



# VIETNAM PORT SECTOR OVERVIEW

AUGUST 2022

Seaports are a vital part of Vietnam's rapidly growing economy. The Government's detailed planning for a modern and cohesive seaport system, including increases in capacity and prioritising the development of international gateways, offers significant potential benefits and opportunities for investors. In tandem with this, though, investment in the port sector requires understanding of several different, and complex, legal areas. In this report, we give an overview of how Vietnam's seaport system is expected to develop over the next few decades, explore upcoming opportunities, and explain the key challenges for the system itself and for those wanting to invest in it.

# 1. PORT DEVELOPMENT POLICY AND PLANNING

The master plan for development of Vietnam's seaport system for 2021–2030, with a vision to 2050, was approved by the Prime Minister under Decision 1579/QĐ-TTg dated 22 December 2021 (the **Seaport Master Plan**). It replaced the former 2009 master plan and is the most important macro policy document relevant to the port sector.

The Seaport Master Plan sets out key objectives on seaport development by 2030:

- In terms of capacity, Vietnam's port system will carry up to 1423 million tons of goods (of which container cargo is increasing from 38 to 47 million twenty equipment unit ((**TEU**)) and up to 10.3 million passengers (including both domestic and international passenger transport).

- Regarding port infrastructure, Vietnam will prioritise the development of international gateways (such as Lach Huyen port in Hai Phong, Cai Mep port in Ba Ria – Vung Tau and the Van Phong port in Hanh Hoa), and development of large-scale seaports servicing inter-regional or nationwide socio-economic development (such as Tran De port in Soc Trang province, which serves the Mekong Delta region).

It is expected that by 2050, Vietnam will have an average increase of around 4.5% per year for goods transport and of about 1.3% per year for passenger transport. Its goal is to build up a modern and cohesive seaport system, which fosters the development of maritime economic activity in line with Resolution 36-NQ/TW of the Party Central Committee dated 22 October 2018 on the strategy for durable development of Vietnam's maritime economy.

## 1.1 Seaport planning

The Seaport Master Plan separates Vietnam's seaport system into five groups on the basis of location, and designates the development orientation for each as follows.

Chart 1 – Vietnam Seaport Group Map



Chart 2 – Classification of seaports by scale

SEAPORT CATERORIES

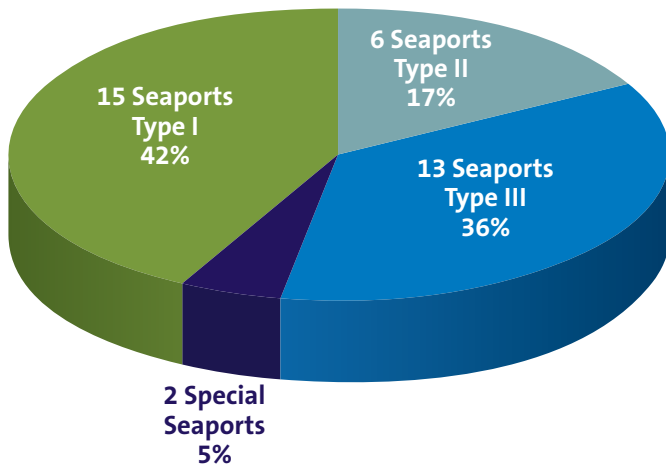


Chart 3 – Seaport Groups – Development Orientation

Seaport Group	Development orientation up to 2030	Development orientation up to 2050
<b>Group 1</b>	<ul style="list-style-type: none"> <li>Up to 367 million tons of goods (including 15 million TEU of container cargo) for goods transport</li> <li>Up to 164,000 passengers for passenger transport</li> </ul>	<ul style="list-style-type: none"> <li>Lach Huyen, Cai Lan ports to be completed</li> <li>Harbours on Cam river to be relocated</li> <li>Harbours in Nam Do Son – Van Uc, Cam Pha, Hai Ha to be developed</li> </ul>
<b>Group 2</b>	<ul style="list-style-type: none"> <li>Up to 255 million tons of goods (including 1 million TEU of container cargo) for goods transport</li> <li>Up to 204,000 passengers for passenger transport</li> </ul>	<ul style="list-style-type: none"> <li>Nghi Son – Dong Hoi, Vung Ang and Son Duong – Hon La ports to be developed</li> </ul>
<b>Group 3</b>	<ul style="list-style-type: none"> <li>Up to 181 million tons of goods (including 2.5 million TEU of container cargo) for goods transport</li> <li>Up to 2 million passengers for passenger transport</li> </ul>	<ul style="list-style-type: none"> <li>Lien Chieu (Da Nang) port to be developed</li> <li>International goods transshipment port in Van Phong (Khanh Hoa) to be developed</li> </ul>
<b>Group 4</b>	<ul style="list-style-type: none"> <li>Up to 540 million tons of goods (including 28 million TEU of container cargo) for goods transport</li> <li>Up to 1.8 million passengers for passenger transport</li> </ul>	<ul style="list-style-type: none"> <li>Cai Mep Ha port to be developed</li> <li>Possibility of new port in Can Gio (on Go Gia river) to be examined</li> <li>Ports on Sai Gon river, and others, to be relocated according to the urban development of Ho Chi Minh city</li> </ul>
<b>Group 5</b>	<ul style="list-style-type: none"> <li>Up to 80 million tons of goods (including 0.8 million TEU of container cargo) for goods transport</li> <li>Up to 6.2 million passengers for passenger transport</li> </ul>	<ul style="list-style-type: none"> <li>International gateway port in Mekong Delta to be established</li> </ul>

1.2 Seaport infrastructure planning

According to the Seaport Master Plan, the infrastructure supporting Vietnam's seaports (including marine navigational channels, lighthouses, storm-sheltering anchorage zones, infrastructure servicing the work of ensuring maritime safety, state management and other supporting structures) will be developed to suit the size of seaports, shipping fleet development trends, transportation needs, and the ability to balance and mobilise investment resources. The Seaport Master Plan also prioritises the following port infrastructure:

- Cai Mep – Thi Vai navigation channel servicing ships with a capacity of 18,000 TEU;
- project for large vessels arriving via Hau river – phase II;
- navigation channels in Nghi Son, Chanh river, Cam Pha, Tho Quang and others; and
- lighthouses on islands and archipelagos, and infrastructure securing maritime safety.



### 1.3 Capital and water surface/Land using demand forecast

The Seaport Master Plan anticipates that the total demand for land and water surface used to develop the seaport system as planned up to 2030 is about 33,600 hectares and 606,000 hectares respectively. The required investment capital for container ports up to 2030 is VND313,000 billion (c. US\$13.7 billion).

### 1.4 Implementing the plan

The Government's proposed solutions for implementing the Seaport Master Plan have been classified into six main groups: policies, capital/fund raising, environment and technology, human resources development, international cooperation, and organisation and supervision of implementation activities.

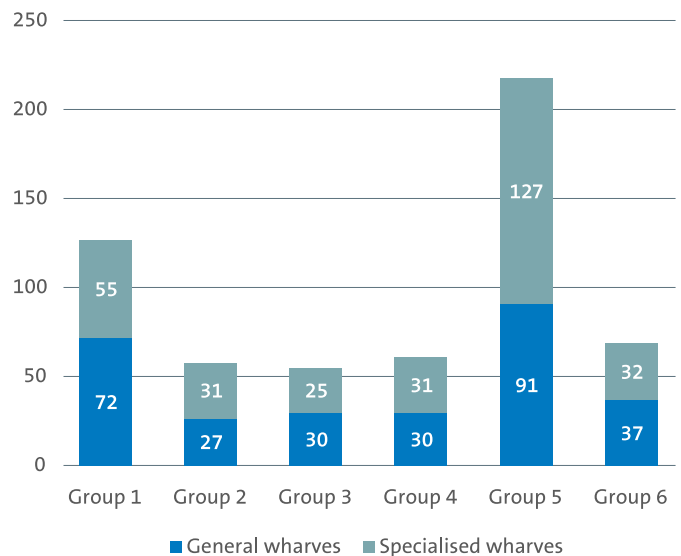
The Government intends to reinforce the legal framework and policies in the maritime sector, in order to promote investment in the development of seaport infrastructure and encourage private sectors to take a more active role in the process. Vietnam will also give priority to reserve land and water surface for seaport development, and will further develop policies on prices and charges at seaports, to improve seaport investment efficiency and boost competitiveness.

## 2. PORT SECTOR – CURRENT STATUS AND OPPORTUNITIES

### 2.1 Overview

According to the Vietnam Marine Administrative (the **VMA**), as of April 2021, Vietnam had 287 general wharves and 301 specialised wharves, totalling 96 kilometres in length across 286 ports nationwide.<sup>1</sup> In April 2022, Vietnam announced plans to add 10 new ports to the national seaport system, bringing the total number nationwide to 296.<sup>2</sup> The new ports are to be strategically located in Hai Phong, Quang Ninh, Thanh Hoa, Quang Tri, Tien Giang, Ben Tre, Tra Vinh and Vung Tau. Notably, each of Hai Phong and Vung Tau has two newly added ports: in Hai Phong, VIMC Dinh Vu port and an FGG specialised port; in Vung Tau, Cai Mep Gemadept Terminal Link port and Cai Mep general port.

Chart 4 – Current capacity of Vietnam's port system (Source: VMA)



Along Vietnam's coastline, the three main port cities are Hai Phong in the North, Da Nang in the centre and HCMC in the South. Hai Phong is a major port for international container traffic. Da Nang port manages cargo in the central region, and connects Vietnam to Myanmar, Thailand and Laos. Ho Chi Minh City port handles the largest share of cargo throughout in Vietnam and remains one of the biggest ports in the region.

The four biggest terminal operators in Vietnam are Saigon Newport Corporation, Tan Cang – Cai Mep International Terminal Co., Ltd, Gemadept Corporation and Port of Hai Phong Joint Stock Company. In addition to the presence of local developers, a number of ports are owned entirely by foreign investors or developed under joint venture arrangements. Some notable joint venture ports between foreign investors and Vietnamese investors are Central Sai Gon SPCT (joint venture with DP World – Saudi Arabia); Sai Gon Vietnam SITV (joint venture with Hutchison Hongkong); international port SP-PSA (joint venture with PSA Singapore); Cai Mep CMIT (joint venture with APMT Denmark); SP-SSA (joint venture with SSA Marine America); Cai Lan container port (joint venture with SSA Holdings International Vietnam); Germalink port (joint venture with CMA terminals – France) and Tan Cang Cai Mep (joint venture with Mitsui O.S.K line – Japan, Hanjin Shipping Line – Korea and Wanhai Lines – Taiwan). Lach Huyen port (Hai Phong) and Cai Mep – Thi Vai port (Ba Ria – Vung Tau) are two key foreign-invested ports in the North and South, with capacity to accept container ships of up to 132,000 deadweight tonnage (**DWT**) and 214,000 DWT respectively. According to the VMA, large-scale specialised wharves in industrial parks, metallurgical complexes, refinery and petrochemical plants, and coal-fired power centres could receive ships up to 200,000 DWT, liquid cargo to 150,000 DWT, and crude oil up to 320,000 DWT. The maximum sizes of vessel accepted in some other major ports are as follows:

<sup>1</sup> Main content of the master plan on development of Vietnam's seaport system in the period 2021–2030, with a vision to 2050, p. 68.

<sup>2</sup> Decision 552/QĐ-BGTĐT dated 20 April 2022 of the Ministry of Transportation announcing the list of ports belonging to Vietnamese seaports.

Chart 5 – Size of vessel allowed at some ports (source VMA)

Region	Port	Maximum size of vessel (DWT)
North	Quang Ninh	50,000
	Dinh Vu	40,000
	B12 Oil Terminal	40,000
Central	Chan May	30,000
	Danang	45,000
	Quy Nhon	30,000
	Cam Ranh	30,000
South	Phu My	60,000
	Saigon New Port	30,790
	Saigon Port	32,000 - 60,000
	Ben Nghe	36,000
	Saigon Petro Port	32,000
	Nha Be	36,000
	Bong Sen	30,000

## 2.2 Challenges

There are several key challenges when it comes to port development.

First, current port capacity will not meet the increasing demand. The construction of important ports, such as Van Phong, to serve large-size container ships (eg TEU15,000 or above) is behind schedule and threatens Vietnam's ability to become a container transit hub. In practice, import and export demands are mainly focused on the North and South region, and the construction of international gateway ports, such as Lach Huyen port (Hai Phong) and Cai Mep port (Ba Ria – Vung Tau), with the capacity to admit ships up to 10,000 DWT or above only partly meets the requirements for transportation of import-export goods and international transit.

Second, port infrastructure and facilities are not sufficiently developed, especially for big vessels, leading to transshipment problems. In 2018, the Vietnam Port Association stated that 80% of container imports and exports require transshipment, causing traffic congestion, delays and increased costs. As Vietnam has shallow water levels (especially in the North) and undeveloped handling facilities, it is difficult for large ships to access and, thus, they often need to dock at ports in Singapore, Malaysia or Taiwan. Therefore, there is an important and urgent need for Vietnamese ports to serve transshipment vessels.

Third, the quality and location of current infrastructure (eg highways, road, rail and logistics centres) are not always compatible with the location and size of ports, leading to under-utilisation, delays and inefficiency. For example, public sources reveal that Hiep Phuoc port in HCMC is facing difficulties, as a result of a low utilisation rate (around 20% of capacity) caused

by poor connecting roads to it. Meanwhile, the shallow waters of the Soai Rap River prevent the port receiving ships of over 30,000 tons. Another example is Cai Mep's low utilisation due to its infrequent shipping services, and distance from the main industrial zones and demand markets such as HCMC, Bien Hoa, Dong Nai and Binh Duong.

## 2.3 Opportunities

In recent years, a number of state-owned ports started equitisation (privatisation) processes, providing opportunities for investors in a number of large operational seaports in Vietnam.

- In May 2014, Hai Phong port launched an initial public offering (IPO), in which the total value of shares offered for sale – approximately 5.5% of the total charter capital – was about VND238 billion (c. US\$10.5 million). At present, state-owned capital still accounts for 92.56% of Hai Phong port.
- One year after the IPO of Da Nang port in June 2014, Sai Gon port launched an IPO in June 2015, in which 35.7 million shares accounting for 16.51% of charter capital were sold at a value of around VND4 trillion (c. US\$186 million). In this IPO, VPBank and Vietinbank also won the auction to acquire 7.44% and 9.07% respectively of the charter capital of Saigon Port. To pay for its stake in the port company, Vietinbank swapped a debt of Saigon Port's of about VND2.3 trillion (c. US\$102 million). The value paid by VPBank remains unknown. Although, in 2016, Vietinbank and VP Bank announced that they planned to divest their investments, the current public record shows that these companies still have shares in Sai Gon port.

M&A activity in the seaport sector has also attracted many investors. In recent years, there have been some notable acquisition transactions in the South of Vietnam:

- In December 2017, Quang Nam Resort Real Estate JSC acquired 9.8% of the charter capital of Sai Gon Port from Vietnam N.A Motor Company Limited at a value of over VND185 billion (c. US\$8 million).
- In September 2017, Vinpearl JSC acquired 13.5 million shares of Nha Trang Port from the People's Council of Khanh Hoa province at a value of VND148.5 billion (c. US\$6.45 million) to increase its ownership ratio to 85.55%.
- In March 2019, Wan Hai Lines Pte Ltd, which is a subsidiary of Wan Hai Lines (Taiwan), bought 19.83 million shares of Da Nang Port JSC at a value of around VND400 billion (c. US\$17.4 million) to own 20.4% of the charter capital of Da Nang Port JSC.
- In May 2020, VNDirect Securities JSC acquired 3 million shares from Gelex Group JSC to own 16.1% (equal to VND200 billion or US\$8.6 million in value) of the charter capital of Dong Nai Port JSC.

With the continuing development of Vietnam's economy in general, and the importance of seaports in facilitating and supporting it, there are likely to be many opportunities for investors in the seaport sector in Vietnam. The Seaport Master Plan itself offers a lot of greenfield opportunities for investors. In particular, the plan provides for 41 priority projects in the maritime sector in the period 2021–2030, of which the following seven projects are planned for private sector development:

- Harbour 3, 4 of Lach Huyen harbour area;
- Harbour 5, 6 of Lach Huyen harbour area;
- Tran De – Soc Trang harbour area;
- expanding Nghi Son – Thanh Hoa harbour area;
- Cai Mep Ha port and logistics area;
- investment in inland container depots on demand; and
- investment in seaports excluding specialised wharves

Priority investment projects in the port sector are divided into three main groups: port entrance channels projects, general ports and container terminals, and specialised ports. In fact, local provincial authorities are calling for investment in many seaport development projects. For example:

- In 2020, Ba Ria – Vung Tau province called for investors in 17 seaport projects that had not been implemented yet or had not yet had investors.
- In March 2021, Quang Binh province called for investors in the phase 2 of Hon La seaport project in Hon La economic zone.
- In April 2021, Da Nang city called for investors in the Lien Chieu port project.

### 3. CONSIDERATIONS FOR INVESTMENT IN PORT PROJECTS

#### 3.1 Overview of the legal framework for port development

Investment in the port sector in Vietnam requires consideration of various branches of law, in addition to the port sector-specific regulations.

Key port-sector specific legal instruments include the Vietnam Maritime Code 2015, as amended,<sup>3</sup> and its guiding documents. The Vietnam Maritime Code 2015 regulates the classification of seaports, seaport planning, investment in and construction of seaports and seaport management, among other things. This is further detailed under Decree 71 dated 28 July 2021 on classification of seaports, and Decree 21 dated 21 March 2012 regulating the port and navigable channels management. Investors operating a seaport are also required to satisfy conditions for conducting port trading activities set out under Decree 37 dated 04 April 2017, as amended, and, if logistics activities are involved, Decree 163 dated 30 December 2017.

In addition to the specific regulations for the port sector, port investments are also subject to general law on investment and on enterprises (please see our publications on key points of the [New Law on Investment](#) and [New Law on Enterprises](#)) and other regulations on land, construction, labour and tax. If the port project is implemented in the form of a public-private partnership (**PPP**), it is also regulated by the PPP law (please see our Insights on key points of the [New PPP Law](#) and its implementing Decree 35).

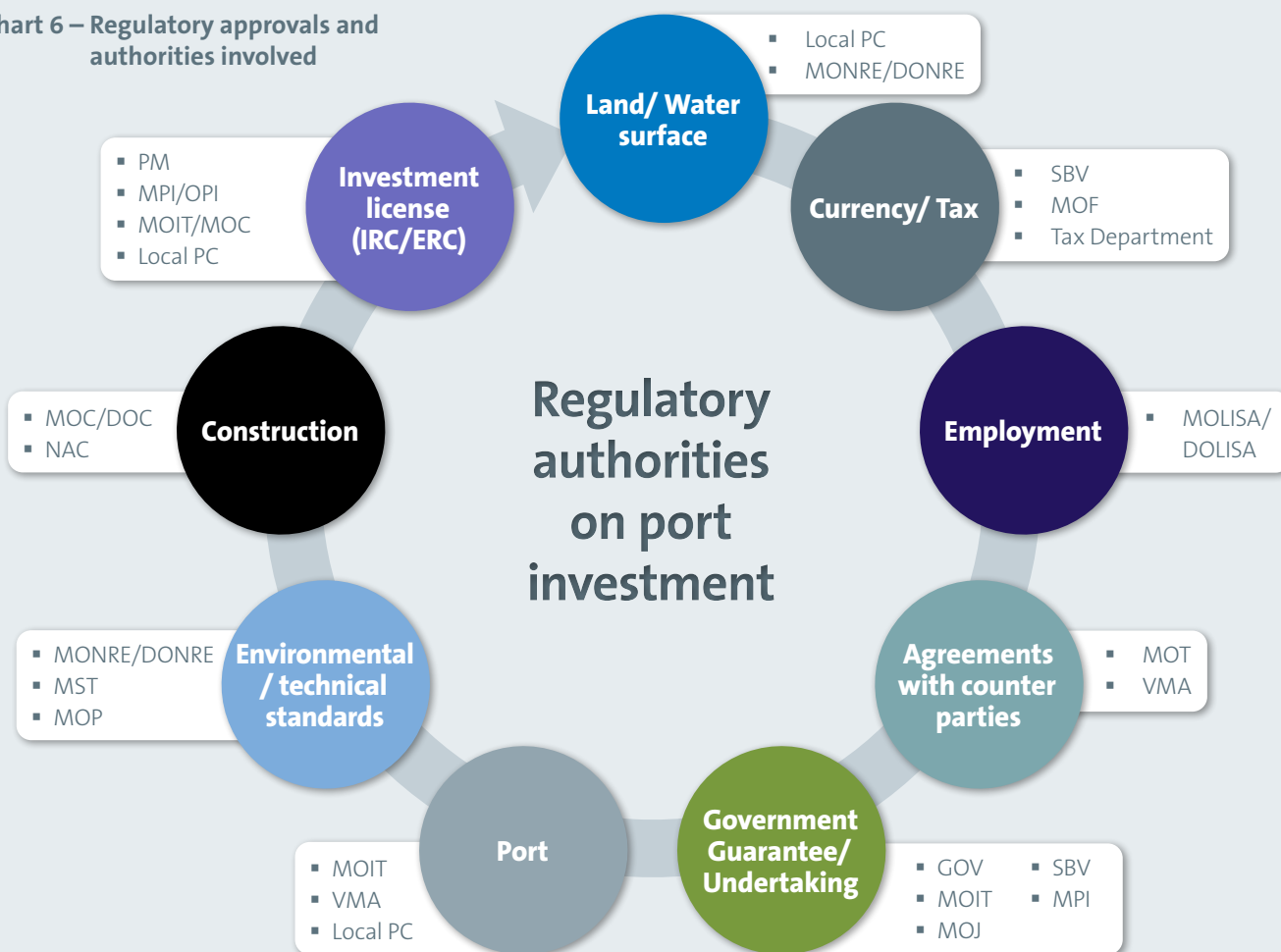
Investors should also be mindful of the application of international treaties when considering and implementing port projects in Vietnam. For example, investors conducting business activities in seaport services may be entitled to enjoy and/or required to meet investment access rights and conditions specified in Vietnam's commitments to WTO, CPTPP, AFTA, AFAS/ATISA and/or, most recently, EVFTA. They may also be entitled to investment protections set out under various bilateral investment treaties to which Vietnam is a party.

#### 3.2 Required regulatory approvals and interaction with authorities

Port development requires interaction with many types of state agencies and public enterprises. The Ministry of Transportation (the **MOT**) is the line ministry for the port sector and the VMA is the direct authority responsible for all port-related activities. Interactions with other central government authorities and agencies, such as different ministries, state administration agencies and maritime safety enterprises, would also be required. At the local level, a seaport is under the administration of a port authority that carries out state administration activities. Investors in the seaport sector must therefore be prepared for the complex and time-consuming regulatory approval process associated with each stage of a new investment in the port sector that must be completed before the project can be operated.

<sup>3</sup> The Vietnam Maritime code No. 95/2015/QH13 dated 25 November 2015, as amended by Law 35/2018/QH14.

**Chart 6 – Regulatory approvals and authorities involved**



MPI: Ministry of Plan and Investment  
 MOIT: Ministry of Industry and Trade  
 MOC: Ministry of Construction  
 MOLISA: Ministry of Labour, Invalids and Social Affaires  
 MONRE: Ministry of Natural Resources and Environment  
 MST: Ministry of Science and Technology  
 MOF: Ministry of Finance  
 MOJ: Ministry of Justice  
 MOT: Ministry of Transport

MOT: Ministry of Tax  
 SBV: State Bank of Vietnam  
 PC: People Committee  
 DPI: Department of Plant and Investment  
 DOLISA: Department of Labour, Invalids and Social Affaires  
 DONRE: Department of Natural Resources and Environment  
 DOC: Department of Construction  
 NAC: National Acceptance committee  
 VMA: Vietnam Maritime Administration

### 3.3 Investment structure

#### (a) Current investment forms and foreign ownership cap

The construction, operation and management of seaports is classified as 'conditional' business activity.<sup>4</sup> In general, foreign investors are permitted to set up a 100% foreign-owned company (FOC) to develop and operate a port project in Vietnam. However, in practice, most ports are joint ventures in which foreign investors have minority interests or they are wholly-domestically owned, often for reasons to do with national security and defence. For example, Cai Mep has seven (07) operators in which TCCT berth is invested by Saigon Newport (100% domestic investor), while the other six are joint ventures between

Vietnamese and foreign port operators and shipping lines (see 'Port sector – current status and opportunities').

Specific activities proposed to be implemented at a port may be subject to foreign ownership restrictions. For some other ancillary services, foreign investors must form a joint venture with local investors: these include custom clearance supporting sea transportation, bill of lading checking, goods transportation brokering, goods inspection, sampling and scaling, goods receiving and accepting, and transportation documentation preparation services. In the case of a company providing multiple activities, the maximum foreign ownership allowed for it will be limited to the lowest foreign ownership threshold provided for any business line it conducts.

<sup>4</sup> Appendix I.B.18 of Decree 31/2021/ND-CP dated 26 March 2021 of the Government guiding the Law on Investment.

The below table sets out the current foreign ownership threshold for certain key activities of a port operating company.

No.	Scope of business	Foreign ownership restriction
1.	Port construction and operation	100%, though in practice most ports are joint ventures in which foreign investors have a lesser percentage
2	Container handling services <sup>5</sup> and other cargo handling services <sup>6</sup> – ( <i>Xếp dỡ</i> )	50%. No commitment on removal of foreign ownership restriction
3	Customs clearance services – ( <i>Thông quan</i> )	FOC having less than 100% foreign ownership
4	Freight station and depot services – ( <i>Dịch vụ kho bãi</i> )	100%
5	Storage and warehouse services	100%
6	Freight transport agency services	100%
7	Shipping agency service – ( <i>Đại lý tàu biển</i> )	49%. No commitment on removal of foreign ownership restriction
8	Vessel towage service – ( <i>Lai dắt tàu biển</i> )	49%. No commitment on removal of foreign ownership restriction
9	Maintenance and repair of equipment, containers, trailers, chassis, facilities, quays and vessels	100%
10	Designing, financing and constructing terminal facilities and other related support facilities, including inland container depot, office building, warehouses and logistic centers	100%
11	Purchasing and importing equipment and information systems to handle containers and other cargoes for the business operation of the company	100%
12	Performing all other related services in regards to handling and transportation of containers and other cargoes	From 49% to 51% – no restriction for international sea transportation
13	Performing other logistics support activities comprising: bill of lading inspection, freight brokerage services, cargo inspection, sampling and weighing services; goods receipt and acceptance services; and services of preparation of transport documentation – ( <i>Các dịch vụ khác, bao gồm các hoạt động sau: Kiểm tra vận đơn, dịch vụ môi giới vận tải hàng hóa, kiểm định hàng hóa, dịch vụ lấy mẫu và xác định trọng lượng; dịch vụ nhận và chấp nhận hàng; dịch vụ chuẩn bị chứng từ vận tải</i> )	FOC having less than 100% foreign ownership

### (b) PPP investment form

Investors may consider pursuing greenfield port investments by way of direct, independent investment or under Vietnam's PPP regulations. The PPP form might, in principle, provide a higher degree of certainty and project feasibility/ bankability, as it provides investors with an opportunity to allocate certain project risks to the Government. Despite that, Vietnam's current PPP Law remains untested. (Please see our [Vietnam infrastructure sector publication](#) for further discussions of the differences between PPP and independent project investment). Investors may implement eligible investment projects, including port projects, under the PPP form if the total investment capital is VND1500 billion (c. US\$65.9 million) or more.<sup>7</sup>

As noted, to date there have been no new projects (including seaports) being developed under the PPP form (either under the current PPP Law regime or previous PPP regulations). Given that

the PPP Law and its guiding Decree are still fairly new and are not tested in practice, potential investors should be prepared for some uncertainty and a lengthy process if taking this path.

### (c) Practical alternative structures

Apart from the above-mentioned type of investment, alternative structures have been observed in practice for structuring port investment, such as investments via nominee arrangements or setting up a joint venture subsidiary to invest in port-related activities subject to the foreign ownership cap. However, this poses a risk of being considered a false transaction, something under increasing scrutiny in the [New Law on Investment](#) (particularly in sensitive sectors for foreign investment or projects in the border areas,) and the authorities could potentially terminate such investment projects.<sup>8</sup>

<sup>5</sup> Container handling services are defined under the Central Product Classification on Goods and Services (CPC) 7411 as including cargo handling services for freight in special containers and services of freight terminal facilities for all modes of transport, including stevedoring services.

<sup>6</sup> Other cargo handling services is defined under CPC 7419 as including cargo handling services provides for non-containerised freight, services of freight terminal facilities for all modes of transport and cargo handling services incidental to freight transport not elsewhere classified.

<sup>7</sup> Article 2 of Decree 35/2021/ND-CP dated 29 March 2021 of the Government detailing and guiding Law on Public-Private Partnership Investment.

<sup>8</sup> Amended Investment Law – major shift in Vietnam's approach to foreign investment ([Amended Investment Law – major shift in Vietnam's approach to foreign investment](#) (allens.com.au))



## 4. CERTAIN KEY LEGAL ISSUES

Matter	Legal requirement	Further considerations
<p><b>Right to develop a sea port project</b></p>	<p>Investment in seaports must conform to a wide range of master plans, including:</p> <ul style="list-style-type: none"> <li>■ the master plan on development of the seaport system;</li> <li>■ the detailed master plan on groups of seaports, ports, wharves, floating terminals, water zones and water areas; and</li> <li>■ the detailed master plan on development of land and water areas for seaports.</li> </ul> <p>The development of a seaport should be in harmonisation with other types of transportation infrastructure, especially the road system.</p>	<ul style="list-style-type: none"> <li>■ It would be challenging for investors to propose a new seaport that is not included in the approved master plan, given seaports' dependence on other means of transportation, and the ambiguities with the Law on Planning as to the timeline and process to add a new project to existing master plans.</li> <li>■ Given the above, the focus for upcoming investment in Vietnam seaports might be on greenfield seaports already approved in the Seaport Master Plan and M&amp;A or expansion of seaports having been licensed or constructed.</li> </ul>
<p><b>Right to use land/sea surface area and related security issues</b></p>	<ul style="list-style-type: none"> <li>■ Land use rights can only be mortgaged where the land rent due to the authorities has been paid in full and up front. For seaport project companies that pay land rent annually, or are exempted from land rent as part of project incentives, only assets attached to land can be mortgaged.</li> <li>■ Land use rights are not able to be mortgaged to foreign lenders.</li> <li>■ Further complications in terms of granting security arise for projects that are allocated sea use rights under Decree 11/2021/ND-CP, where there is no land use right certificate granted to investors over such sea areas.</li> </ul>	<p>The Government guarantees and undertaking was used in some past projects to resolve land mortgage issues. However, it is not clear whether this approach will be able to be taken with future projects.</p>
<p><b>Structuring port projects</b></p>	<p>Various structures, with different legal implications, have been considered for the development of port projects in Vietnam (see 'Investment structure')</p>	<ul style="list-style-type: none"> <li>■ Solutions to overcome the foreign ownership caps imposed on certain port activities include: setting up subsidiaries for different port activities, leasing out the port for a terminal charge, other alternative structure/arrangements. It is important to note that the authorities may terminate a part of or the entire project if the investor implements the project using facade transaction(s).</li> <li>■ Foreign investors may consider using the most favourable conditions for market approach under the treaty(ies) when investing in the seaport sector in Vietnam. Foreign investors who are applicable entities of an international treaty on investment that has more favourable conditions for market approach by such investors than the provisions of Vietnamese law shall receive the more favourable conditions in such an international treaty.</li> </ul>
<p><b>Government guarantees and undertaking</b></p>	<p>Investors in some large-scale projects (gas, coal-fired power and refineries) have managed to negotiate and enter into a contract called the Government guarantees and undertaking (<b>GGU</b>) with the Government.</p>	<p>GGUs provide for allocation of certain risks regarding the project to the Government where it was in the best position to control such risks. We are not aware of any GGUs having been granted to seaport projects to date; however, this is still an option for investors to consider.</p>

Matter	Legal requirement	Further considerations
<p><b>Tendering process in relation to state-owned seaports</b></p>	<p>Equitisation of seaports wholly owned by the state, and provisions of goods and services to state-owned seaports, must follow a pathway issued by the Government and be subject to a compulsory tendering process.</p>	<ul style="list-style-type: none"> <li>■ For a strategic sector like managing and operating seaports, the owner (representing the state) of the company must seek approval by the Prime Minister as to the specific amount of shares the state would like to keep after equitisation.<sup>9</sup> Share sale must be subject to the process set out under Decree 126 dated 16 November 2017 (as amended), which may require tendering.</li> <li>■ Investors seeking opportunities to provide goods and services to state-owned seaports should also be mindful they may be subject to a tendering process regulated by the Law on Tendering.</li> </ul>
<p><b>Regulatory approval process</b></p>	<p>Port operators must obtain a number of sub-licences for construction, development, and putting the seaport, jetties, access channel and navigation aids into use.</p>	<ul style="list-style-type: none"> <li>■ This process requires interaction with different authorities (see 'Regulatory approvals required and interaction with authorities').</li> <li>■ Investors should be prepared for complex and time-consuming regulatory approval processes when considering greenfield seaport investment in Vietnam.</li> </ul>
<p><b>Fees, prices and terminal charges</b></p>	<ul style="list-style-type: none"> <li>■ Certain service prices paid by port users to port companies are regulated by the MOT. The price frame provided by the MOT will apply, in general, for the services of pilotage; wharfage, docking, berthage; container handling and towage. For these services, port companies must apply charge rates falling within the floor and ceiling threshold imposed by the MOT. Other than these services, port companies can determine the prices at their discretion, provided that they declare them to competent authorities and comply with requirements on listing such prices as required by law.</li> <li>■ Port-related administrative fees (such as a tonnage fee, marine safety assurance fee, anchoring or berthing fee, sea protest attestation fee and seaport entering and leaving fee applicable to international maritime operations), which are regulated by the MOF, are paid by shipping lines/cargos owners and collected by port authorities.</li> </ul>	<ul style="list-style-type: none"> <li>■ In practice, regarding regulated service price, the majority of seaports in Vietnam charge minimum rates to remain their competitive advantage. Given these price brackets are relatively low compared with that of other countries in the region, the MOT and VMA have been receiving proposals on increasing the price benchmark to support the port companies in the renovation and development of port infrastructures. However, the MOT and VMA are quite reserved in this regard because higher prices would affect the trade competitiveness of Vietnam, and the proposal, if adopted, would be inconsistent with Vietnamese policy on assisting businesses in mitigating the Covid19 pandemic. Recently, the MOT Vice Minister assigned the VMA to research an amendment to regulations on statutory port services fees being included in the legislation making plan in 2022 of MOT.</li> <li>■ Provincial People's Council where a checkpoint location is entitled to collect port infrastructure fees from companies transporting goods by sea, so that the province can renovate connecting transportation routes to seaport and ancillary port infrastructure. Till dated, Provincial Hai Phong and Ho Chi Minh issued some decisions on port infrastructure fees, with Hai Phong implementing from 1 January 2017 and Ho Chi Minh implementing from 1 April 2022.</li> </ul>

<sup>9</sup> Article 33.2(a) of Decree 126/2017/ND-CP dated 16 November 2017 of the Government on conversion from state-owned enterprises and single-member limited liability companies with 100% of charter capital invested by state-owned enterprises into joint-stock companies In terms of fees, tonnage fee together with the marine safety assurance fee, anchoring or berthing fee, sea protest attestation fee and seaport entering and leaving fee (applicable to international maritime operations only) are regulated by the MOF (as amended).

## 5. WHAT'S NEXT?

### Upcoming master plans

As mentioned above, investment in seaports must conform to certain master plans, especially maritime-related master plans. Following the issuance of the Seaport Master Plan in December 2021, the detailed master plan on: (i) groups of seaports, ports, wharves, floating terminals, water zones and water areas, and (ii) development of land and water areas for seaports, are still in the pipeline. Potential investors should pay close attention to the development of these master plans.

### Implementation of the new decree on sea allocation

The entire project area of a seaport would lie on both land and water. In February 2021, the Government issued a new Decree 11/2021/ND-CP on allocation of sea areas, addressing the authorities to allocate sea areas to users, rights and obligations of the users, allocation fees and other relevant issues. There are still issues that are not entirely clear under this Decree (such as the right of foreign investors to obtain site surveys, as well as the authority and procedure for such decision) that would require further guidance and practice in the future. The Government is drafting a Decree amending Decree 11/2021/ND-CP, to address certain points regarding the authorities, procedure and fees for allocation of sea areas. It is expected that it will be issued in the third quarter of 2022.

### Investor selection

At the moment, there is no clear and uniform approach regarding the policy, method and process for selection of investors to develop port projects. Depending on the specific project, different approaches could be considered (eg direct appointment of investors or via bidding process) and, subsequently, relevant laws could be applied. In addition, foreign investors should be mindful that, from policy to practice, a lot of effort is required before an optimal investment structure can be identified, and all the legal requirements (including the vast permits and licences) can be fulfilled. These processes would be time-consuming in practice, and require patience, and active dialogue via different commercial, technical and political approaches.

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