Vietnam

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Table of Contents

I. Summary
   A. Types of Organizations
   B. Tax Laws
II. Applicable Laws
III. Relevant Legal Forms
   A. General Legal Forms
   B. Public Benefit Status
IV. Specific Questions Regarding Local Law
   A. Incorporation
   B. Proprietary Interest
   C. Dissolution
   D. Activities
   E. Political Activities
   F. Discrimination
   G. Control of Organization
V. Tax Laws
   A. Income or Profits Tax
   B. Value Added Tax
   C. Double Tax Treaty
VI. Knowledgeable Contacts

I. Summary

A. Types of Organizations

Vietnamese law does not comprehensively define the terms “not-for-profit organization” (“NPO”) or “not-for-profit purposes.” However, various regulations in Vietnam, including Decree No. 116/2013/ND-CP (Government, October 4, 2013) and Decree No. 30/2012/ND-CP (Government, April 12, 2012), set forth specific definitions for “NPOs” and “not-for-profit purposes.” Per these decrees, “NPOs” are defined as corporate bodies or organizations mainly operating to raise funds or finance charitable, religious, cultural, educational, social, or similar purposes. “Not-for-profit purposes” are defined as the non-pursuit of profits for sharing, and the use of all profits earned in the course of operations for particular, recognized activities. Based on the regulations for the establishment and operation of organizations with not-for-profit purposes (enumerated in Section II below), it is possible to conclude that Vietnamese law recognizes 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"). A social fund is a fund 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 is a fund established for not-for-profit purposes to remedy difficulties caused by acts of God, fire, and other adverse problems, as well as to help patients with terminal illnesses and other persons in difficulty.

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 or environmental protection, cultural activities, educational activities, professional activities, or sports activities).

Scientific and technological organizations ("STOs"). An STO is an organization engaged in scientific or technological research and development, or scientific or technological service activities. Because the other categories of NPOs are narrower and the definition of STO is relatively broad, in Vietnam 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 2014 regulations governing STOs, STOs are classified as public STOs, non-public STOs, or foreign-invested STOs based on their source of capital contribution.

International non-governmental organizations ("INGOs"). 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 five forms listed above comprise the primary NPO forms specifically contemplated by Vietnamese law. However, in practice, there are a number of informal types of NPOs in Vietnam which also perform charitable and not-for-profit functions, including 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, which may include SREs, funds, associations, STOs, and INGOs that are duly established. However, as one might expect, Vietnamese law is generally silent on specific provisions applicable to
these informal NPOs. Thus, these NPOs are generally outside of the scope of this Note.

In addition to the NPO types presented above, the social enterprise (“SE”) is a new type of hybrid organization combining a not-for-profit structure with an enterprise having profit-earning purposes. The social enterprise was established to address social and environmental issues for the public benefit; it must use at least 51 percent of its total annual profits to reinvest in the implementation of its registered social or environmental objectives. The social enterprise is governed by the Enterprise Law (see Section II.G below).

B. Tax Laws

Both the Enterprise Income Tax Law (2009) and the Individual Income Tax Law (2008), along with their subsidiary implementing regulations and documents, 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 scattered in 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 the 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 November 28, 2013
Civil Code of the National Assembly of June 14, 2005
Law on Elderly Persons, promulgated by the National Assembly on November 23, 2009
Law on Disabled Persons, promulgated by the National Assembly on June 17, 2010
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 No. 01/2012/ND-CP of January 4, 2012; Decree No. 79/2012/ND-CP of October 5, 2012; and 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

C. Social/charitable 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 help people overcome difficulties due to acts of God, fire, serious incidents, and 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 (as amended by Circular No. 03/2014/TT-BNV of the Ministry of Home Affairs of June 19, 2014)

E. STOs

Law on Science and Technology of the National Assembly of June 18, 2013
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”)  
Decree No. 87/2014/ND-CP of the Government of September 22, 2014 on attracting foreign experts and Vietnamese individuals living abroad to participate in science and technology activities in Vietnam

F. INGOs

Decree No. 12/2012/ND-CP of the Government of March 1, 2012 on registration and management of operation of INGOs in Vietnam  
Circular No. 05/2012/TT-BNG of the Ministry of Foreign Affairs of November 12, 2012 guiding the implementation of Decree No. 12/2012/ND-CP  
Circular No. 07/2010/TT-BKH of the Ministry of Planning and Investment of March 30, 2010 guiding the implementation of Decree 93

G. SEs

Law on Enterprise, promulgated by the National Assembly on November 26, 2015 (“Enterprise Law”)  
Decree No. 96/2015/ND-CP of the Government of October 19, 2015 providing detailed regulations for implementation of the Enterprise Law (“Decree 96”)

H. Tax

Law on Enterprise Income Tax of June 3, 2008 (as amended on June 19, 2013 and November 26, 2014)  
Decree No. 209/2013/ND-CP of the Government of December 18, 2013 detailing and guiding the implementation of a number of articles of the Law on Value Added Tax  
Circular No. 141/2013/TT-BTC of the Ministry of Finance of October 16, 2013
guiding Decree 92
Decree No. 91/2014/ND-CP of the Government of October 1, 2014 on
amendments to decrees on taxes (as amended by Decree No. 12/2015/ND-
Law on Individual Income Tax of November 20, 2007 (as amended on
November 22, 2012 and November 26, 2014)
Law on Special Consumer Tax No. 27/2008/QH12 of November 13, 2008 (as
amended on November 26, 2014)

III. Relevant Legal Forms

A. General

As discussed in Section I.A above, the five main legal forms of NPOs under
Vietnamese law are: (i) social relief establishments (SREs), (ii) social and charitable
funds (funds), (iii) associations, (iv) scientific and technological organizations (STOs),
and (v) international non-governmental organizations (INGOs). In addition, as also
mentioned in Section I.A, there is now a hybrid form known as a social enterprise.

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

1. Decree 68 (2008) on Conditions and Procedures for Establishing,
Operating, and Liquidating Social Relief Establishments provides the
primary framework for SREs.
and Charitable Funds (quỹ) provides regulatory guidance on funds. It
spells out details concerning funds’ establishment, structure,
organization, and governance. The Decree refers to property assigned
or raised to accomplish social or charitable purposes through granting
or programming during a particular period of time.
3. Decree 45 (2010) on the Organization, Activities and Management of
Associations 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. [1]
4. Decree 08 (2014) 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. [2]
5. Decree 93 (2009) 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, adding more detailed provisions and focusing on approval processes, the use of funds, and devolution of decision-making to provincial and other sub-national levels. [3]

An NPO’s establishment and operation are closely regulated and monitored by the government. The decrees described above are supplemented by an increasing array of regulatory agency decisions and other subordinate legal documents (including tax regulations) that govern many specific aspects of NPO activities in Vietnam.

It is difficult to estimate the number of NPOs in Vietnam, as government sources are not consistent on such statistics. At the national and provincial levels, there are several thousand associations and well over a 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. [4]

Decree 96 (2015) sets forth detailed regulations implementing the provisions of the Enterprise Law regarding SEs, including the receipt of aid and assistance, undertakings made by the SEs, structural modifications, and the responsibilities of owners, members, and shareholders.

B. Public Benefit Status

Vietnamese law does not directly link the “public benefit status” of an NPO or an SE to its establishment. The law does, however, provide a list of certain enumerated purposes and activities for which an NPO or an SE may be established and operate. The inherent public benefit status of different NPO forms may be discerned from this list. Furthermore, because of the interest of NPOs 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. [5] Tax documents, 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.

Particular NPO forms and SEs may or may not have public benefit purposes according to the following:

SRE. 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 under the Law on Elderly Persons), seriously disabled persons (as provided under the Law on Disabled Persons), HIV/AIDS-infected persons in poor households, 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. Accordingly, the SRE must be established with the purpose of providing benefits to these discrete groups.
Funds. A social fund is a fund 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 is a fund established for not-for-profit purposes to remedy difficulties caused by acts of God, fire, and other adverse problems, as well as to help patients with terminal illnesses and other persons in difficulty. Funds must “operate for the purpose of promoting the development of culture, science, charity and other social and humanitarian purposes, which are not profit-making” (Civil Code Article 105).

Association. An association operates to protect and advance the lawful rights and interests of its members and the community. Associations may exist for various purposes (e.g. animal or environmental protection, cultural activities, educational activities, professional activities, or sports activities).

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

INGO. An INGO is a non-governmental, not-for-profit organization, social fund, private fund, or other form of NPO established in accordance with foreign law and carrying out 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 developmental assistance and humanitarian aid, it is understood that INGOs operate with the purpose of providing a public benefit.

SE. An SE is an enterprise committed to address social or environmental issues for the public benefit. It uses at least 51 percent of its total annual profits to reinvest in the implementation of its registered social or environmental objectives. It is thus understood that SEs operate with the principle purpose of providing public benefit.
IV. Specific Questions Regarding Local Law

As a general rule, all NPOs and SEs are limited subjects of statutory law, and as such are only permitted to carry out activities that the law specifically allows. In some instances the law explicitly prohibits certain activities, according to the following.

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, by only allowing an SRE to receive, use, and manage funds (including in-kind funding) contributed by organizations for charitable purposes, and further requiring that an SRE must 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.

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

According to the Enterprise Law and Decree 96, SEs are obligated to use at least 51 percent of their annual profits to reinvest in the implementation of their registered social and environmental objectives. As discussed above and because SEs are hybrid structures, it can be inferred that SEs are permitted to distribute their residual annual profits (49 percent or less) to their members, shareholders, and owners.

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.
Vietnamese law is silent on whether an INGO’s members are permitted to have any proprietary interest in the organization’s assets.

The owners, members, or shareholders of an SE are permitted to assign their shares or capital contribution portions to other organizations and individuals, provided that such organizations and individuals undertake to continue to conduct the SE’s activities to implement the registered social or environmental objectives (Decree 96 Article 9(1)).

C. Dissolution

For associations, Decree 45 (2010) provides that the distribution of any remaining assets at the time of dissolution will be decided by a state agency, in the case of an association with remaining funds from other organizations (including overseas organizations), or from the state (as long as the association has fulfilled its obligations and debts). For an association with its own assets remaining at the time of dissolution, if it has fulfilled its obligations and debts, the remaining assets are to be distributed by the association according to 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) specifies two ways a fund may dissolve: (1) it may dissolve at its own will if it terminates operations under its charter, if its operational objectives have been fulfilled, or if it has no assets or finances for operation (Decree 30 Article (38)(2)); (2) it may be dissolved by the state if it fails to comply with its reporting obligations in two consecutive years, or if it falsifies financial information such as its registered account number (Decree 30 Article (38)(4)). The handling of a fund’s assets, finances, and staff upon dissolution will be subject to the plan approved by the fund management council (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 also has the right to dissolve it (Decree 08 (2014) Article (16); Decree 68 (2008) Article 20(1)).

When an SE faces dissolution, the residual assets that the SE has received must be returned to the aid provider or transferred to another SE or organization with similar social objectives (Decree 96 Article 8(3)).

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 those in-kind) 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 for raising and caring for individuals being assisted by the SRE. The SRE is required to manage and use the funds in accordance with the law.

Vietnamese law is silent on specific activities that are impermissible for an SRE to undertake.

b. Social Funds and Charitable Funds

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

(i) mobilize financial contributions and aid for the fund;
(ii) receive assets – donated, sponsored, or otherwise – from 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 serious incidents.

The operation of a social or charitable fund must be in compliance with the following principles: (a) its operations and establishment are conducted for not-for-profit purposes; (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 revenues 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:

(i) money-laundering, supporting terrorist and unlawful activities;
(ii) infringing on the social ethics, national habits, customs, traditions, and character of the Vietnamese people; and
(iii) 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, associations are not specifically authorized by law to mobilize funds domestically from individuals and organizations other than 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 give INGOs a legal basis to receive foreign non-governmental aid. However, 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 of engaging in such fundraising activities.

**f. Social Enterprises (SEs)**

Along with the regular activities associated with enterprises, SEs are entitled to carry out activities to raise and receive funding in various forms from individuals, enterprises, non-governmental organizations, and other Vietnamese or foreign organizations. Specifically, SEs are entitled to:

(i) receive foreign non-governmental aid in order to implement their objectives of resolving social or environmental issues; and
(ii) receive aid and assistance in the form of assets, finance, or technical assistance from domestic or foreign individuals, agencies, and organizations, and from foreign organizations registered for operation in Vietnam in order to implement their objectives to resolve social or environmental issues.

SEs are obliged to fulfill the following:

(i) to use at least 51 percent of their total annual profits in order to implement their registered social or environmental objectives during their operation;
(ii) to strictly use funding raised for purposes of covering managerial and operational expenses to implement their registered social or environmental objectives;
(iii) to comply with the reporting regime applicable to SEs; and
(iv) to meet the other obligations of normal enterprises.

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 the obtainment of appropriate permits and approvals, some NPOs may organize cultural activities including art performances, fashion shows and festivals for charitable purposes. Such events, undertaken in Vietnam by any organization or individual, even when undertaken by an NPO for not-for-profit and
humanitarian purposes, are subject to regulations. 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, incite violence, propagandize wars of aggression, sow 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 an association may raise funds through membership fees, as well as “revenues from its business and services under law to cover its operational expenses.” Associations may also receive lawful donations from domestic and overseas organizations and individuals, and from the state (Decree 45 Article 23(11)(12)). Many Vietnamese associations do indeed partly cover their operational expenses through business and service revenues.

For funds, Decree 30 (2012) arguably permits such groups to engage in economic activities through a general provision enabling them to have income 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 are explicitly given the right to directly engage in economic activities. In particular, the regulations clearly provide that an STO has the right to engage in joint ventures and 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 resulting from the research results of the STO.

The Enterprise Law provides that SEs have the same rights as normal enterprises. SEs may engage in economic activities much like normal enterprises do (i.e., conducting business not prohibited by the law), provided that they use at least 51 percent of their total annual profits to reinvest in the implementation of their registered social or environmental objectives.

E. Political Activities

Vietnamese law does not specifically address the permissible political activities or public advocacy for any type of NPOs or SEs. However, scattered regulations on the legitimate rights and obligations of an NPO may be understood as allowing an NPO or an SE to engage in certain political activities or public advocacy. [5]

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.” Despite these provisions, commentators note that the scope of permissible political activities and public advocacy has narrowed somewhat from earlier regulations. [5]

For funds, Decree 30 (2012) provides that they have the right to “lodge complaints and denunciations in accordance with law” (Article 30(9)), and “exercise other rights … in accordance with law” (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 16 of the Constitution provides that “all people are equal before the law” and “no one is subject to discriminatory treatment in political, civil, economic, cultural or social life.” The Vietnamese regulatory documents governing NPOs do not generally deal further with non-discrimination.

With respect to SEs, the Enterprise Law stipulates that the state must ensure the equality of all enterprises before the law, irrespective of their form of ownership and sector.

G. Control of Organization

Other than an NPO established based on the state budget, over which the Government of Vietnam would exercise considerable control, the remaining 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.

Furthermore, 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 a new law on associations as well as Decree 45 (2010) on associations. [6] 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 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)).

SEs are established in accordance with the provisions prescribed in the Enterprise Law (Decree 96 Article 4(1)). Vietnam encourages and creates favorable conditions for organizations and individuals to establish SEs whose operational objectives are aimed at resolving social or environmental issues in the community’s interest (Decree 96 Article 2(1)). There are no specific provisions prohibiting foreign organizations or individuals from establishing SEs or becoming shareholders, members, and owners of SEs.

V. Tax Laws

A. Income or Profits Tax

Most NPOs and SEs enjoy special income tax treatment and do not pay tax on income received from the government or from local or foreign contributions that is “used for educational, scientific research, cultural, artistic, charitable, humanitarian and other social activities in Vietnam” (Enterprise Income Tax Law (2009) Article 4). NPOs and SEs also benefit from deductible expenses when calculating taxable income, including allowable deductions on:

(i) expenses for educational sponsorships (including sponsorships for vocational education):
   - sponsorships for public and private schools providing “national education,” provided that such sponsorships are not made in the form of contributing capital or shares bought in the school in question;
   - sponsorships for infrastructure and equipment used for teaching and learning;
   - sponsorships for the regular operation of schools;
   - sponsorships for students in compulsory educational institutions, vocational educational institutions, and higher education institutions;
   - sponsorships for competitions on school subjects; and
   - sponsorships for the establishment of scholarship funds.

(ii) expenses for health sponsorships:
   - sponsorships for medical facilities, provided that the sponsorships are not made in the form of contributing capital or shares bought in the medical facility in question;
   - sponsorships for medical equipment and medicine;
   - sponsorships for the regular operation of hospitals and medical centers; and
monetary sponsorships for patients via organizations permitted to raise such.

(iii) expenses for disaster recovery;
(iv) expenses for the construction of houses for the poor;
(v) expenses for the sponsorship of scientific research;
(vi) expenses for the sponsorship of beneficiaries of other incentive policies; and
(vii) expenses for the sponsorship of extremely disadvantaged areas and relevant state programs (including, for example, sponsorships for building new bridges in extremely disadvantaged residential areas).

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 individuals’ credit funds (Enterprise Income Tax Law Article 13).

The Individual Income Tax Law (2008) as amended on July 1, 2013 and November 26, 2014 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. [7]

However, Vietnamese regulations do not grant tax exemptions for income originating from activities carried out by a NPO or SE for charitable, social purposes and other not-for-profit purposes.

B. Value Added Tax (VAT)

Goods imported as humanitarian aid and non-refundable aid that NPOs and SEs 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 signed a double tax treaty on July 7, 2015. Though signed, the double tax treaty will not come into effect until both countries exchange instruments of ratification; to the knowledge of the author, this has not yet occurred.

VI. Knowledgeable Contacts

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Footnotes
[1] An associations law to replace Decree 45 has been under discussion in Vietnam since the early 1990s, but is yet to be enacted by the National Assembly. The law was the subject of intense debates in 2005 and 2006. Significant differences involving government agencies and associations, and within the government community, could not be overcome, and as such the law has been put off for further discussion and drafting. Contested issues included: 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; the status and role of national umbrella associations of nonprofits, and other issues. For further discussion of the debate on the associations law, see Sidel, *Maintaining Firm Control: Recent Developments in Nonprofit Law and Regulation in Vietnam*, International Journal Not-for-Profit Law (IJNL) 12:3 (2010).

[2] A new Law on Science and Technology took effect on January 1, 2014, replacing the prior law which had been valid since 2000. Decree 08 and Circular 03 were issued soon after to guide the implementation of this new law and perfect the legal framework for the establishment and operation of STOs. The Law and its implementing regulations distinguish more clearly, based on the source of capital contribution, among types of STOs—including public STOs, non-public STOs, and foreign-invested STOs—and provide separate procedures for the establishment of each type. The Law and its regulations also provide a legal basis for the establishment of representative offices and branches of foreign STOs, which have been operated in Vietnam for years.

Compared to the prior regulations, however, the Law creates additional requirements for an STO’s establishment. In particular, after March 15, 2014, any newly-established STO must have at least five persons with a bachelor’s degree. At least 30% of the STO’s staff must specialize in the STO’s field and 40% must be full-time personnel. For a newly-established STO operating in a brand-new field, however, the minimum number of qualified personnel is one, and he/she must be employed full-time and have a bachelor’s degree in the STO’s field. Already-existing STOs (established and operating prior to March 15, 2014) have two years from March 15, 2014, to satisfy the requirement on personnel.

Furthermore, in July 2009, the government issued Decision 97/2009/QD-TTg ("Decision 97"), which limits the areas in which individuals are allowed to form STOs and the 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 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 the Vietnam Institute of Development Studies ("VIDS"), a research group, although it applied to others as well. Regardless of the existence of the new Law, Decision 97 remains effective. For further discussion of Decision 97 and its implications, see Sidel, supra note 1.

[3] For further discussion of the new regulations on donor-provided foreign non-governmental aid, see Sidel, supra note 1.

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 10th session of the 10th Legislature of the National Assembly). In addition, the Socio-Economic Development Plan 2006-2010, for the first time, encourages “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). The Social Economic Development Plan also sets out national policy targets that overlap closely with the work of many domestic and foreign NPOs working in Vietnam.

[5] 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.


[7] For further discussion of these newer limitations on political activities and public advocacy by associational entities under Decree 45 and Decision 97, see the more detailed discussion in Sidel, supra note 1.