3) years have elapsed from the date of termination of the provisional application until the date of submission of the claim.

5. For greater certainty, no claim may be submitted pursuant to the provisions of this Agreement, in accordance with the rules and procedures established in this Agreement if, (i) the claim arises from an alleged breach of provisions of this Agreement that took place before the date of entry into force of this Agreement, or (ii) in the event of the provisional application of this Agreement, if the claim arises from an alleged breach of provisions of this Agreement that took place before the provisional application of this Agreement.

6. For the purposes of this Article, the definition of “entry into force of this Agreement” provided for in paragraph 4(d) of Article X.15 (Entry into Force) shall not apply.		
<p>Annex [] Public debt</p> <p>1. No claim that a restructuring of debt of a Party breaches an obligation under Section 2 [Investment Protection] may be submitted to, or if already submitted, be pursued under Section 3 [Resolution of Investment Disputes and Investment Court System] if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission.</p> <p>2. Notwithstanding [Article 6 Submission of a Claim, Section on Resolution of Investment Disputes and Investment Court System], and subject to paragraph 1 of this Annex, an investor may not submit a claim under Section 3 [Resolution of Investment Disputes and Investment Court System] that a restructuring of debt of a Party breaches Articles X [National Treatment] or X [Most-Favoured</p>	No regulations	<p>Assessments: This is about the enforcement of ISDS under EVFTA, not covered by domestic laws.</p> <p>Recommendations: No recommendations for any amendments of legislations</p>

<p>Nation] of Section 1 [Liberalisation of Investments]²²²¹ or an obligation under Section 2 [Investment Protection], unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to [Article 4 Consultations].</p> <p>3. For the purposes of this Annex:</p> <ul style="list-style-type: none"> - 'negotiated restructuring' means the restructuring or rescheduling of debt of a Party that has been effected through <ul style="list-style-type: none"> (i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or (ii) a debt exchange or other similar process in which the holders of no less than 66% of the aggregate principal amount of the outstanding debt subject to restructuring, excluding debt held by that Party or by entities owned or controlled by it, have consented to such debt exchange or other process. - "governing law" of a debt instrument means a country's legal and regulatory 		
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²²For greater certainty, a breach of the Article [National Treatment] or Article [Most-Favoured Nation] does not occur merely by virtue of a different treatment provided by a Party to certain categories of investors or investments on grounds of a different macroeconomic impact, for instance to avoid systemic risks or spillover effects, or on grounds of eligibility for debt restructuring.

<p>framework applicable to that debt instrument.</p> <p>4. For greater certainty, “debt of a Party” includes, in the case of the European Union, debt of a government of a Member State, or of a Government in a Member State, at the central, regional or local level.</p>		
<p>Section 3. Resolution of Investment Disputes</p> <p>SUB-SECTION 1: SCOPE AND DEFINITIONS</p>		<p>The approach view</p> <p>The ISDS resolution is particularly applied for EU's investors who meet the conditions in the disputes provided under EVFTA. This resolution is not applied for domestic investors and it does not affect the domestic arbitration dispute settlement procedures. In other words, ISDS resolution exists simultaneously with (not substituting to) domestic dispute settlement resolution</p> <p>For that reason, there is a need for an ISDS resolution for EU's investors in the Suggested Law implementing EVFTA commitments on Investment.</p> <p>The content of ISDS should be included in the Suggested Law implementing EVFTA commitments on Investment. See particular recommendations in each part.</p>

<p>Article 1 Scope</p> <p>1. This Section shall apply to a dispute between, on the one hand, a claimant of one Party and, on the other hand, the other Party concerning any measure²³ alleged to breach the provisions of:</p> <ul style="list-style-type: none"> (a) Section 2 (Investment protection), (b) Article 3 paragraph 2 (national treatment as regards the operation of investments) and Article 4 paragraph 2 (most favoured nation treatment as regards the operation of investments) of Section 1 with respect to the operation of investments as referred to in Article 13(1)(i) (Scope) of Section 2 (Investment Protection), which allegedly causes loss or damage to the claimant or, where the claim is brought on behalf of a locally established company owned or controlled by the claimant, to the locally established company. <p>2. For greater certainty, a claimant may not submit a claim under this Section if its investment has been made through fraudulent misrepresentation,</p>	<p>No regulations</p>	<p>Assessments: Commitments about the coverage of disputes which are applicable for ISDS are very important, hence they need to be clearly provided in domestic legislations</p> <p>Recommendations: Domestic regulations compatible with commitments in this Article should be included in the Suggested Law implementing EVFTA commitments on Investment (in the part of ISDS)</p>
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²³The Parties understand that the term “measure” may include failures to act.

<p>concealment, corruption or conduct amounting to an abuse of process.</p> <p>3. The Tribunal may not decide claims that fall outside of the scope of this Article.</p>		
<p>Article 2 Definitions</p> <p>The definitions contained in Chapter 1, Article X (Objectives, coverage and definitions) apply to this Section.</p> <p>"proceeding", unless otherwise specified, means a proceeding before the Tribunal or Appeal Tribunal under this Section;</p> <p>"disputing parties" means the claimant and respondent;</p> <p>"claimant of a Party" means:</p> <p>(a) an "investor" of a Party, as defined in Article 13 (ii) of Section 2 (Scope) acting on its own behalf; or</p> <p>(b) an "investor" of a Party acting on behalf of a locally established company, which it owns or controls. For greater certainty, a claim submitted under (b) shall be deemed to relate to a dispute between a Contracting State and a national of another Contracting State for the purpose of Article 25(1) of the ICSID Convention.</p> <p>"non-disputing Party" means Viet Nam</p>		<p>Assessments:</p> <p>These definitions, especially the ones relating to the coverage that subjects have right to file/sue in accordance with ISDS resolution, are very essential, hence, they need to be clearly provided in domestic legislations</p> <p>Recommendations:</p> <p>Domestic regulations compatible with commitments in this Article should be included in the Suggested Law implementing EVFTA commitments on Investment (in the part of ISDS)</p>

<p>when the respondent is the European Union or a Member State of the European Union, and the European Union when Viet Nam is the respondent.</p> <p>"respondent" means either Viet Nam or, in the case of the European Union, either the European Union or the Member State concerned as notified pursuant to Article 6.</p> <p>"locally established company" means a juridical person, established in the territory of one Party, and owned and controlled by an investor of the other Party.</p> <p>"Third Party funding" means any funding provided by a natural or juridical person who is not a party to the dispute but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings in return for a remuneration dependent on the outcome of the dispute or in the form of a donation or grant.</p> <p>"UNCITRAL Transparency Rules" means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.</p>		
SUB-SECTION 2: ALTERNATIVE		Assessments:

DISPUTE RESOLUTION AND CONSULTATIONS		These contents regard the detailed due process and procedures to settle ISDS disputes. They are concise and clear enough to be directly applied. Recommendations: <ul style="list-style-type: none">- The Congress should issue a resolution applying directly these contents of EVFTA- An article to cite processes and procedures mentioned in these parts under EVFTA should be included in the Suggested Law implementing EVFTA commitments on Investment
SUB-SECTION 3: SUBMISSION OF A CLAIM AND CONDITIONS PRECEDENT		
SUB-SECTION 4: INVESTMENT TRIBUNAL SYSTEM		
SUB-SECTION 5: CONDUCT OF PROCEEDINGS)²⁴ (except for Article 31)		
Article 31 Enforcement of awards 1. Final awards issued pursuant to this Section: (a) shall be binding between the disputing parties and in respect of that particular case; and (b) shall not be subject to appeal, review, set aside, annulment or any other remedy. 2. Each Party shall recognize an award rendered pursuant to this Agreement as binding and enforce the pecuniary		Assessments: Commitments in this Article regard the recognition and enforcement of final awards (requiring the organization of implementation provided by domestic laws) and reservations about the legal enforcement of arbitrators' decisions in dispute settlements, so they need to be covered under domestic laws. Recommendations: Providing in the Suggested Law implementing EVFTA commitments on

²⁴ See content at: http://www.trungtamwto.vn/sites/default/files/evfta_chapter_8.pdf

<p>obligation within its territory as if it were a final judgement of a court in that Party.</p> <p>3. Notwithstanding paragraphs 1 and 2, during the period mentioned in paragraph 4, the recognition and enforcement of a final award in respect of a dispute where Viet Nam is the respondent shall be conducted pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10th June, 1958 (New York Convention). During this time, paragraph 1(b) of this Article and paragraph 3(b) of Article 10 (Consent) do not apply to disputes where Viet Nam is a respondent.</p> <p>4. Upon completion of a period of 5 years after the entry into force of this Agreement, or a longer period fixed by the Trade Committee should the conditions warrant, the recognition and enforcement of a final award in respect of disputes where Viet Nam is the respondent shall be in accordance with paragraphs 1 and 2.</p> <p>5. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in</p>		<p>Investment (in the part of ISDS):</p> <ul style="list-style-type: none"> - The legal enforcement of arbitral awards as mentioned in Para 1, Article 31 under EVFTA; - The mechanism of recognition and enforcement of arbitral awards and reservation-related contents mentioned in commitments in two cases: <ul style="list-style-type: none"> + Within the duration of reservation: 5 years after the entry into force of EVFTA + After the duration of reservation: from the 6th year (or a point of time fixed by the Trade Committee)
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<p>force where such execution is sought.</p> <p>6. For greater certainty, Article X (Rights and obligations of natural or juridical persons under this Agreement, Chapter X) shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.</p> <p>7. For the purposes of Article 1 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, final awards issued pursuant to this Section shall be deemed to be arbitral awards and to relate to claims arising out of a commercial relationship or transaction.</p> <p>8. For greater certainty and subject to paragraph 1, where a claim has been submitted to dispute settlement pursuant to Article 7(2)(a), a final award issued pursuant to this Section shall qualify as an award under Section 6 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID).</p>		
ANNEX I Mediation Mechanism for investment disputes		<p>Assessments: These contents regard the detailed due process and procedures to settle ISDS</p>

ANNEX II Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators		disputes. They are concise and clear enough to be directly applied.
ANNEX III		Recommendations: - The Congress should issue a resolution applying directly these contents of EVFTA
ANNEX IV Working Procedures for the Appeal Tribunal		- An article to cite processes and procedures mentioned in these parts under EVFTA should be included in the Suggested Law implementing EVFTA commitments on Investment

THE REVIEW OF THE SCHEDULE OF MARKET ACCESS COMMITMENTS ON INVESTMENT AND SERVICES (Annex 8d EVFTA)

Viet Nam - Schedule of commitments – Cross border supply of services and Establishment

CAM KẾT EVFTA	VIETNAM LEGISLATION	ASSESSMENTS AND RECOMMENDATIONS
<p>1. The list of commitments below indicates the economic activities liberalized pursuant to Articles ... (Schedule of specific commitments- Chapter II on Investment) and ... (Schedule of specific commitments- Chapter III on Cross border supply of services) and, by means of reservations, the market access, national treatment and performance requirement limitations that apply to establishments and investor of the EU Party in those activities or to services and service suppliers of the EU Party in those sectors, where applicable.</p> <p>Establishment or supply of services in sectors or sub-sectors covered by this Agreement and not mentioned in the Schedules below is not committed.</p>	<p>Decree No. 118/2015/NĐ-CP Article 13. Publishing of investment conditions applied to foreign investors</p> <p>1. The Ministry of Planning and Investment shall take charge and cooperate with other Ministries and ministerial agencies in reviewing and aggregating investment conditions applied to foreign investors according to Laws, Ordinances, Decrees, and international agreements on investors, and sectors and sub-sectors specified in Point e Clause 2 Article 10 of Decree in order to publish them on National Foreign Investment Web Portal.</p> <p>2. Investment conditions applied to foreign investors to be published as set out in Clause 1 of this Article include:</p> <ul style="list-style-type: none"> a) Business lines subject to conditions applied to foreign investors; b) Basis for application for investment 	<p>Assessments: This point affirms the principle of "positive list" approach for services and investment market access, meaning that market access is just applied for what has been included in the Schedule commitments.</p> <p>The Schedule of Commitments under EVFTA only comprises of conditions applied for EU's investors and their investments. Meanwhile, Vietnam's specialized legislations provide market access conditions (if available) which are generally applied for foreign investors from all nations and territories.</p> <p>Investment conditions for foreign investors by regions according to international agreements are announced on the national information gate on foreign investment.</p> <p>Recommendations:</p>

	<p>registration to foreign investors;</p> <p>c) Contents of investment conditions applied to foreign investors as set out in Clause 1 Article 10 of this Decree;</p> <p>d) The sectors and sub-sectors specified in Point e Clause 2 Article 10 of this Decree.</p> <p>3. The Investment conditions specified in Clause 2 of this Article shall be updated in the following cases:</p> <p>a) Investment conditions applied to foreign investors are changed according to a Law, Ordinance, Decree, or international agreement on investment;</p> <p>b) The sectors and sub-sectors specified in Point e Clause 2 Article 10 of this Decree shall be adjusted according to the review result specified in Clause 1 of this Article.</p> <p>4. The updates mentioned in Clause 3 of this Article shall be published on National Foreign Investment Web Portal following the procedures specified in Clause 3 Article 12 of this Decree.</p> <p>Decision No. 10/2007/QĐ-TTg issuing the system of economic branches of Viet Nam</p>	<ul style="list-style-type: none"> - No recommendations for amending specialized investment legislations - Investment conditions for EU's investors in the Schedule of Commitments under EVFTA should be updated on the national information gate on foreign investment
2. Identifying individual sectors and sub-sectors: (a) ISIC rev 3.1 means the	No regulation on CPC Decision No. 10/2007/QĐ-TTg issuing	<p>Assessments:</p> <p>This point refers ISIC, CPC to identify</p>

<p>International Standard Industrial Classification of all Economic Activities as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 4, ISIC REV 3.1, 2002; (b) CPC means the Central Products Classification as referred to in footnote ... of Article ... (Understanding on computer services-Section III on Computer Services-Chapter V on Regulatory Framework); and (c) CPC provisional means the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991)</p>	<p>the system of economic branches of Viet Nam</p>	<p>the codes of individual services sectors and their sub-sectors committed in EVFTA. Under Vietnamese legislations, services sectors are generally understood and broadly covered, and specific activities in these sectors are usually not listed. Therefore, sectoral coverage under Vietnamese legislations is broader than that under EVFTA.</p> <p>Recommendations: No recommendations for any amendments of legislations (except for the substantial difference (identified in the below reviews) in the definitions of services sectors and sub-sectors between Vietnamese legislations and EVFTA)</p>
<p>3. The list below does not include measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures when they do not constitute a market access, a national treatment or performance requirement limitation within the meaning of Articles ... (Market access-Chapter II on Investment) and ... (Market</p>	<p>Luật Đầu tư Article 7. Conditional business lines 1. Conditional business lines are the business lines in which the investment must satisfy certain conditions for reasons of national defense and security, social order and security, social ethics, or public health. 2. The List of conditional business lines is provided in Appendix 4 hereof.</p>	<p>Assessments: Measures mentioned in this Para under EVFTA are equivalent to business conditions in Vietnam's conditional business sector. Under Vietnamese legislations, these conditions are provided in specialized legislations generally applied for all investors. Business condition - related Vietnamese legislations are in compliance with this</p>

<p>accessChapter III on Cross border supply of services) and Articles ... (National Treatment-Chapter II on Investment) and ... (National Treatment- Chapter III on Cross border supply of services) and ... Article ... (Performance Requirements-Chapter II on Investment). Those measures (e.g. need to obtain a license, universal service obligations, need to obtain recognition of qualifications in regulated sectors, need to pass specific examinations, including language examinations, and non-discriminatory requirement that certain activities may not be carried out in environmental protected zones or areas of particular historic and artistic interest), even if not listed, apply in any case to establishments and investor of the EU Party or to services and service suppliers of the EU Party, where applicable.</p>	<p>3. Conditions for making investments in the business lines mentioned in Clause 2 of this Article are specified in the Laws, Ordinances, Decrees, and the international agreements to which the Socialist Republic of Vietnam is a signatory. Ministries, ministerial agencies, the People's Council, People's Committees, and other entities must not issue regulations on conditions for making business investments.</p> <p>4. Conditions for making business investments must be appropriate for the objectives in Clause 1 of this Article, ensure transparency, objectivity, not wasting time or money of investors.</p> <p>5. The conditional business lines and the corresponding conditions shall be posted on the National Company Registration Portal.</p> <p>6. The Government shall elaborate the announcement and control of conditions for business investments.</p>	<p>regulation under EVFTA.</p> <p>Recommendations: No recommendations for any amendments of legislations</p>
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	<p>conditions</p> <p>1. Individuals and business organizations may make investment in the business lines subject to conditions specified in Appendix 4 of the Law on Investment if all conditions are fulfilled and the fulfillment of such conditions is maintained throughout the course of business.</p> <p>2. Investment conditions include:</p> <ul style="list-style-type: none">a) License;b) Certificate of eligibility;c) Practising certificate;d) Certificate of professional liability insurance;dd) Written certification;e) Documents other than those specified in Point a through dd of this Clause;g) Conditions that must be fulfilled to make investment without the written certification or approval specified in	
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	<p>Point a through e of this Clause.</p> <p>3. Every individual or organization that fulfills investment conditions is entitled to the documents specified in Point a through e Clause 2 of this Article (hereinafter referred to as licenses) or to make investment and do business when the conditions specified in Point g Clause 2 of this Article are fulfilled. If the issuance, renewal, adjustment, or supplementation of a license is rejected, the competent authority must send a written notification to the applicant and provide explanation.</p> <p>4. While following administrative procedures for issuance of a license or fulfilling the conditions specified in Point g Clause 2 of this Article, it is not required to write the business lines subject to conditions on the Certificate of Enterprise Registration.</p>	
4. In accordance with paragraph ... of Article ... (Objective and Scope), Articles ... (Market access-Chapter II on Investment) and ... (Market access-Chapter III on Cross border supply of services) and Articles ... (National		<p>Assessments:</p> <p>This is an exception (Vietnam's rights) in providing subsidy-related measures aimed at promoting the welfare and employment of ethnic minorities.</p> <p>According to this Para, Vietnam does</p>

<p>Treatment-Chapter II on Investment) and ... (National Treatment- Chapter III on Cross border supply of services) and ... Article ... (Performance Requirements- Chapter II on Investment) do not apply to subsidies²⁵ aimed at promoting the welfare and employment of ethnic minorities .</p>		<p>not need to follow the principles mentioned in the Investment chapter under EVFTA. Hence, Vietnamese legislations are compatible with EVFTA.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - This exception should be noticed as regulations are provided (if necessary). - This exception should be noticed as the evaluation of the compatibility of Vietnamese legislations in specific committed services sectors (see below) is carried out.
<p>For greater certainty, notwithstanding Article ... (Market access-Chapter II on Investment), non-discriminatory requirements as regards the type of legal form of an establishment do not need to be specified in the below list of commitments on establishment in order to be maintained or adopted.</p> <p>For greater certainty, the following measures adopted or maintained in sectors other than services are consistent with Article ... (Market access-Chapter II on Investment) and do not need to be specified in the below list of commitments on establishment in</p>		<p>Assessments:</p> <p>This is an exception (Vietnam's rights) in providing the type of compulsory legal form of an establishment, measures concerning the use of land, conservation and protection of natural resources and the environment.</p> <p>According to this Para, Vietnam does not need to follow the principles mentioned in the Investment chapter under EVFTA. Hence, Vietnamese legislations are compatible with EVFTA.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> - This exception should be noticed as regulations are provided (if necessary).

²⁵ For greater certainty, the Parties understand that “subsidies”, for the purpose of this sentence, include benefits granted for the development of ethnic minorities, such as site assistance, human resources training, assistance for technology research and development, legal aids, market information and promotion.

<p>order to be maintained or adopted: (i) Measures concerning zoning or planning or regulations affecting the development or use of land, or other analogous measures; (ii) Measures seeking to ensure the conservation and protection of natural resources and the environment, including limitation on the availability, number and scope of concessions granted, and the imposition of moratoria or bans.</p>		<p>- This exception should be noticed as the evaluation of the compatibility of Vietnamese legislations in specific committed services sectors (see below) is carried out.</p>
<p>6. The rights and obligations arising from the list below shall have no self-executing effect and thus confer no rights directly on natural or juridical persons.</p>	<p>Law on the conclusion, accession to and implementation of treaties 2005 Article 6.- Treaties and provisions of domestic law</p> <p>1. In cases where a legal document and a treaty to which the Socialist Republic of Vietnam is a party, contains different provisions on the same matter, the provisions of the treaty shall prevail.</p> <p>2. The promulgation of legal documents must ensure that they shall not obstruct the implementation of treaties which contain provisions on the same matter and to which the Socialist Republic of Vietnam is a party.</p>	<p>Assessments: Commitments in this Para stress that market access regulations in the Schedule of Commitments confer no direct application on natural or juridical persons and they need internalizing into domestic legislations. Under Vietnamese legislations, there is no certain provision about cases that are directly applied or need internalizing into domestic legislations, hence, Vietnamese legislations are compatible with EVFTA.</p> <p>Recommendations: All commitments in the list in the Suggested Law implementing EVFTA commitments on Investment should be internalized into domestic legislations.</p>

	<p>3. On the basis of the requirements, contents and nature of a treaty, the National Assembly, the State President or the Government, when deciding to consent to be bound by the treaty, shall also decide on the direct application of the whole or part of the treaty to agencies, organizations and/or individuals in case the provisions of the treaty are explicit and specific enough for implementation; or decide or propose to amend, supplement, cancel or promulgate legal documents for the implementation of the treaty.</p>	<p>Based on law application principle, it is not necessary to review all specialized legislations. The reason is that despite any differences between Vietnamese legislations and EVFTA, market access for EU's investors will follow the regulations under this Suggested Law implementing EVFTA commitments on Investment (later collected and announced on the national information gate on foreign investment), but not the ones in the specialized legislations, except for cases not provided in the Suggested Law.</p> <p>Therefore, the below review of Vietnamese legislations against EVFTA about market access does just present the openness level under EVFTA to compare with, but not affect current domestic legislations.</p>
7. Where Viet Nam maintains a reservation that requires that a service supplier or an investor be a citizen, national, permanent resident or resident of its territory as a condition to the supply of a service or establishment in its territory, a reservation listed in the list of commitments in Appendix ...		<p>Assessments: This is about the reservation of the Agreement and it does not belong to domestic legislations.</p> <p>Recommendations: This commitment should be combined with other relevant ones to assure the accurate understanding about related</p>

<p>pursuant to Article ... (Scope and Definitions) with respect to temporary movement of natural persons shall operate as a reservation with respect to the commitments on establishment taken in this Appendix in conformity with Article... (Schedule of specific commitments-Chapter II on Investment), to the extent applicable.</p>		<p>obligations.</p>
ALL SECTORS		
<p>Employment of foreigners</p> <p>1. Unbound for measures relating to employment of foreigners, unless otherwise provided in Chapter IV [Temporary Presence of Natural Persons for Business Purposes]</p>	<p>Law on labour</p>	<p>Assessments: Under EVFTA, this is the right, not the obligation of Vietnam (except the relevant commitments in Chapter IV)</p> <p>Recommendations: No recommendations for any amendments of legislations Commitments at Chapter IV of Chapter 8 should be noticed.</p>
<p>Share Acquisition, securities and public companies</p> <p>2. EU investors are permitted to make capital contribution in the form of buying shares of Viet Nam's enterprises. In the case of buying shares of <u>joint-stock commercial banks, or buying shares of enterprise operates in the sectors not committed in this Schedule</u>, the total equity held by foreign investors</p>	<p>Decree No. 01/2014/NĐ-CP on foreign investor's purchase of shares of Vietnamese credit institutions</p> <p>Article 7. Shareholding percentage for foreign investors</p> <p>1. Shareholding percentage of a foreign individual shall not exceed 5% of charter capital of a Vietnamese credit institution.</p> <p>2. Shareholding percentage of a foreign</p>	<p>Assessments: Apart from cases with commitments (to be review below) contained in the list, for general cases, the market access level in this commitment under EVFTA is similar to that under Vietnamese legislations.</p> <p>Recommendations: No recommendations for any amendments of legislations</p>

<p>in each enterprise may not exceed 30% of the enterprise's chartered capital. For the other sectors and sub-sectors committed in this Schedule, the level of equity held by foreign investors in acquisition of Vietnamese enterprises shall be corresponding to the limitations on foreign capital participation set forth therein, if any.</p> <p>Unless otherwise specified in each specific sector or sub sector of this Schedule, no limitation on foreign ownership in <u>public company</u>, except the following:</p> <ul style="list-style-type: none"> - in sectors where laws and regulations of Viet Nam prescribe limitations on foreign ownership, foreign ownership in public company shall have to comply with such limitations; - in sectors where foreign investment are conditional and conditions for foreign investment in such sector do not include limitation on foreign ownership, foreign investors are not allowed to hold more than 49% of total number of stocks of a public company". 	<p>organization shall not exceed 15% of charter capital of a Vietnamese credit institution except for case specified at Clause 3 this Article.</p> <p>3. Shareholding percentage of a foreign strategic investor shall not exceed 20% of charter capital of a Vietnamese credit institution except for case specified at Clause 3 this Article.</p> <p>4. Shareholding percentage of a foreign investor and the concerned persons of such foreign investor shall not exceed 20% of charter capital of a Vietnamese credit institution.</p> <p>5. Total shareholding level of foreign investors shall not exceed 30% of charter capital of a Vietnamese commercial bank. Total shareholding level of foreign investors at a Vietnamese non-banking credit institution shall comply with legislation applicable to public companies and listing companies.</p> <p>6. In special case, to perform restructure of credit institution which is weak and faces to difficulties, to ensure credit safety of credit institution system, the Prime Minister shall decide the shareholding percentage of a foreign</p>	
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	<p>organization, a foreign strategic investor, total shareholding level of foreign investors at a weak and restructured joint-stock credit institution, in excess of limit specified at Clauses 2, 3, 5 this Article for each specific case.</p> <p>7. The shareholding percentage specified at Clauses 1, 2, 3, 4, 5, 6 this Clause include the capital amount which foreign investor entrusted for other organizations and individuals to purchase shares.</p> <p>8. Foreign investors changing convertible bonds of Vietnamese credit institutions into stocks must ensure the shareholding percentage, conditions for shareholding as prescribed in this Decree.</p> <p>Decree No 60/2015/NĐ-CP on amending, supplementing several articles of the Government's Decree No. 58/2012/NĐ-CP on providing specific provisions for the implementation of certain articles of the Law on securities Article 2a. Rate of foreign ownership on Vietnam's securities exchange market</p>	
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	<p>1. Rate of foreign ownership in a public company shall be stipulated as follows:</p> <p>a) Where the International Agreement of which Vietnam is a signatory lays down regulations on the rate of foreign ownership, it will be governed by this Agreement;</p> <p>b) Where a public company operates in the investment and business sector which is governed by the law on investment, other relevant laws stipulating the rate of foreign ownership, it will be governed by these legal regulations.</p> <p>Where a public company operates in the investment and business sector subject to conditions applied to foreign investors but none of specific regulations on the rate of foreign ownership, the maximum rate of foreign ownership will be 49%;</p> <p>c) Where a public company operates in multiple industries or sectors that have different regulations on the rate of foreign ownership, it will not exceed the lowest rate defined in these industries or sectors that have regulations on the rate of foreign ownership, unless otherwise regulated by the International</p>	
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	<p>Agreement;</p> <p>d) As regards a public company which is not governed by regulations laid down in Point a, b, c of this Clause, the rate of foreign ownership will not be restricted, unless otherwise stipulated by the company's rules and regulations.</p> <p>2. As regards a state-owned enterprise equitized in the form of a public securities offering, the rate of foreign ownership will be governed under legal regulations on equitization. If there is none of provisions enshrined in the law on equitization, the rate of foreign ownership will be governed under the equivalent regulations laid down in Clause 1 of this Article.</p> <p>3. Bond investment made by foreign investors shall be regulated as follows:</p> <p>a) Foreign investors shall be allowed to put unrestricted investments in the Government bond, Government-backed bond, local government bonds, corporate bond, unless otherwise stipulated by relevant laws or the issuing organization;</p> <p>b) With respect to the issue of convertible bonds, the issuer must ensure that the rate of foreign</p>	
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	<p>ownership on the maturity date when these bonds are converted into stocks or on the date when stocks are bought shall conform to regulations laid down in Clause 1, 2 of this Article.</p> <p>4. Foreign investors shall be entitled to make unrestricted investments in certificates of securities investment fund, stocks of securities investment companies, non-voting stocks of public companies, derivative securities, depository receipts, unless otherwise prescribed by the issuer's rules and regulations. Except for the open-end fund, the securities investment fund that has the rate of foreign ownership equal to more than 51%, the rate of foreign ownership must conform to statutory conditions and procedures applied to foreign investors that contribute capital, buy securities or paid-in capital of economic organizations.</p> <p>5. Public companies, listed companies must report to the State Securities Commission and provide updated information about the rate of foreign ownership on their websites, and websites of the Stock Exchange and the Vietnam Securities Depository</p>	
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<p>Organizational issues</p> <p>3. Unbound for the establishment and operation of co-operatives, union of co-operatives, household business and sole proprietorship. Representative offices of foreign service suppliers are permitted to be established in Viet Nam, but they shall not engage in any direct profit-making activities²⁶. Unless otherwise indicated in each specific sector or sub-sector of this Schedule, the establishment of branches is unbound. Treatment accorded to subsidiaries of EU juridical person formed in accordance with the law of the Viet Nam and having their registered office, central administration or principal place of business within Viet Nam is not extended to branches or agencies established in Viet Nam by EU's companies²⁷.</p>	<p>- Law on cooperative, Law on enterprises</p> <p>- Law on commerce</p> <p>Article 18.- Obligations of representative offices</p> <p>1. Not to directly conduct profit-generating activities in Vietnam.</p> <p>2. To conduct commercial promotion activities within the scope permitted by this Law.</p> <p>3. Not to enter into contracts, not to amend or supplement contracts already entered into by foreign traders, except where chief representatives obtain valid letters of authorization from foreign traders or other cases specified in Clauses 2, 3 and 4, Article 17 of this Law.</p> <p>4. To pay taxes, fees and charges, and fulfil other financial obligations provided for by Vietnamese law.</p> <p>5. To report on their operations according to Vietnamese law.</p> <p>6. To have other obligations as defined by Vietnamese law.</p> <p>Decree No. 07/2016/NĐ-CP on</p>	<p>Assessments:</p> <p>The market access level in this commitment under EVFTA is similar to that under Vietnamese laws.</p> <p>Recommendations:</p> <p>No recommendations for any amendments of legislations</p>
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²⁶ Representative office is a subordinate unit of foreign enterprises, established under the Vietnamese law in order to seek, promote trade and tourism opportunities but is not allowed to engage in any direct profit-making activities.

²⁷ In accordance with the Civil Code of Viet Nam, these subsidiaries are considered as juridical persons of Viet Nam.

	detailed regulations on establishment of representative offices or branches of foreign traders in Viet Nam under laws on commerce	
State owned enterprises 4. Unbound for privatization, equitization or divestment of assets through transfer or disposal of equity interests or assets of State Owned Enterprises.		<p>Assessments: Under EVFTA, this is the right, not the obligation of Vietnam. Hence, Vietnamese legislations are compatible with EVFTA.</p> <p>Recommendations: No recommendations for any amendments of legislations</p>
Public utilities 5. Economic activities considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators		<p>Assessments: Under EVFTA, this is the right, not the obligation of Vietnam. Hence, Vietnamese legislations are compatible with EVFTA.</p> <p>Recommendations: No recommendations for any amendments of legislations</p>
Land and real estate ²⁸ 6. Unbound for land ownership, acquisition of land use rights, land lease, usage of land, land planning, term of		<p>Assessments: This is Vietnam's reservation under EVFTA about issues relating to land and real estate, and ownership of natural</p>

²⁸ For greater certainty, this reservation is without prejudice to the rights and obligations of the Parties in Article (Expropriation)

<p>land use, rights and obligations of land users²⁹. Natural resources found in land belong to the State of Viet Nam. Cultural heritage, whose owner cannot be identified, found in land belong to the State of Viet Nam. Unbound for measures relating to the purchase, selling, ownership and leasing of residential real estates by foreigners.</p>		<p>resources on land and cultural heritage. Hence, Vietnamese legislations are compatible with EVFTA.</p> <p>Recommendations:</p> <p>No recommendations for any amendments of legislations</p>
<p>Investment procedures</p> <p>7. Unbound for any measure with respect to investment procedures applied to foreign investor or foreign invested economic entities, such as procedures relating to investment registration certificate of investment projects, and foreign exchange management procedures³⁰.</p>		
<p>SPECIFIC MARKET ACCESS COMMITMENTS BY SECTORS</p>	<p>IMPLEMENTED IN THE REVIEW OF SPECIALIZED LEGISLATIONS ON SERVICES SECOTRS AGAINST EVFTA MARKET ACCESS COMMITMENTS ON SERVICES AND INVESTMENT</p>	

²⁹ For illustrative purposes, foreign organizations and individuals cannot own land. They can only lease land in line with the duration of their investment project subject to approval of a competent State body, which shall not exceed 50 years.

³⁰ For greater certainty, this reservation is without prejudice to the Parties' right and obligations under Section (Investment Protection) and Chapter (Domestic Regulations). For further clarity, a breach of an obligation under Section (Investment Protection) in itself shall not be considered a breach of an obligation referred to in Headnote paragraph 1. A breach of an obligation under Chapter (Domestic Regulations) in itself shall not be considered a breach of an obligation referred to in Headnote paragraph 1 and shall not be subject to the dispute settlement mechanism under Section (ISDS).