Vietnam

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Comments related to any information in this Note should be addressed to Brittany Grabel.

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I. Summary

A. Types of Organizations

There is no specific definition of the term “not-for-profit organization” (“NPO”) under Vietnamese law. Rather, based on the various regulations for the establishment and operation of organizations with not-for-profit purposes, it is possible to conclude that Vietnamese law allows for the establishment and operation of the following five types of NPOs:

- Social relief establishments (“SREs”), including state-owned and privately-owned establishments. The purpose of an SRE is to assist individuals experiencing social difficulties, including orphans, abandoned children, HIV/AIDS-infected children,
HIV/AIDS-infected persons in poor households, elderly persons, seriously disabled persons, victims of domestic violence, victims of sexual abuse, victims of human trafficking, victims of forced labor, and other groups in difficult circumstances that may qualify for such assistance.

- Social funds and charitable funds (“funds”). Social and charitable funds are established for not-for-profit purposes to support and encourage the development of culture, education, health, sports, science, and other public development purposes. A charitable fund in particular is established to help those adversely affected by acts of God, fires, and other disasters, as well as patients with terminal illnesses and other difficult conditions.

- Associations. An association is a voluntary organization of Vietnamese citizens or organizations conducting the same business, having the same interests, or united by a common goal. An association operates to protect and advance the lawful rights and interests of its members and the community. Associations may exist for various reasons (e.g., animal/environmental protection, cultural activities, educational activities, professional activities, or sports activities).

- Scientific and technological organizations (“STO”). An STO is an organization engaged in scientific research, technological research and development, or scientific and technological service activities. Because the other categories of NPO are quite narrow and the STO category is relatively broad and undefined, domestic NPOs with a general purpose are often established as STOs by default, even if such NPOs do not have a purely scientific or technological research purpose in practice. According to the new 2014 regulations applicable to STOs, and based on the source of the respective STO’s capital contributions, STOs are now classified as either public STOs, non-public STOs, or foreign-invested STOs.

- International non-governmental organizations (“INGO”). An INGO is a non-governmental organization, social fund, private fund or other form of social and not-for-profit organization established in accordance with foreign law with not-for-profit operations in Vietnam in the areas of developmental assistance or humanitarian aid.

The NPO forms listed above comprise the primary NPO forms specifically contemplated by Vietnamese law. However, in practice, NPOs in Vietnam also exist in myriad other forms, both formal and informal, which also perform various charitable and not-for-profit functions. These include, for instance, voluntary groups, clubs, and political and religious organizations. Although not necessarily recognized by law, these NPOs gather contributions from their members and give direct support to beneficiaries, who may include other SREs, funds, associations, STOs and INGOS that are duly established. However, Vietnamese law is generally silent on specific provisions applicable to these informal NPOs; as such, these NPOs fall outside the scope of this Note.
B. Tax Laws

The Enterprise Income Tax Law (2009), Individual Income Tax Law (2008), and the subsidiary implementing regulations and documents related to these two laws, afford tax preferences to income derived from or applied to various kinds of charitable and social purposes. NPOs are also afforded tax incentives and preferences detailed in provisions dispersed among different tax documents, including legislation and regulations dealing with value added tax (VAT). It is assumed that not-for-profit revenues are not derived from business or commercial activities of an NPO.

II. Applicable Laws

A. General

- Constitution of the Socialist Republic of Vietnam, promulgated by the National Assembly on April 15, 1992, as revised on December 25, 2001
- Code of the National Assembly of June 14, 2005
- Law on Elderly Persons, promulgated by the National Assembly on January 14, 2011 ("Law on Elderly Persons")
- Decree No. 06/ND-CP of the Government of January 14, 2011 implementing the Law on Elderly Persons
- Law on Disabled Persons, promulgated by the National Assembly on April 10, 2012 ("Law on Disabled Persons")
- Decree No. 28/2012/ND-CP of the Government of April 10, 2012 implementing the Law on Disabled Persons
- Decree No. 103/2009/ND-CP of the Government of November 6, 2009 issuing regulations on cultural activities and trading in public cultural services (as amended by Decree 01/2012/ND-CP of January 4, 2012 and by Decree No. 79/2012/ND-CP of October 5, 2012 and by Decree No. 113/2013 of October 2, 2013)

B. SREs

- Decree No. 136/2013/ND-CP of the Government of October 21, 2013 on policies to support social relief subjects
- Decree No. 68/2008/ND-CP of the Government of May 30, 2008 on conditions and procedures for establishing, operating, and liquidating social relief establishments ("Decree 68")
- Decree No. 81/2012/ND-CP of the Government of October 08, 2012 amending and
supplementing Decree 68

C. Funds

- Decree No. 30/2012/ND-CP of the Government of April 12, 2012 on the organization and operation of social funds and charitable funds (“Decree 30”)
- Circular No. 02/2013/TT-BNV of the Ministry of Home Affairs of April 10, 2013 implementing Decree 30
- Circular No. 10/2008/QD-BTC of February 12, 2008 of the Ministry of Finance promulgating the regulation of financial management of social funds and charitable funds
- Decree No. 64/2008/ND-CP of May 14, 2008 on mobilizing, receiving, distributing and using voluntary contributions to support people to overcome difficulties due to acts of God, fire, serious incidents and patients with serious diseases (“Decree 64”)
- Circular No. 72/2008/TT-BTC of the Ministry of Finance of July 31, 2008 guiding Decree 64

D. Associations

- Decree No. 45/2010/ND-CP of the Government of April 21, 2010 on establishment, operation, and management of associations (“Decree 45”)
- Decree No. 33/2012/ND-CP of the Government of April 13, 2012 amending Decree 45
- Circular No. 03/2013/TT-BNV of the Ministry of Home Affairs of April 16, 2013 guiding the implementation of Decree 45

E. STOs

- Law on Science and Technology of the National Assembly of June 18, 2013 (“Law on Science and Technology”)
- Decree No. 08/2014/ND-CP of the Government of January 27, 2014 implementing the Law on Science and Technology (“Decree 08”)
- Circular No. 03/2014/TT-BKHCN of the Ministry of Science and Technology of March 31, 2014 providing guidance on the establishment and registration of STOs (“Circular 03”)

F. INGOs

- Decree No. 12/2012/ND-CP of March 1, 2012 on registration and management of operation of INGOs in Vietnam
regulations on management and use of foreign non-governmental aid ("Decree 93")

- Circular No. 07/2010/TT-BKH of the Ministry of Planning and Investment of March 30, 2010 guiding the implementation of Decree 93

G. Tax

- Law on Individual Income Tax of November 20, 2007 (as amended on July 1, 2013)
- Law on Enterprise Income Tax of June 3, 2008 (as amended on January 1, 2014)
- Decree No. 218/2013/ND-CP of the Government of December 26, 2013 guiding the implementation of the Law on Enterprise Income Tax
- Law on Special Consumer Tax No. 27/2008/QH12 of November 13, 2008
- Circular No. 141/2013/TT-BTC of the Ministry of Finance of October 16, 2013 guiding Decree 92

III. Relevant Legal Forms

A. General

As discussed above, there are five main legal forms for the establishment of an NPO under Vietnamese law, comprising: (i) social relief establishments (SREs), (ii) funds, which may be social or charitable, (iii) associations, (iv) scientific and technological organizations (STOs); and (v) international non-governmental organizations (INGOs).

Five primary government decrees form important components of the legislative framework for NPOs in Vietnam:

- Decree 68 (2008) on Conditions and Procedures for Establishing, Operating, and Liquidating Social Relief Establishments: This Decree provides the framework for regulating SREs.

- Decree 30 (2012) on the Organization and Operation of Social Funds and Charitable Funds (quỹ): This Decree provides regulatory guidance on funds, including details concerning their establishment, structure, organization and governance. The Decree refers to property assigned or raised to accomplish select social or charitable purposes through granting or programming during a particular period of time.
• Decree 45 (2010) on the Organization, Activities and Management of Associations: This Decree regulates the formation, operation, activities and state management of associations (hội). It constitutes the legal basis for registering and operating most Vietnamese associational entities, including “special purpose” associations that receive government support and which are mostly state-affiliated umbrella groups.

• Decree 08 (2014): This Decree governs the registration and activities of STOs, particularly through umbrella groups such as the Vietnam Union of Science and Technology Associations (VUSTA). These organizations are an important component of the Vietnamese not-for-profit sector.

• Decree 93 (2009): This Decree governs the management and use of foreign non-governmental aid. It was followed by a detailed Circular in March 2010, which along with Decree 93 maintains and enhances state control over non-governmental aid provided by donors to Vietnam, with more detailed provisions than in the past and with a focus on approval processes, use of funds, and devolution of decision-making to provincial and other sub-national levels. [1]

The government closely regulates and monitors the establishment and operation of NPOs, and the application process for establishing an NPO may be complicated and time-consuming. The legal framework for NPOs is supplemented by an increasing array of regulatory agency decisions, decrees, and other subordinate legal documents (including tax regulations) that govern many specific aspects of NPO activities in Vietnam. A Law on Associations has been under discussion in Vietnam since the early 1990s but has yet to be enacted by the Vietnamese legislature, the National Assembly. [2]

The complex legal environment for NPOs can be illustrated by the situation facing STOs. On January 1, 2014, the new Law on Science and Technology took effect and replaced the old law, which had been valid since 2000. Not long after the issuance of the new Law on Science and Technology, Decree 08 and Circular 03 were issued to guide the implementation of the new law and enhance the legal framework for the establishment and operation of STOs. (Hereinafter, the “Law on Science and Technology,” “Decree 08,” and “Circular 03” shall be referred to collectively as the “New STO Law.”)

The New STO Law distinguishes among different types of STOs based on the source of their respective capital contributions, and sets forth separate establishment procedures for each. These types include public STOs, non-public STOs, and foreign-invested STOs. While distinguishing among STO types on the basis of capital sources, the New STO Law may have the overall positive effect of providing greater clarity for entities desiring to establish an STO in Vietnam. The New STO Law also provides a legal basis for the establishment of
representative offices and branches of foreign STOs which, in practice, have operated in Vietnam for years without a formal status.

However, compared to the old regulations, the New STO Law creates a number of additional requirements that must be satisfied in order to establish an STO in Vietnam, irrespective of the type. In particular, after March 15, 2014, any newly-established STO must have at least five personnel with a bachelor’s degree, 30% of the personnel must specialize in the operational field of the STO, and 40% must be full-time personnel. [3] Additionally, with the exception of newly-established STOs operating in a brand-new field, all STOs must have at least one, full-time, qualified member of personnel, with a bachelor’s degree and a major in the STO’s field of operation. Existing STOs (those established and operating prior to March 15, 2014), have a time-limit of two years from March 15, 2014 to satisfy the requirements concerning personnel.

Furthermore, Decision 97/2009/QD-TTg (“Decision 97”), issued by the government in July 2009, limits the areas in which individuals are allowed to form STOs and the policy advocacy such groups may undertake. Under Decision 97, individually-established STOs are prohibited from operating in fields such as economic policy, public policy, political issues, and a range of other areas that are considered sensitive. They are also not permitted to engage in the public distribution of policy advocacy positions. Commentators have argued that Decision 97 specifically targeted a particular research group, the Vietnam Institute of Development Studies (VIDS), although it applied to other groups as well. [4] Decision 97 remains in effect regardless of the implementation of the New STO Law.

More generally, it is difficult to estimate the number of NPOs in Vietnam, as government sources are not consistent on such statistics. There are several thousand associations at the national and provincial levels, and well over one-thousand funds and foundations of various kinds. There are also tens of thousands of NPOs in various forms at the local level, including cooperatives, clubs, local community-based groups and associations, and other forms of associations at the grassroots levels. [5]

B. Public Benefit Status

Vietnamese law does not provide a specific and direct link between the “public benefit status” of an NPO and an NPO’s establishment. However, Vietnamese law does provide a list of certain enumerated purposes and activities for which an NPO may be established and operate. From this list, the implied – and in some instances, practically required – public benefit status of different statutory NPO forms may be discerned. Furthermore, because of NPOs’ interest in securing financial support from the state in the form of preferential tax treatment, it is common for many NPOs to carry out specific operations with public benefit purposes tied to the state’s development objectives. [6] Tax laws and regulations, such as the Individual Income Tax Law (2007), provide that NPOs must operate for charity, humanitarian or not-for-profit purposes in order to receive preferential tax treatment from
the state.

The purpose of an SRE is to assist individuals experiencing social difficulties, such as: orphans, abandoned children, HIV/AIDS-infected children, elderly persons (as provided by the Law on Elderly Persons), seriously disabled persons (as provided by the Law on Disabled Persons), HIV/AIDS-infected persons in poor households, victims of domestic violence, sexually abused victims, victims of human trafficking, victims of forced labor, and other groups in difficult circumstances that may qualify for such assistance. Accordingly, the SRE must be established with the purpose of providing benefits to these discrete groups.

All funds are established and operate for not-for-profit purposes to promote the development of culture, science, charity, and other social and humanitarian purposes (Civil Code Article 105). Charitable funds, in particular, are established for not-for-profit purposes to remedy difficulties caused by acts of God, fires, and other adversities, as well as to help patients with terminal illnesses and others in difficulty.

An association is a voluntary organization of Vietnamese citizens or organizations conducting the same business, having the same interests, or united by a common goal. An association operates to protect and advance the lawful rights and interests of its members and the community. Associations may exist for various reasons, such as animal or environmental protection, cultural activities, educational activities, professional activities, or sports activities.

An STO is an organization engaged in scientific research, technological research and development, or engaging in scientific and technological service activities. It is understood that by carrying out their permissible activities for charitable purposes, STOs operate for the public benefit. [7]

An INGO is a non-governmental organization, not-for-profit organization, social fund, private fund or other form of social and not-for-profit organization established in accordance with foreign law with not-for-profit operations in Vietnam in the areas of developmental assistance provision or humanitarian aid provision. By law, an INGO can only carry out its activities in Vietnam in accordance with the Operation Permit granted by the People's Aid Coordination Committee (PACCOM), or on the basis of specific approvals granted on a case-by-case basis. Given that the law specifically defines INGOs as operating in the area of development assistance and humanitarian aid, it is understood that INGOs operate with the purpose of providing a public benefit.
IV. Specific Questions Regarding Local Law

A. Inurement

Vietnamese associations and funds are generally not permitted to distribute or share profits with members or individuals. Although Decree 45 (2010) on the Organization, Activities and Management of Associations does not specifically prohibit private inurement, it does require associations to operate on a not-for-profit basis. Decree 30 (2012) strictly prohibits funds from dividing their assets during operation.

Vietnamese law is silent on whether an SRE is permitted to distribute or share profits with its members. However, because an SRE is limited to receiving, using, and managing funding (including in-kind funding) that is contributed by organizations for charitable purposes, and further requiring an SRE to ensure that contributions are used for such charitable purposes, it is understood that an SRE is not permitted to distribute or share profits with members or individuals.

An STO is permitted to engage in joint ventures, affiliations to make capital contributions, and to execute business cooperation contracts with domestic and foreign individuals; however, it is unclear whether STOs have the right to distribute or share profits with members. To the extent that an STO is permitted to joint venture and engage in related activities, it seems logical that an STO would at least be permitted to receive distributions from such entities.

Vietnamese law is silent as to whether an INGO’s members are permitted to have any proprietary interest in assets. All NPOs, however, are limited subjects of the statutory law and, consequently, NPOs are generally only permitted to carry out activities that the law specifically allows.

B. Proprietary Interest

For associations, the Civil Code (Article 104) and relevant regulations on associations (especially Decree 45 (2010)) generally do not permit an association’s members to have a proprietary interest in its assets.

For funds, the Civil Code provides that funds and their organizers “may not divide up the property of the fund in the course of the fund’s operation” and that “the property of the social fund or charitable fund shall be managed, used and dispensed with in accordance with the provisions of law and in accordance with the purpose of the operation of the fund as stipulated by its charter” (Civil Code Article 105). As indicated above, Decree 30 (2012) strictly prohibits funds from dividing their assets during operation.

C. Dissolution
For associations, Decree 45 (2010) provides that “[f]or assets and finance funded by domestic and overseas organizations; or supported by the state for which the association has fulfilled related obligations and paid debts, the remaining assets and financial balance shall be decided by competent state agencies” and “[f]or the association’s own assets and financial sources for which the association has fulfilled related obligations and paid debts, the remaining assets and financial balance shall be decided by the association under its charter” (Decree 45 Article 31(1)(a)(b)).

For funds, the revised 2005 Civil Code (Article 105) provides that “the property of [a foundation] shall not be divided up among its founding members but must be settled in accordance with the provisions of law.” Decree 30 (2012) on Funds specifies that “A fund may dissolve at its own will or be dissolved” (Decree 30 Article (38)(1)). A fund dissolves of its own will if it terminates operation under its charter, if its operational objectives have been fulfilled, or if it has no assets or finances for operation (Decree Article (38)(2)). A fund will be dissolved if it fails to comply with its reporting obligations in two consecutive years, or if it falsifies its accounting information or registered account number, etc. (Decree 30 Article (38)(4)). The handling of the assets, finances, and staff of a fund will be subject to the plan approved by the fund management council upon dissolution (Decree 30 Article (38)(3)).

For STOs and SREs, the law generally states that the competent authority that had the right to establish the STO or SRE will also have the right to dissolve it (Decree 08 (2014) Article 16; Decree 68 (2008) Article 20(1)).

D. Activities

1. General Activities

   a. Social Relief Establishment (SRE)

   An SRE is entitled to carry out the following activities:

   (i) receive funds provided by domestic and foreign individuals and organizations (including their members);
   (ii) receive, use and manage funds (including in-kind funds) contributed by organizations for charity purposes and ensure the use of such contributions for such purposes;
   (iii) receive and mobilize foreign non-governmental aid;
   (iv) provide social work, including the establishment of plans to raise funding resources through programs and projects; and
   (v) mobilize organizations and individuals to provide funds to bring up and take care of individuals being assisted by the SRE. The SRE is required to manage and use the funds in accordance with law.
Vietnamese law is silent on specific activities that are impermissible for an SRE to undertake.

b. Social Funds and Charitable Funds

Both social funds and charitable funds are entitled to carry out the following activities:

(i) mobilize financial contributions and aid for the fund;
(ii) receive assets donated or sponsored or otherwise provided by domestic and foreign organizations and individuals in accordance with the fund’s objectives and provisions of law;
(iii) mobilize and receive foreign non-governmental aid; and
(iv) call for and mobilize organizations and individuals to contribute cash or goods to support people affected by acts of God, fire or other serious incidents.

The operation of a social fund and a charitable fund must be in compliance with the following principles: (a) its operations and establishment are not conducted for profit; (b) it is voluntary and self-financing; (c) it is responsible for its undertakings; (d) it operates under a charter that has been recognized by the agency that licenses it; (e) it makes public all revenue and expenditures and is financially transparent; and (f) its assets must not be divided during its operation. Vietnamese law strictly prohibits funds from engaging in any of the following activities:

- money-laundering, supporting terrorist and unlawful activities;
- infringing on the social ethics, national habits, customs, tradition and character of the Vietnamese people; and
- infringing on the legitimate rights and benefits of individuals, organizations and the community, and causing an adverse impact on the interests of the nation, national defense or national unity.

c. Associations

An association is entitled to carry out the following activities:

(i) mobilize funds from membership fees and revenues from its business and services in accordance with the law to cover its operational expenses;
(ii) receive aid and donations from domestic and foreign individuals and organizations; and
(iii) mobilize and receive foreign non-governmental aid.
It should be noted that unlike an SRE or funds, the law does not specifically indicate that an association may mobilize funds domestically from individuals and organizations other than from its members. However, an association is allowed to (i) receive aid and donations from both domestic and foreign individuals and organizations, and (ii) mobilize foreign non-governmental aid. Consequently, it is reasonable to conclude that an association is permitted to carry out fundraising activities in Vietnam, albeit in a more limited form than other types of NPOs. An association is specifically not allowed to distribute the funds it has raised and/or mobilized to its members.

**d. Scientific and Technological Organizations (STOs)**

An STO is entitled to carry out the following activities:

(i) receive aid and donations from domestic and foreign individuals and organizations for the purpose of carrying out scientific and technological activities;

(ii) mobilize and receive foreign non-governmental aid;

(iii) undertake a joint venture, affiliate, make capital contributions, and execute business cooperation contracts with domestic and foreign individuals to do business in accordance with the law; and

(iv) organize the manufacture and business of products/works resulting from research results and of scientific and technological services in relation to the functions of such STO.

Based on the foregoing, it is unclear under Vietnamese law whether an STO is permitted to raise funds from domestic individuals and organizations. Although the law specifically allows an STO to “receive funds” from domestic individuals and organizations, the law does not specifically allow an STO to “mobilize” funds from such sources.

**e. International Non-Governmental Organizations (INGO)**

The law is silent on whether an INGO can carry out fundraising activities in Vietnam, including the right to mobilize or receive funds from domestic individuals and organizations. Regulations on management and usage of foreign non-governmental aid state clearly that the permissible donors of such aid can only be organizations established in Vietnam. However, the regulations also include a broad provision applicable to other organizations providing that: “with respect to other organizations, the receipt of aid will be submitted to the Government for its consideration and determination.” This discretionary mechanism may accordingly give INGOs a legal basis to receive foreign non-governmental aid. Nonetheless, an INGO, as a strictly construed subject of statutory law, can only carry out such activities if the Operation Permit from PACCOM, or a specific approval on a case-by-case basis, grants the INGO the operational power to engage in such fundraising activities.
2. **Public Benefit Activities**

Please refer to Section III. B on “Public Benefit Status” for details.

3. **Economic Activities**

Generally, in addition to the direct receipt of fundraising resources from members and organizations, and upon obtaining the appropriate permits and approvals, some NPOs may organize cultural activities including art performances, fashion shows, and festivals for charitable purposes. Like all cultural activities, art performances, fashion shows and festivals undertaken in Vietnam by any organization or individual, even when undertaken for not-for-profit and humanitarian purposes, are subject to Vietnam’s regulatory regimes applicable to such activities. Accordingly, an NPO wishing to undertake cultural programming for charitable purposes must ensure compliance with certain prohibitions. For instance, the contents of such cultural programming cannot: (a) tend to incite people to oppose the State of the Socialist Republic of Vietnam; (b) undermine the unity of the Vietnamese people, inciting violence, propagandizing wars of aggression, sowing hatred between nations and peoples; or (c) disseminate reactionary ideas and cultures, depraved lifestyles, criminal acts, social evils, superstitions, acts against fine customs and habits, harming the health and deteriorating the eco-environment.

For associations, Decree 45 (2010) provides that associations may “raise funds for the association through collecting membership fees and revenues from its business and services under law to cover its operational expenses” and may “receive lawful donations from domestic and overseas organizations and individuals under law [and] receive the State’s financial support for activities related to the tasks assigned by the State” (Decree 45 Article 23(11)-(12))” Many Vietnamese associations do indeed collect revenue from businesses and services to finance their operational expenses.

For funds, Decree 30 (2012) arguably permits such groups to engage in economic activities through a general provision that enables funds to have income arising from “the provision of services and other activities in accordance with the law” (Decree 30 Article 32(2)).

Based on the permissible and impermissible activities in Vietnam for each type of NPO, it is likely that only STOs have the specific right to directly engage in economic activities. In particular, the regulations clearly provide that an STO has the right to engage in joint ventures, affiliations, make capital contributions, execute business cooperation contracts with domestic and foreign individuals in accordance with the law, and organize the manufacture of business products/works resulting from the research results of the STO.

E. **Political Activities**

Vietnamese law does not specifically and directly address the permissible political activities
or public advocacy for any type of NPOs. However, scattered regulations on the legitimate rights and obligations of an NPO may be understood as allowing an NPO to engage in certain political activities or public advocacy.

For associations, Decree 45 (2010) on associations permits an association to “propagate its goals, “represent its members in internal and external relations related to its functions and tasks,” “protect its legitimate rights and interests and its members in line with its guiding principles and goals,” “organize and coordinate activities of its members for its common interests,” “participate in programs, projects, studies and counseling and critical comment and examination at the request of state agencies…..,” and “comment on legal documents related to its activities under law [and] propose to competent state agencies matters related to its development and domain.” Commentators have noted that several of these provisions represent a narrowing of permitted policy and public advocacy from earlier regulations. For example, the right to “participate in programs, projects, studies and counseling and critical comment and examination at the request of state agencies” (Decree 45 Article 23(7)) adds the provision “at the request of state agencies” and, accordingly, arguably limits the scope of advocacy by associational entities. Similarly, the provision on “commenting on legal documents” is also limited by organizational role and status. [8]

For funds, Decree 30 (2012) provides that they have the right to “lodge complaints and denunciations in accordance with law” (Decree 30 Article 30(9)) and “exercise other rights ... in accordance with law” (Decree 30 Article 30(14)). Nonetheless, it can be assumed that the more recent limitations on public advocacy by associations as specified in Decree 45 (2010) and Decision 97 (2009) would also apply to funds.

Officially, if not in practice, Article 69 of the Constitution would appear to permit associations and other organizations as well as individuals to “hold demonstrations in accordance with the law.”

F. Discrimination

Article 52 of the Constitution states that “all citizens are equal before the law.” The Vietnamese regulatory documents governing NPOs do not generally deal further with non-discrimination.

G. Control of Organization

Other than an NPO established through the state budget, over which the Government of Vietnam would exercise considerable control, NPOs can be established upon satisfaction of certain conditions. Such NPOs’ activities, operations and dissolution would be subject to the specific operational permit or approval issued by the competent authority.

At present, it does not appear that an NPO may be controlled by an American grantor
charity. This was a matter of debate in the drafting of the Law on Associations and Decree 45 (2010) on associations. Decree 45 (2010) now provides (in an article on “associate and honorary members”) that “[j]oint-venture enterprises and wholly foreign-owned enterprises . . . that operate in Vietnam, make contributions to an association’s development and agree with the association charter may be considered and recognized by an association of economic organizations to be their associate members” (Decree 45 Article 17).

Article 17 of Decree 45 (2010) also contemplates that Vietnamese citizens and institutions may become associates or honorary members of associations without the right to vote or stand for election within such associations. The Decree gives associations the power to draft procedures for the admission of associate and honorary members into their charter. It may be the case that, in the future, foreign citizens and institutions may be named as associates or honorary members of associations under a broader interpretation of these provisions.

For funds, Decree 30 (2012) on social and charitable funds allows “foreign individuals and organizations [to] contribute . . . property with Vietnamese individuals or organizations to establish a fund” (Decree 30 Article 10(1)).

V. Tax Laws

A. Income or Profits Tax

Most NPOs enjoy special income tax incentives and do not pay tax on income received from the government or from local or foreign contributions that are “used for educational, scientific research, cultural, artistic, charitable, humanitarian and other social activities in Vietnam” (Enterprise Income Tax Law (2009) as amended on January 1, 2014, Article 4). Special tax rates apply to non-exempt enterprises engaged in educational training, vocational training, health care, culture, sports, and the environment, and for agricultural cooperatives and people’s credit funds (Enterprise Income Tax Law Article 13).

The Individual Income Tax Law (2008) as amended on July 1, 2013 exempts from personal income tax income received from charitable funds that the government permits to be established, or has recognized, and which is for charitable or humanitarian purposes and not for profit-making purposes. It also exempts from personal income tax income received from governmental or non-governmental foreign aid sources for charitable or humanitarian purposes approved by state authorities.

However, Vietnamese regulations are silent on whether income originating from activities carried out by a NPO for charitable, social, or other not-for-profit purposes shall be exempted from taxes or otherwise enjoy tax incentives.

B. Value Added Tax (VAT)
Goods imported as humanitarian aid, non-refundable aid, gifts, and presents that NPOs receive from foreign donors are generally exempted from VAT and other indirect taxes at the import stage. Monetary aid from foreign donors to buy goods for use in humanitarian activities is also generally not subject to VAT.

C. Double Tax Treaty

The United States and Vietnam have not yet entered into a double tax treaty.

VI. Knowledgeable Contacts

Eli Mazur: Eli.Mazur@ykvn-law.com
Le Huu Hong Chuyen: chuyen.le@ykvn-law.com

Footnotes

[1] For further discussion of these new regulations on donor-provided foreign non-governmental aid, see Sidel, infra note 2.

[2] For further discussion of the debate on the Law on Associations, see Sidel, Maintaining Firm Control: Recent Developments in Nonprofit Law and Regulation in Vietnam, International Journal Not-for-Profit Law (IJNL) 12:3 (2010). The Law was the subject of intense debate in 2005 and 2006. Significant differences involving government agencies and associations, and within the government community, could not be overcome. The Law has been put off for further discussion and drafting. The issues included, among others: procedures for the establishment of associations; permitted and prohibited activities; management of associational activities (“single” vs. “dual” ministerial management); foreign membership; the economic activities of NPOs; and the status and role of national umbrella associations of nonprofits.

[3] A literal translation of the New STO Law reads that these 40% “must work officially” for the STO. The authors of this Note have assumed that this means full-time; however, only regulatory practice will completely clarify the scope of this new requirement.


[5] See, e.g., Kerkvliet, Quang A, and Sinh, Forms of Engagement Between State Agencies and Civil Society Organizations in Vietnam: Study Report (December 2008). The Government of Vietnam seeks to promote the growth of a development-oriented NPO sector in Vietnam that cooperates with and does not oppose party and government policy. The Tenth National Assembly resolved to “expand and diversify forms of assembling people to join unions, social organizations, professional, cultural and friendship associations, as well as those working in the charity and humanitarian fields” (Resolution No. 51/2001/QH10 of December 25, 2001 of the
In addition, the Socio-Economic Development Plan 2006-2010, for the first time, encouraged “all non-governmental organizations, social associations and unions to develop social security networks and provide effective assistance to the vulnerable” and “to engage in managing and monitoring some public fields” (Social Economic Development Plan of Vietnam 2006-2010, pp. 91, 140).


[7] The New STO Law now distinguishes three types of STOs based on the source of their capital contribution: public, non-public, and foreign-invested STOs. Public STOs are established by a state body or a political or social-political organization; non-public STOs are STOs established by other Vietnamese organizations and individuals; and foreign-invested STOs are STOs established by foreign organizations or individuals or established on the basis of cooperation between foreigners and local entities. However this distinction does not necessarily determine or otherwise relate to an STO’s public benefit objectives or activities.

[8] For further discussion of these newer limitations on policy and public advocacy by associational entities under Decree 45 and Decision 97, see the more detailed discussion in Sidel, supra note 2.