

# NONPROFIT LAW IN VIETNAM



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This section describes the legal framework of nonprofit organizations (also known as non-governmental organizations or NGOs) in Vietnam, along with translations of legislative provisions relevant for a foundation or advisor undertaking an equivalency determination of a foreign grantee under IRS Revenue Procedure 92-94.

These reports have been prepared by the [International Center for Not-for-Profit Law \(ICNL\)](#). Please direct corrections and comments to [Lily Liu](#).

We include hyperlinks to the following information, to the extent available:

- Longer country reports analyzing various aspects of local legislation; and
- Texts of local laws that affect the decision whether or not to qualify a grantee (generally in translation, although ICNL and the Council cannot warrant the accuracy of any translation; in addition, legislative excerpts were selected by in-country contacts, and ICNL and the Council cannot warrant that all relevant provisions have been translated).

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## 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) (as amended) and Decree No. 93/2019/ND-CP (Government, November 25, 2019), 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 finances for 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 and recognized activities. Based on the regulations for the establishment and operation of organizations with not-for-profit purposes (enumerated in Section II), 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 who are experiencing social and other 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 Law on Science and Technology (as defined in the Applicable Laws), 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 several 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 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 SE was established to address social and environmental issues for the public benefit. It must reinvest at least 51 percent of its total annual net profit in the implementation of its registered social or environmental objectives.

## **B. TAX LAWS**

Both the Enterprise Income Tax Law (2008) and the Individual Income Tax Law (2007), 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 of the National Assembly of November 28, 2013](#)
- Civil Code No. 91/2015/QH13 of the National Assembly of November 24, 2015

- Law on Elderly Persons No. 39/2009/QH12 of the National Assembly of November 23, 2009
- Decree No. 06/2011/ND-CP of the Government of January 14, 2011 implementing the Law on Elderly Persons, as amended
- Law on Disabled Persons No. 51/2010/QH12 of the National Assembly of June 17, 2010 (as amended by Law No. 32/2013/QH13 of the National Assembly of June 19, 2013)
- Decree No. 28/2012/ND-CP of the Government of April 10, 2012 implementing the Law on Disabled Persons, as amended
- 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

## **B. SRES**

- Decree No. 20/2021/ND-CP of the Government of March 15, 2021 on policies to support social relief subjects
- Decree No. 103/2017/ND-CP of the Government of September 12, 2017 on establishment, operation, dissolution, and management of SREs, as amended

## **C. SOCIAL/CHARITABLE FUNDS**

- Decree No. 93/2019/ND-CP of the Government of November 25, 2019 prescribing the organization and operation of social and charitable funds
- Circular No. 4/2020/TT-BNV of the Ministry of Home Affairs of October 13, 2020 implementing Decree No. 93/2019/ND-CP on the organization and operation of social funds and charitable funds
- Decree No. 64/2008/ND-CP of the Government 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
- 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 the establishment, operation, and management of associations
- 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

## **E. STOS**

- Law on Science and Technology No. 29/2013/QH13 of the National Assembly of June 18, 2013, as amended (“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
- Circular No. 03/2014/TT-BKHHCN of the Ministry of Science and Technology of March 31, 2014, providing guidance on the establishment and registration of STOs, as amended
- 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, as amended

## **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 12
- Decree No. 80/2020/ND-CP of the Government of July 8, 2020, issuing regulations on management and use of foreign non-governmental aid

## **G. SES**

- Law on Enterprises No. 59/2020/QH14 of the National Assembly of June 17, 2020 (“Enterprise Law”)
- Decree No. 47/2021/ND-CP of the Government of April 1, 2021, providing detailed regulations for implementation of the Enterprise Law

## **H. TAX**

- Law on Enterprise Income Tax No. 14/2008/QH12 of the National Assembly of June 3, 2008, as amended
- Decree No. 218/2013/ND-CP of the Government of December 26, 2013, guiding the implementation of the Law on Enterprise Income Tax, as amended
- Circular No. 96/2015/TT-BTC of the Ministry of Finance of June 22, 2015 providing guidance on enterprise income tax provided in Decree No. 12/2015/ND-CP of the Government of February 12, 2015, as amended
- Law on Value Added Tax No. 13/2008/QH12 of the National Assembly of June 3, 2008, as amended

- 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, as amended
- Decree No. 92/2013/ND-CP of the Government of August 13, 2013, guiding the Law on Enterprise Income Tax and the Law on Value Added Tax, as amended
- 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
- Law on Individual Income Tax No. 04/2007/QH12 of the National Assembly of November 20, 2007, as amended
- Law on Special Consumer Tax No. 27/2008/QH12 of the National Assembly of November 14, 2008, as amended

### III. RELEVANT LEGAL FORMS

#### A. GENERAL

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 mentioned above, there is now a hybrid form known as a social enterprise (SE).

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

1. Decree 103 (2017) on Establishment, Operation, Dissolution, and Management of Social Relief Establishments provides the primary framework for SREs.
2. Decree 93 (2019) on the organization and operation of social and charitable funds provides regulatory guidance on funds. It spells out details concerning funds' establishment, structure, organization, and governance. The Decree refers to property assigned or contributed to the funds within 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 governmental support and which are mostly state-affiliated umbrella groups.
4. Decree 08 (2014) governs the registration and activities of STOs, particularly the cooperation between STOs and other organizations that perform scientific and technological tasks. The activities of STOs are likely carried out by 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. [\[1\]](#)

5. Decree 80 (2020) governs the management and the use of foreign non-governmental aid. The Decree maintains and enhances state control over non-governmental aid provided by donors to Vietnam, and includes provisions on, among others, approval processes, the use of funds, and devolution of decision-making to provincial and other sub-national levels.

An NPO's establishment and operations 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 regulated and non-regulated NPOs in various forms at the local level, including cooperatives, clubs, local community-based groups, and associations.

In addition to the five main legal forms of NPOs, a hybrid form (i.e. an SE) is regulated by Vietnamese law. Specifically, Decree 47 (2021) 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. [\[2\]](#) Tax rules, such as the Individual Income Tax Law (2007), provide that NPOs must operate for charity, humanitarian, or not-for-profit purposes to receive preferential tax treatment from the state.

NPO forms including SREs, funds, associations, INGOs, and SEs must benefit the public by providing support to certain communities or working to address certain social issues. STOs must benefit the public by carrying out permissible scientific or technological activities for charitable purposes. The following is a discussion of how each form of NPO benefits the public:

**SREs.** The purpose of an SRE is to assist (i) individuals who are experiencing social difficulties, such as orphans, abandoned children, HIV/AIDS-infected children, elderly persons, seriously disabled persons, and HIV/AIDS-infected persons in poor households; (ii) persons who need immediate protection, such as victims of domestic violence, victims of sexual abuse, victims of human trafficking, and victims of forced labor; and (iii) 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.

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

**STOs.** 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.

**INGOs.** 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 developmental assistance and humanitarian aid, it is understood that INGOs operate with the purpose of providing a public benefit.

**SEs.** An SE is an enterprise committed to addressing social or environmental issues for the public benefit within a number of years or over an indefinite term. It reinvests at least 51 percent of its total annual net profit in the implementation of its registered social or environmental objectives. Most SEs in Vietnam aim to support disadvantaged people by creating jobs and providing opportunities for leadership roles. [\[3\]](#) 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 circumstances, the law explicitly prohibits certain activities.

### 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 93 (2019) 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 use their profits for operation fees, 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 47, SEs are obligated to reinvest at least 51 percent of their annual net profits 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 net profits (49 percent or less) to their members, shareholders, and owners.

## **B. PROPRIETARY INTEREST**

For associations, the Civil Code (Article 76) and relevant regulations on associations (especially Decree 45 (2010)) generally do not permit members to have proprietary interests in the association's assets.

For funds, the Civil Code provides that funds and their organizers "may not divide up the profit of the fund to its members" (Civil Code Article 76). As indicated above, Decree 93 (2019) strictly prohibits funds from dividing their assets during operation.

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

For SEs, owners, members, or shareholders have a right to assign their shares or capital contribution 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 (Enterprise Law Article 10.2(c)).

## **C. DISSOLUTION**

When an association is dissolved, a state agency distributes any remaining funds from other organizations or from the state after it has fulfilled the association's existing obligations and debts. If an association has fulfilled its obligations and debts and has remaining funds/assets at the time of dissolution, the remaining funds/assets are to be distributed by the association according to its charter (Decree 45 Article 31(1)(a)(b)).

For funds, the Civil Code (Article 76) provides that the property of [a foundation] shall not be divided up among its founding members. Decree 93 (2019) specifies two ways a fund may be dissolved: (1) it may be dissolved at its own will if it terminates operations under its charter and its operational objectives have been fulfilled or if it has no assets or finances for operation (Decree 93 (2019) Article 41(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 93 (2019) Article 41(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 93 (2019) Article 41(3)).

For STOs and SREs, generally the competent authority that has the right to establish the STO or SRE also has the right to dissolve it (Decree 08 (2014) Article 16; Decree 103 (2017) Article 22(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 or to the State under relevant provisions of Civil Code (Decree 47 Article 6(2)).

## **D. ACTIVITIES**

### **1. GENERAL ACTIVITIES**

#### **A. SOCIAL RELIEF ESTABLISHMENT (SRE)**

An SRE is entitled to carry out the following activities:

1. Receive funds provided by domestic and foreign individuals and organizations;
2. Advise and assist the beneficiaries of social assistance policies;
3. Coordinate with other competent agencies and organizations in protecting and assisting the beneficiaries of social assistance policies;
4. Search for and arrange relevant forms of care for the beneficiaries of social assistance policies; and
5. Mobilize organizations and individuals to provide funds and in-kind donations 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 does not specify impermissible activities for SREs.

#### **B. SOCIAL FUNDS AND CHARITABLE FUNDS**

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

1. Mobilize financial contributions and aid for the fund;
2. Receive assets – donated, sponsored, or otherwise – from domestic and foreign organizations and individuals in accordance with the fund's objectives and provisions of law;
3. Mobilize and receive foreign non-governmental aid; and
4. 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-financed; (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

its operations, including its 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:

1. Money-laundering, supporting terrorist and unlawful activities;
2. Infringing on the social ethics, national habits, customs, traditions, and the character of the Vietnamese people; and
3. 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:

1. Mobilize funds from membership fees and revenues from its business and services in accordance with the law to cover its operational expenses;
2. Receive aid and donations from domestic and foreign individuals and organizations; and
3. Mobilize and receive foreign non-governmental aid.

It should be noted that unlike SREs or funds, associations are not specifically authorized by law to mobilize funds domestically from individuals and organizations other than their members. However, an association may (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 or mobilized to its members.

### **D. SCIENTIFIC AND TECHNOLOGICAL ORGANIZATIONS (STOS)**

An STO is entitled to carry out the following activities:

1. Receive aid and donations from domestic and foreign individuals and organizations for the purpose of carrying out scientific and technological activities;
2. Mobilize and receive foreign non-governmental aid;
3. 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
4. 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. However, regulations on management and usage of foreign non-governmental aid state clearly that only organizations established in Vietnam can receive foreign non-governmental aid, though the regulations also include a broad provision permitting “other organizations as decided by the Prime Minister” to receive donations from domestic individuals and organizations. 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 an Operation Permit from the People’s Aid Coordinating Committee (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:

1. Receive foreign non-governmental aid to implement their objectives of resolving social or environmental issues; and
2. 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 to implement their objectives to resolve social or environmental issues.

SEs are obliged to fulfill the following:

1. Reinvest at least 51 percent of their total annual net profits to implement their registered social or environmental objectives within certain years or over an indefinite term;
2. Strictly use funding raised for purposes of covering managerial and operational expenses to implement their registered social or environmental objectives;
3. Comply with the reporting regime applicable to SEs; and
4. 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 through “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 Articles 23(11) and 23(12)). Many Vietnamese associations do indeed partly cover their operational expenses through business and service revenues.

For funds, Decree 93 (2019) 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 93 (2019) Article 35(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 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 reinvest at least 51 percent of their total annual net profit 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 a SE to engage in certain political activities or public advocacy. [\[4\]](#)

For associations, Decree 45 (2010) 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.

For funds, Decree 93 (2019) provides that they have the right to “file complaints and denunciations in accordance with law” (Article 8(1)(d)). 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.

For STOs, Decision 97 (2009) limits the areas in which individuals can establish STOs and the advocacy such entities may undertake. Under Decision 97, STOs established by individuals 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.

Officially, if not in practice, Article 25 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**

In general, a competent authority may retain control over an NPO by issuing specific operational permits or requiring approval for an NPO’s activities, operations, and dissolution. However, there are certain restrictions over foreign control of the different NPO types.

Founders of a fund must be Vietnamese (Decree 93 (2019) Article 11). Foreign members may only comprise up to 49% of the management council administering the fund. A foreign member may not act as chairman of the management council, only as an honorary chairman (Decree 93 (2019) Articles 26.1 and 27.7).

While foreign entities may make contributions to an association, they are not granted the right to vote nor the right to stand for election for a decision-making position in an association (Decree 45 (2010) Article 17).

Vietnamese law does not place any restrictions on control of SREs, STOs, INGOs, or SEs.

Additionally, the Government of Vietnam exercises considerable control over NPOs established based on the state budget.

# **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. 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, 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 do not grant tax exemptions for income originating from activities carried out by an NPO or SE for charitable, social purposes and other not-for-profit purposes.

## B. VALUE ADDED TAX

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] The Law on Science and Technology No. 29/2013/QH13, and its implementing regulations (Decree 08 and Circular 03) distinguish between types of STOs based on the source of capital contribution—including public STOs, non-public STOs, and foreign-invested STOs—and provide different 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.

[2] 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 10th session of the 10th Legislature of the National Assembly). 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). The Social Economic Development Plan also set out national policy targets that overlapped closely with the work of many domestic and foreign NPOs working in Vietnam.



[3] For more information on SEs, see [Social Enterprise in Vietnam](#), published by the British Council in March 2019.

[4] 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.