



THE RESEARCH OF LEGAL SYSTEM OF VIETNAM
AND LEGAL INFORMATION RELATED TO SOCIETY,
CULTURE, POLITICS AND SECURITY OF VIETNAM

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Research Team

Prapirut Chatprapachai	Project Leader / Researcher
Sitanan Sriworakorn	Researcher
Dr. Nguyen Bich Thao	Researcher

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Chapter 1: Overview of Society and Culture of Socialist Republic of Vietnam

1.1 Introduction

The Socialist Republic of Vietnam is located on the Indochina Peninsula in Southeast Asia, having borders with China to the North, Laos, and Cambodia to the West, and East Sea (South China Sea) of the Pacific Ocean to the East.¹ With an estimated population of 90.73 million as of 2014, the Socialist Republic of Vietnam is the 15th-most-populous country in the world,² gaining a significant advantage of a young, abundant workforce.

The Socialist Republic of Vietnam has 54 ethnicities living across the country; each ethnicity has its cultural color.³ The unique culture of the Socialist Republic of Vietnam is closely attached to the long history of the nation. The Development of the Socialist Republic of Vietnam has witnessed the collision between the East and the West influences. Therefore, it is correct to say that there are three cultural layers interplaying in its history: the local culture, the mixture of Chinese and the neighboring cultures, and the culture that interacted with the Western. Throughout history, the Vietnamese colony people constantly had to cope with foreign invasion with hundreds of wars and uprisings against aggression from outsiders.⁴ For more than a thousand years from the second century B.C. to 938, the Socialist Republic of Vietnam was under Chinese rule.⁵ China exerted a strong influence on Vietnamese administration, law, education and culture. After regaining independence from China, the Socialist Republic of Vietnam spent

¹ Ministry of Foreign Affairs, About Vietnam: Geography, *available at* http://www.mofa.gov.vn/en/tt_vietnam/geo/ (accessed August 8, 2015).

² Central Intelligence Agency, The World Factbook, *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/vn.html> (accessed August 8, 2015).

³ Ministry of Foreign Affairs, About Vietnam: Culture, *available at* http://www.mofa.gov.vn/en/tt_vietnam/nr040810155004/ (accessed August 8, 2015).

⁴ Ministry of Foreign Affairs, About Vietnam: Aspects of National Development, *available at* http://www.mofa.gov.vn/en/tt_vietnam/history/ (accessed August 8, 2015).

⁵ *Ibid.*

the next ten centuries of self-determination under the feudalist regime and became the French's semi-feudal colony in the nineteenth century. In 1945, the Socialist Republic of Vietnam declared independence, but immediately after the young democratic republic government came into power, the Socialist Republic of Vietnam had to continue fighting for national unification against France and, later, the United States until 1975. After the war, the Socialist Republic of Vietnam's economy fell into crisis and stagnation, suffering from hyperinflation. The year 1986 marked a milestone in the history of modern Socialist Republic of Vietnam with the launch of *Doi Moi* (Renovation) Policy, which shifted the Socialist Republic of Vietnam's centrally-planned economy into a market-based economy, introduced a private sector, and encouraged foreign direct investment.⁶

Political and economic reforms launched in 1986 have transformed the Socialist Republic of Vietnam from one of the poorest countries in the world, with per capita income below \$100, to a lower middle-income country within a quarter of a century with per capita income of over \$2,000 by the end of 2014. Rising living standards have been matched by a steady improvement in some of development indicators, with improved access to education and health, along with targeted social safety nets for a broader range of society. The Socialist Republic of Vietnam has made efforts to create a more equitable society which is inclusive of the most vulnerable groups in the society; the poor, the ethnic minorities, women and the disabled.

To date, the Socialist Republic of Vietnam has achieved most and, in some cases, surpassed most of the Millennium Development Goals (MDGs), particularly with the goals of poverty reduction, education and gender equality. Over the last few decades, the Socialist Republic of Vietnam has made remarkable progress in reducing poverty. The percentage of people living in poverty dropped from almost 60% in the 1990s to less than 3% today. The Socialist Republic of Vietnam's growth rate has averaged 6.4% per year for the last decade, but it has

⁶ Ministry of Foreign Affairs, General Information about Vietnam's Economy, *available at* http://www.mofa.gov.vn/en/tt_vietnam/nr040810155228/ (accessed August 8, 2015).

begun to slow recently. In 2014, GDP growth was 6 %, projected to flatten in 2015 and start to pick up in 2016.⁷

In order to achieve a rapid and sustainable development, the Socialist Republic of Vietnam's socio-economic development strategies have consistently emphasized that economic growth must harmoniously associate with cultural development, social progress and equity, improvement of people's living quality, environmental protection and sustainability development, and proactive response to climate change. Culture is the foundation of the society; culture is not only the outcome of rapid and sustainable development but also the driving force of such development. Cultural development is equally essential as economic development. Social equity and progress are essential contents of sustainable development, and social equity and progress need to be realized in each policy and stage of development. The social policy emphasizes on poverty reduction, limitation of income gap through wealth distribution and the development of effective and transparent social welfare systems. It also puts lots of efforts in developing education and training, particularly tertiary education and vocational training in order to create an appropriate structure of quality labor force. It also compliments with the need for restructuring and transformation of economy to achieve economic growth. It aims to provide equal opportunities for learning society, while improving medical services and promoting healthcare activities.

1.2 The Policy on Society and Culture

The cultural and social policies have been outlined in the Platform for National Construction for the Transitional Period towards Socialism (supplemented and developed in 2011) and the Socio-Economic Development Strategy for 2011-2020 (adopted by the 11th National Congress of the Communist Party of the Socialist Republic of Vietnam). To implement the Platform and the Socio-Economic Development Strategy, in recent years, the Government of the Socialist

⁷ The World Bank, The World Bank in Vietnam: Overview, *available at* <http://www.worldbank.org/en/country/vietnam/overview> (accessed August 7, 2015).

Republic of Vietnam continuously promulgated numerous national strategies for the development of culture, education, science and technology, public health, human resources and the protection of the environment during the years 2011-2020. The main directions for society and culture development in the Party's documents have also been translated into the provisions of the new Constitution (2013).⁸

1.2.1 Education Policy

The National Platform declares that the development of education and training, together with the development of science and technology, is a top national policy, and investment in education is considered as an investment for development. The Platform prioritizes in a comprehensive education reform of Vietnamese citizens in order to meet the development needs of the society through modernizing the quality of education, international cooperation for development educational systems and generate a life-long learning society.

Under the Constitution of 2013 (Article 61),⁹ to develop education is a top national policy that aims to increase public intellectual standards, develop human resources, and nurture talented people. The State prioritizes investment in, and attracts other investment sources for, education; cares for pre-school education; and ensures free compulsory primary education; gradually universalizes secondary education; develops higher education and vocational training; and implements affordable scholarship and school fee policies. The State prioritizes the development of education in mountainous areas, on islands, in ethnic minority areas, and in areas that have extremely difficult socio-economic conditions; prioritizes the employment and

⁸ The Constitution of the Socialist Republic of Vietnam (2013) (Unofficial Translation), from the website of International for Democracy and Electoral Assistance (IDEA), *available at* http://constitutionnet.org/sites/default/files/translation_of_vietnams_new_constitution_enuk_2.pdf (accessed August 10, 2015).

⁹ Article 61 of the Constitution of the Socialist Republic of Vietnam (2013), "1. Development of education is a primary national policy for the purposes of elevating the people's intellectual standards, training human resources and fostering talents."

development of talented people; and creates the conditions for people with disabilities and poor people to receive education and vocational training.

In the 2011-2020 Education Development Strategy approved by the Prime Minister on June 13, 2012¹⁰, the policies for education development are articulated as follows:

- Educational development must be truly a top national policy and the cause of the Party, State and entire people. Enhancing the Party leadership, state management and promoting the role of political, economic and social organizations in education development. Investment in education is considered as an investment for development. Implementing incentive policies for education, particularly investment and wage policies; prioritizing state budget for universalized education development and specific target groups.

- Ensuring social equity in education, improving education quality in disadvantaged areas to reach the fundamental level while creating conditions for localities and educational institutions with more favorable conditions to quickly develop one step ahead to reach the level of countries with a developed education.

- Intensively reforming educational systems towards standardized education compatible with the socialist-oriented market economy¹¹, via improvement of morals and practical skills of

¹⁰ Decision No. 711/QĐ-TTg dated June 13, 2012 of the Prime Minister approving the Education Development Strategy during 2011-2020. In Vietnam, the system of Vietnamese legal texts is as follows: (1) Constitution; (2) Codes, Laws, and Resolutions passed by the National Assembly; (3) Ordinances and Resolutions passed by the Standing Committee of the National Assembly; (4) Orders and Decisions of the President; (5) Decrees issued by the Government; (6) Decisions issued by the Prime Minister; (7) Resolutions of the Judiciary Council of the Supreme People's Court; (8) Circulars issued by the Chief Justice of the Supreme People's Court, the Chief Prosecutor of the Supreme People's Procuracy, ministers and equivalents, (9) Resolutions and Decisions issued by the People's Councils and People's Committees at the provincial, district and commune levels. (Art. 4 of Law No. 80/2015/QH13 on the Promulgation of Legal Texts).

¹¹ Socialist-oriented market economy is one of the principle mechanisms to mobilize the development of the Socialist Republic of Vietnam which has been emphasized by Vietnamese Communist Party since 1986. The 11th Politburo of the Central Committee of the Communist Party defined social-oriented market economy
(continued on next page)

talented educators in order to achieve scio-economic development, assure the nation's security defense.

- Making profound and board international integration in education by preserving and promoting national identity and maintaining independence, self-reliance and socialist orientation. Expanding exchange and cooperation with world educational institutions, particularly the advanced and reputed ones; seeking and promptly making use of opportunities to attract quality resources.

The Educational Development Strategy identifies educational reform solutions including restructuring educational administrative system in generating qualified educational human capitals, while reserving educational contents and performance assessment. It also enhances an investment in educational regime through researches and technological transferred via international cooperation. In addition, it also creates the equal opportunity for the poor and the minority to access education.

1.2.2 Science and Technology Policy

Science and technology play a vital role in developing modern production forces, protecting the environment, increasing productivity, quality, efficiency, and the speed of development and improving the competitiveness of the Socialist Republic of Vietnam's economy. The goal of developing science and technology is to invigorate the country's industrialization and modernization process, to develop a knowledge-based economy, and to catch up with the world's

(continued from footnote 11)

as an economic system that composed of various sectors of consumer parts that operate and conduct businesses under market economy system under administration of public sectors and guidance of Vietnamese Communist Party. The model of this socialist-oriented market economy is a form of economic system which can be methaphored as "the two hands"; with one hand holds rules and principles of market economy system and the other hand is control and based on socialism, which means the state has ownership over property and play administrative roles. The state that occupies ownership over property, together with people participation shall fundamentalize the economic system.

advancement level. Systematic mechanism and policies are formulated in order to achieve innovation through application of science and technology by the talents.

Article 62 of the Constitution reiterates that to develop science and technology is a top national policy, playing the key role in national socio-economic development. The State prioritizes investment in, and encourages organizations and individuals to invest in, research, development, transfer effective application of scientific and technological achievements; guarantees the right to conduct science and technology research; and protects intellectual property rights. The State creates the conditions for everyone to participate in, and to enjoy the benefits from, scientific and technological activities.¹²

The Strategy for Science and Technology Development during 2011-2020 approved by the Prime Minister on April 11, 2012¹³ provides more detailed policies in developing science and technology:

- Development of science and technology together with education and training is the top national policy and a key motive for fast and sustainable national development. Science and technology must play a decisive role to make development breakthrough in productive force, innovate the growth model, to enhance the competitive capacity of the economy and to accelerate the progress of national industrialization and modernization.

- To concentrate on three essential tasks: (1) innovating fundamentally, comprehensively and synchronously organizations, management mechanism and operation mechanism of science

¹² Article 62 of the Constitution of the Socialist Republic of Vietnam (2013), "1. Development of science and technology is a primary national policy, playing a key role in the country's socio-economic development. 2. The State shall prioritise investment and encourage investment by organisations and individuals in scientific research, development, transfer and effective application of scientific and technological achievements; shall guarantee the right to conduct scientific and technological research and protect the right to intellectual property. 3. The State shall provide favourable conditions for everyone to participate in and enjoy benefits from scientific and technological activities."

¹³ Decision No. 418/QĐ-TTg dated April 11, 2012 of the Prime Minister approving the Strategy for Science and Technology Development during 2011-2020.

and technology; (2) enhancing national scientific and technological capability; and (3) pushing up study and application, link science and technology development with socio-economic development at all levels and in all branches.

- The State increases and prioritizes investment for research and development (R&D) and technological products. Speeding up the socialization and mobilizing all resources, especially those of enterprises, to invest in science and technology development.

- Development of the science and technology market links with enforcement of the law on intellectual property in order to boost the commercialization of results of technological study, application and development, and to encourage scientific and technological innovation.

- International integration of science and technology is an objective and an essential solution for Socialist Republic of Vietnam's science and technology to reach international level. International cooperation of science and technology must be implemented in an active and creative manner, ensuring national independence, sovereignty and national security, equality and mutual benefit.

The Strategy identifies priority technological directions, including information and communication technologies, biological technology, new-material technology, robot and automated technology, and environmental technology.

1.2.3 Public Health Policy

Article 58 of the Constitution of the Socialist Republic of Vietnam (2013) provides that the State and society shall invest in healthcare for Vietnamese citizens by implementing universal healthcare insurance which is inclusive of all citizens especially, the minority, and the citizens with severe socio-economic problems. The State, society and family are responsible for protecting and caring for the health of mothers and children, and for family planning.¹⁴

¹⁴ Article 58 of the Constitution of the Socialist Republic of Vietnam (2013), "1. The State shall invest in the development of the protection and care of the People's health, provide health insurance for the entire people
(continued on next page)

Pursuant to the National Strategy to protect, care and improve public health during 2011-2020 and the orientation towards 2030, which was approved by the Prime Minister on January 10, 2013,¹⁵ the development strategies of the public health sectors are articulated below:

- Health is the most valuable asset of each person and of the entire society; public health services are special non-profit social services; investment in health is investment in development and reflects the good nature of the society;

- Ensure that all citizens especially the poor, the children under age of 6, the disadvantaged and the highly susceptible people who are the beneficiaries of social policies can access to qualified fundamental healthcare services through upgrading and improving more equitable efficient healthcare system.

- Protect, care for and improve public health are the obligation of everyone, every family and the community, are responsibilities of ministries, government agencies, authorities, Fatherland Front Committees¹⁶ at all levels, associations, and socio-professional organizations, among which health authorities play a pivotal role regarding expertise and technologies.

- The State plays the core role in macro-management and orients the protection, care and improvement of public health through laws and policies; regulates and distributes resources; and manages the quality of health services and health service prices.

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and exercise a priority policy of health care for ethnic minorities, highlanders, islanders and people living in extremely difficult socio-economic conditions."

¹⁵ Decision No. 122/QĐ-TTg dated January 10, 2013 of the Prime Minister approving the National Strategy to protect, care, and improve public health during 2011-2020, and the orientation towards 2030, available at <https://vanbanphapluat.co/decision-no-122-qd-ttg-approving-the-national-strategy-to-protect-care> (accessed August 15, 2015).

¹⁶ Fatherland Front Committees is an organization which is composed of political groups that are in connection with Communist Party of Vietnam. Its role is to be a channel for participation of public sector., available at <http://www.mattran.org.vn> (accessed August 15, 2015).

- Innovate the operation and financial mechanism of health agencies in association with execution of the plan for providing health insurance for everyone in order to quickly adapt to the socialist-oriented market economy institutions in the health sector's activities.

- Harmoniously combine the fortification of the health network with an in-depth development of medicine; the development of public health services with non-public health services; and modern medicine with traditional medicine.

Primary solutions to implement the above guidelines include developing and completing the system of health organizations; strengthening and improving the grassroots healthcare network and renovating the initial healthcare; enhancing preventive medicine, improving public health, preventing and fighting HIV/AIDS and ensuring food safety and hygiene; raising the quality of medical and rehabilitation services; developing traditional medicine and pharmacy; enhancing reproductive health care and birth control activities; developing human resources for the health sector; developing medical science and technology; innovating financial and investment activities; developing the pharmaceutical industry and production of vaccines, bio-products and equipment and increasing investment in health infrastructure; intensifying international cooperation; developing the health information system; promoting health communication and education activities; and enhancing the state management of public health.

1.2.4 Social Welfare Policy

The Party and the State's sound and equitable social policy for the benefit of the people reflects in the ambition to bring into full play of the people's creativity in constructing and protecting the nation. This policy promotes equality in relation with economic, social and cultural development, ensures the social advancement and fairness in every step. Every development policy must ensure social welfare, while reducing the number of poor households and improving healthcare services for Vietnamese people.

The State encourages legitimate activities to accumulate wealth, and at the same time pays attention to sustainable poverty reduction and bridging the gap between the rich and the

poor regions, areas, and social classes. The State encourages and creates the conditions for organizations and individuals to create jobs, protects the rights and legitimate interests of employees and employers, and creates the conditions for the establishment of progressive, harmonious and stable employment relations.¹⁷

The Socio-Economic Development Strategy during 2011-2020 sets forth the policies of developing a diverse, increasingly expansive and effective social security system, strongly developing insurance systems such as social insurance, unemployment insurance, occupational accidents and diseases insurance, etc., encouraging and facilitating workers' access to and participation in different types of insurance, and expanding different forms of social assistance.

Article 59 of the Constitution also provides that the State and society shall honor, commend, reward, and implement preferential treatment policies to, people who have rendered meritorious service to the country. The State shall create equal opportunities for citizens to enjoy social welfare, develop the social security system, and adopt policies to support the seniors, people with disabilities, poor people, and other disadvantaged people. The State shall adopt housing development policies and create the conditions for everyone to have his or her own home.¹⁸

¹⁷ Article 57 of the Constitution of the Socialist Republic of Vietnam (2013), "1. The State encourages and provides favourable conditions for organisations and individuals to create jobs for workers. 2. The State shall protect the legal rights and interests of the workers and employers and provide favourable conditions for building progressive, harmonious, and stable labour relationships."

¹⁸ Article 59 of the Constitution of the Socialist Republic of Vietnam (2013). "1. The State and society shall honour, commend, reward and exercise a priority policy for people who offer meritorious service to the nation. 2. The State shall create equal opportunities for citizens to enjoy social welfare, develop a system of social security, and provide a policy assisting the elderly, the disabled, the poor and people with other difficult circumstances. 3. The State shall exercise a policy of housing development and create conditions so that everyone shall have housing."

1.2.5 Environment Protection Policy

Environment protection is identified as the responsibility of the entire political system and the whole society and the duty of every citizen. The National Platform highlights the tasks of developing clean energy, ensuring clean production and clean consumption. The State will take the initiative in preventing and mitigating pollution and natural disasters and dealing with the impacts of climate change. Natural resources shall be soundly and more efficiently managed, protected, renewed, and utilized.

The Constitution affirms that State shall adopt environmental protection policies; manage and utilize the natural resources in an efficient and sustainable manner; conserve nature and biodiversity; and take the initiative in preventing and controlling natural disasters and responding to climate change. The State shall encourage all activities for environmental protection and the development and use of new energy and renewable energy. Organizations and individuals that cause environmental pollution, natural resource exhaustion or biodiversity depletion shall be strictly punished and shall rectify and compensate for damage¹⁹

The Strategy for protecting the national environment by 2020 and the orientation towards 2030, which was approved by the Prime Minister on September 5, 2012,²⁰ provides more concrete guidelines in environmental protection as follows:

- Environment protection is a vital responsibility of every mankind. The environment protection strategy is an integral part of the socio-economic development strategy and

¹⁹ Article 63 of the Constitution of the Socialist Republic of Vietnam (2013). “1. The State has a policy to protect the environment; to manage and effectively and stably use natural resources; to protect nature and biodiversity; to take initiative in prevention and resistance against natural calamities and respond to climate change. 2. The State encourages all acts of protection of the environment, development and use of new energy and recycled energy. 3. Organisations and individuals who cause environmental pollution, deplete natural resources and weaken biodiversity shall be strictly dealt with and must be responsible for remedy and compensation for damage.”

²⁰ Decision No. 1216/QĐ-TTg dated September 5, 2012 of the Prime Minister approving the Strategy for protecting the national environment by 2020 and the orientation towards 2030, *available at* <https://vanbanphapluat.co/decision-no-1216-qd-ttg-approving-the-strategy-for-protecting-the-national> (accessed August 15, 2015).

sustainable development, because it will satisfy the needs of current generations and prospect for the future generations. As a result, investing in environment protection equals to investment in sustainable development.

- The development must follow the laws of nature. The economic development is encouraged to be operated in compatibility with the ecological characteristics of each area, with emitting little wastes, low carbon dioxide, and moving towards a green economy.

- Prioritizing the pollution prevention and control; ensuring the efficiency and sustainability in the extraction and utilization of natural resources; focusing on conserving the biodiversity; gradually restoring and improving the environment quality; enhancing the capability to deal with climate change.

- Environment protection is the responsibility of the entire society; it must be uniformly fulfilled on the basis of determining the responsibilities of Ministers and sectors, the decentralization between the Central and the local authorities; intensifying the role of the community, the public organizations, and cooperation with regions and other countries in the world.

- Strengthening the application of administrative measures, step by step applying the criminal sanctions, and utilizing flexible market mechanism in to enhance the efficiency and effect of the State management, ensuring the implementation of laws, requirements, regulations, and standards relevant to the environment.

- The organizations and individuals must pay for the benefit from the resources and value of the environment. Organizations and individuals that cause environmental pollution or degradation of biodiversity must pay compensation for the damage, and pay the cost of restoration.

The overall solutions to implement the Strategy include making substantial changes in the responsibility of the levels of authority, the sectors, enterprises, and people for environment protection; improving the law and management regime, enhancing the enforcement of laws on environment protection; enhancing the scientific research, the development and application of

environment protection technologies; developing environmental economics to support other economic sectors to resolve the environmental issues, stimulate the growth, generate incomes and create employments; increasing and diversifying investment in environment protection; facilitating the integration and enhancing the international cooperation in environment protection

1.2.6 Culture Policy

The Socialist Republic of Vietnam currently aims to build an advanced Vietnamese culture which is profoundly imbued with the national identity, ensure comprehensive development, unity in diversity, humanity, democracy, and advancement, and also assure that culture permeates into every aspect of the social life and becomes the firm spiritual foundation and internal force for development. The Socialist Republic of Vietnam's culture policy is to preserve and promote the good cultural traditions of the Vietnamese ethnic groups, while absorbing the humankind's cultural quintessence, in order to build a democratic, equitable, and civilized society for the legitimate interest and dignity of the people. The Party and the State assure the Vietnamese citizens' right to gain access to information and freedom of creation. The people are considered the center of the country's development strategy.

Article 60 of the Constitution echoes that the State and society shall develop literature and the arts to meet the diverse and healthy spiritual needs of the People; and develop the mass media to meet the People's demands for information and to serve national construction and defense. The State and society shall create an environment for building prosperous, progressive and happy Vietnamese families, and develop Vietnamese people with good health, cultural qualities, patriotism, a spirit of solidarity, a sense of mastery and civic responsibility.²¹

²¹ Article 60 of the Constitution of the Socialist Republic of Vietnam (2013), "1. The State and society shall take care of the creation and development of the Vietnamese culture, which is modern, deeply imbued with national identity and reflects mankind's cultural quintessence. 2. The State and society shall develop literature and art so as to meet the diverse and healthy spiritual demands of the People and promote mass media so as to meet the People's demand for information, serving the course of construction and defence of
(continued on next page)

The Resolution of the 5th plenum of the Party Central Committee (the VIIIth Party Congress) has categorized the scope of culture into eight major areas, namely: ideology, morality and lifestyle; cultural heritage; education and training; science and technology; literature and arts; public information; cultural exchange with the world; and cultural regulations and institutions. In this Resolution, the Party identified five basic guidelines for the cause of building and developing the Socialist Republic of Vietnam's culture, which were reaffirmed and expanded in the Resolution No. 33-NQ/TW dated June 9, 2014 of the 9th plenum of the Party Central Committee (the XIth Party Congress) on building and developing Vietnamese culture and people:

- Culture constitutes the spiritual foundation of the society, which is the objective and also the motive for the sustainable development of the nation. Culture must be placed at the same level of importance with economics, politics, and society.

- The culture that the Socialist Republic of Vietnam has been building is an advanced culture deeply imbued with national identity, unified but diverse in the community of Vietnamese ethnic groups.

- Building a comprehensive cultural environment with an emphasis on the role of family and community. Ensuring the harmonious development of the economy and culture; paying due attention to cultural and human elements in economic development.

- Building and developing culture is the cause of the entire people led by the Party and under the State management, in which the intellectuals are main actors.

In the current context, after the Socialist Republic of Vietnam became an official member of the World Trade Organization, the adjustment of Socialist Republic of Vietnam's cultural policies to comply with international commitments and still preserve the country's unique cultural identity is a major challenge for Vietnamese policy-makers. On May 6, 2009, the Prime Minister issued

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the Fatherland. 3. The State and society shall provide a favourable environment for the growth of the Vietnamese family which is prosperous, progressive, and happy; create Vietnamese people who are healthy, cultured, profoundly patriotic, unified, independent and responsible."

Decision No. 581/QĐ-TTg approving the Strategy for Cultural Development till 2020. The Strategy presents the following key national priorities in cultural development: building healthy people, ways of life, cultural life and environment; preserving and promoting national cultural heritage; preserving and promoting cultural heritage of ethnic minority groups; developing the work of literature and arts; paying respect and promoting the fine cultural and moral values of religions and beliefs; strengthening the work of mass media; intensifying international cooperation and exchange in culture; and building a system of cultural regulations and institutions.

The Vietnamese government is currently making and amending laws related to cultural heritage, cinema, libraries, education, publishing, and copyrights. There is also a focus on building social movements such as “building cultural life” and “building new rural areas”. The government is setting up policies on privatization and decentralization of cultural activities and for strengthening the management of cultural activities and services. Investment in traditional art forms is encouraged; national target programmes are in place for the conservation of heritage buildings and sites as well as the preservation and promotion of the intangible heritage of Socialist Republic of Vietnam’s ethnic groups. Strengthening investment in and development of cultural institutions in mountainous, remote, borderline and island areas is a priority area. Strengthening the capacities of grassroot cultural workers is also being stressed in policy. Cinema development has also been accorded priority.

1.3 International Agreements on Society and Culture Done by the Socialist Republic of Vietnam and Other Nations or Other International Organizations

The Socialist Republic of Vietnam is actively involved in some regional forums and enjoys good relations in the field of culture and the arts with UNESCO, the Asia-Europe Meeting (ASEM), ASEAN Committee on Culture and Information (ASEAN COCI), SEAMEO SPAFA Regional Centre

for Archaeology and Fine Arts, World Intellectual Property Organization and ICCROM (International Centre for the Study of the Preservation and Restoration of Cultural Property).²²

The major countries with which the Socialist Republic of Vietnam enjoys good relations in the field of cultural exchange and co-operation include members of the ASEAN community, Australia, Belgium, China, Denmark, Finland, France, Germany, Japan, Netherlands, Russia, South Korea, Sweden, the United States and the United Kingdom.²³

Below is a non-exhaustive list of major multilateral agreements that the Socialist Republic of Vietnam has ratified or acceded on society and culture:²⁴

- International Covenant on Economic, Social and Cultural Rights, December 16, 1966 (ratified on September 24, 1982).

- Agreement on the Importation of Educational, Scientific and Cultural Materials, with Annexes A to E and Protocol annexed, June 17, 1950 (ratified on June 6, 1952).

- Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of any Disputes which May Arise between States Parties to the Convention against Discrimination in Education, December 10, 1962 (ratified on June 12, 1968).

- Convention concerning the Protection of the World Cultural and Natural Heritage, Paris, November 16, 1972 (acceded on October 19, 1987).

- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, November 14, 1970 (ratified on September 20, 2005).

²² Asia Europe Foundation, Vietnam: An Introduction to national cultural policy, *available at* <http://culture360.asef.org/magazine/vietnam-an-introduction-to-national-cultural-policy/> (accessed August 8, 2015).

²³ *Ibid.*

²⁴ UNESCO, Ratified Conventions: Vietnam, *available at* http://www.unesco.org/eri/la/conventions_by_country.asp?contr=VN&language=E&typeconv=1 (accessed August 8, 2015). Ministry of Culture, Sports and Tourism, *available at* <http://www.bvhttdl.gov.vn> (accessed August 8, 2015).

- Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, October 17, 2003 (ratified on September 20, 2005).

- Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Paris, October 20, 2005 (ratified on August 7, 2007).

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, October 26, 1961 (acceded on December 1, 2006).

- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, May 21, 1974 (acceded on December 1, 2005).

- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Geneva, October 29, 1971 (acceded on April 6, 2005).

- Berne Convention for the Protection of Literary and Artistic Works (acceded on July 26, 2004).

Chapter 2: Overview of Politics and National Security of Socialist Republic of Vietnam

2.1 The Policy on Politics and National Security

The current policy on politics and national security of the Socialist Republic of Vietnam has been set forth in the Platform for National Construction for the Transitional Period towards Socialism (supplemented and developed in 2011) and the Socio-Economic Development Strategy for 2011-2020, which were adopted by the 11th National Congress of the Communist Party of Socialist Republic of Vietnam. The policy on politics and national security laid out in the Party's documents have been translated into the provisions of the new Constitution (2013),²⁵ and have also been affirmed in many statements by Socialist Republic of Vietnam's high-ranking leaders in international and regional forums.

2.1.1 Policy on Politics

The Platform for National Construction for the Transitional Period towards Socialism (supplemented and developed in 2011) reaffirms that the Socialist Republic of Vietnam will consistently pursue its path to socialism, under the leadership of the Communist Party of the Socialist Republic of Vietnam. The Platform highlights that socialist democracy is the goal as well as the driving force of the country's development and calls for the building and improvement of socialist democracy and the realization of democracy in practice at all levels and all aspects of life.

The political system of the Socialist Republic of Vietnam consists of the State, the Communist Party of the Socialist Republic of Vietnam, the Fatherland Front and mass organizations. The State of the Socialist Republic of Vietnam is a socialist state ruled by law and

²⁵ The Constitution of the Socialist Republic of Vietnam (2013).

of the People, by the People and for the People.²⁶ The People exercises the state power in the form of direct democracy and of representative democracy through the National Assembly, People's Councils and other state agencies.²⁷ The Communist Party of Vietnam is the force leading the State and society.²⁸ The Socialist Republic of Vietnam Fatherland Front is a political alliance and a voluntary union of the political organization, socio-political organizations and social organizations, and prominent individuals representing their class, social strata, ethnicity or religion and overseas Vietnamese. The Socialist Republic of Vietnam Fatherland Front constitutes the political base of the people's administration, represents and protects the rights and lawful and legitimate interests of the People, rallies and upholds the strength of the great national unity, exercises democracy and promote social consensus; conducts social supervision and criticism; and participates in the building of the Party and the State, and in people's external relations' activities, thus contributing to national construction and defense. The Trade Union of Vietnam, the Vietnam Peasants' Association, the Ho Chi Minh Communist Youth Union, the Vietnam Women's Union and the Vietnam War Veterans' Association are socio-political organizations established on a voluntary basis to represent and protect the rights and lawful and legitimate interests of their members; and

²⁶ Article 2 of the Constitution of the Socialist Republic of Vietnam (2013), "The Socialist Republic of Vietnam is a socialist rule of law State of the People, by the People and for the People."

²⁷ Article 6 of the Constitution of the Socialist Republic of Vietnam (2013), "The people exercise the State power under the forms of direct democracy and of representative democracy through the National Assembly, the People's Councils and other State agencies."

²⁸ Article 4 of the Constitution of the Socialist Republic of Vietnam (2013), "The Communist Party of Vietnam - the Vanguard of the Vietnamese working class, simultaneously the vanguard of labourers and of the Vietnamese nation, the faithful representative of the interests of the working class, labourers and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh's thought, is the leading force of the State and society."

together with other member organizations of the Vietnam Fatherland Front coordinate and unify action within the Front.²⁹

The Socialist Republic of Vietnam guarantees and promotes the People's right to mastery; recognize, respect, protect and guarantee human rights and citizens' rights.³⁰ The Socialist Republic of Vietnam pursues a consistent policy of protecting and promoting human rights, considering the well-being of each and every person as the goal and driving force of the national development process.³¹ With such a policy, the Socialist Republic of Vietnam has been exerting considerable efforts in protecting and promoting human rights, as demonstrated in laws, policies and the actual accomplishments. The adoption of the 2013 Constitution with 36 provisions in Chapter II exclusively dedicated to human rights and the rights and obligations of Vietnamese citizens, is obviously a step forward toward the rule-of-law state and institutionalized human rights in conformity with the international norms and standards on human rights. The Constitution provides that in the Socialist Republic of Vietnam, human rights and citizens' rights in the political, civil, economic, cultural and social fields shall be recognized, respected, protected and guaranteed by the Constitution and law. Human rights and citizens' rights may not be limited unless prescribed by a law solely in case of

²⁹ Article 9 of the Constitution of the Socialist Republic of Vietnam (2013), "The Vietnam Fatherland Front is a political alliance and a voluntary union of political organisations, socio-political organisations, social organisations and individuals representing their social classes and strata, ethnicities, religions, and overseas Vietnamese."

³⁰ Article 3 of the Constitution of the Socialist Republic of Vietnam (2013), "The State guarantees and promotes the People's mastery; acknowledges, respects, protects and guarantees human rights and citizens' rights; implements the objectives of prosperous people, state powers, democracy, justice, civilisation, and all that people enjoy that is abundant and free for a happy life with conditions for all-round development."

³¹ Statement by Deputy Prime Minister and Foreign Minister of Vietnam at the High-Level Segment of the 25th Session of the UN Human Rights Council, (Geneva, Mar. 3, 2014), *available at* <http://www.mofa.gov.vn/en/nr040807104143/nr111027144142/ns140304151754> (accessed August 8, 2015).

necessity for reasons of national defense, national security, social order and safety, social morality and community well-being.³²

2.1.2 Policy on National Security

Article 1 of the Constitution states that the Socialist Republic of Vietnam is an independent and sovereign country enjoying unity and integrity of territory, including the mainland, islands, seas and airspace.

Article 64 of Chapter IV of the Constitution is devoted to national defense. To defend the socialist Vietnamese Fatherland is the mission of all the people. The State strengthens national defense and security, with the people's armed forces as the core, and fully utilize the total strength of the country to defend the country, thereby contributing to protecting peace in the region and around the world.³³ Article 66 prescribes that the State shall build a People's Army that is regular, well-trained and gradually modernized, which has an appropriate permanent force, an important and powerful reserve force, and a strong and extensive self-defense and militia force, as the core for performing national defense tasks.³⁴ Article 67 articulates that the State shall build a People's

³² Article 14 of the Constitution of the Socialist Republic of Vietnam (2013), "In the Socialist Republic of Vietnam, human rights and citizens' rights in the political, civic, economic, cultural and social fields are recognised, respected, protected and guaranteed in concordance with the Constitution and the law. Human rights and citizens' rights shall only be restricted when prescribed by law in imperative circumstances for the reasons of national defence, national security, social order and security, social morality and community well-being."

³³ Article 64 of the Constitution of the Socialist Republic of Vietnam (2013), "To defend the socialist Vietnamese Fatherland is the responsibility of the entire people. The State shall consolidate and strengthen national defence by the entire people and of the people's security, with the people's armed forces regarded as the core, shall develop to the full the aggregate strength of the country to defend the Fatherland and shall contribute to the protection of peace in the region and in the world. All agencies, organisations and citizens shall fulfil all their national defence and security obligations."

³⁴ Article 66 of the Constitution of the Socialist Republic of Vietnam (2013), "The State shall build a revolutionary people's Army which shall be a well-trained regular army to be gradually modernised, have proper
(continued on next page)

Public Security force that is regular, well-trained and gradually modernized, as the core to safeguard national security, ensure social order and safety, and prevent and fight crime.³⁵

Article 4 of Law No. 32/2004/QH11 passed by the National Assembly on December 3, 2004 on National Security sets forth the national security policies as follows:³⁶

First, the Socialist Republic of Vietnam adopts the policy of peace, friendship, expanding exchanges and cooperation with all countries on the basis of respecting each other's independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual benefit.

Second, the State adopts the policies of building the national unity bloc; strongly developing economy, culture, society, science, technology, security, national defense and external relations, firmly maintaining the political stability in order to ensure the national security.

National security protection activities must follow four principles as provided in Article 5 of the Law on National Security:³⁷

(continued from footnote 34)

permanent forces, powerful reserves, strong and comprehensive self-defence militia and serves as the core of the business of national defence."

³⁵ Article 67 of the Constitution of the Socialist Republic of Vietnam (2013), "The State shall build a revolutionary people's Police Force which shall be a well-trained regular army to be gradually modernised and serves as the core of the business of national security and social order, preventing and fighting against crimes."

³⁶ Article 4 of Law No. 32/2004/QH11 of December 3, 2004 (Law on National Security), "The national security policies:

1. The Socialist Republic of Vietnam State adopts the policy of peace, friendship, expanding exchanges and cooperation with all countries on the basis of respect for each other's independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual benefit.

2. The State adopts the policies of building the national unity bloc; strongly developing economy, culture, society, sciences, technologies, security, national defense and external relations, firmly maintaining the political stability in order to ensure the national security.", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=7310, (accessed October 7, 2018).

³⁷ Article 5 of Law No. 32/2004/QH11 of December 3, 2004 (Law on National Security), "Principles for national security protection activities: *(continued on next page)*

- To abide by the Constitution, the law, ensure the interests of the State, the legitimate rights and interests of organizations, individuals.

- To be placed under the leadership of the Communist Party of the Socialist Republic of Vietnam and the unified management of the State; to mobilize the integrated strength of the political system and the entire nation with the national security protection specialized forces acting as the core.

- To closely link the missions of national security protection with the missions of economic, cultural, social construction and development; to efficiently coordinate security, defense and external activities.

- To actively prevent and defeat all schemes and acts of infringing upon the national security.

Article 7 of the Law on National Security further provides that the State ensures budget and conditions for national security protection activities in all circumstances, giving priority to strategic and integral national security areas; adopts policies to utilize scientific and technological achievements in service of national security protection activities.³⁸

(continued from footnote 37)

1. To abide by the Constitution, the law, ensure the interests of the State, the legitimate rights and interests of organizations, individuals.

2. To be placed under the leadership of the Communist Party of Vietnam and the unified management of the State; to mobilize the integrated strength of the political system and the entire nation with the national security protection specialized forces acting as the core.

3. To closely combine the tasks of national security protection with the tasks of economic, cultural, social construction and development; to efficiently coordinate security, defense and external activities.

4. To actively prevent and struggle to foil all schemes and acts of infringing upon the national security.", available at http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=7310, (accessed October 7, 2018).

³⁸ Article 7 of Law No. 32/2004/QH11 of December 3, 2004 (Law on National Security), "Ensuring conditions for national security protection activities: The State ensures budget and material bases for national security protection activities in all circumstances, giving priority to strategic, key and important national security
(continued on next page)

Fundamental points of Socialist Republic of Vietnam's national defence and security are explicitly presented in the third White Paper on the Socialist Republic of Vietnam National Defence, which was published by the Ministry of Defense of the Socialist Republic of Vietnam in 2009. According to the White Paper, the Socialist Republic of Vietnam adheres to its defence and security policy that thoroughly respects other countries' independence, sovereignty, unity, territorial integrity and national interests on the basis of fundamental principles of the United Nations Charter and international laws. At the same time, the Socialist Republic of Vietnam demands that its independence, sovereignty, unity, territorial integrity and national interests must be respected by other countries. The Socialist Republic of Vietnam advocates against the military use of force first in international relations, but is ready to resolutely fight against all aggressive acts.³⁹

The Socialist Republic of Vietnam has followed a national defence policy of peace, and self-defence, not using force or threatening of using force in international relations, and solving differences and disputes with other countries by peaceful means. The Socialist Republic of Vietnam advocates the gradual modernization of the Vietnam People's Army and enhancement of the defence potential only to maintain its military power sufficient for self-defence capability. The Socialist Republic of Vietnam opposes arms race.

The Socialist Republic of Vietnam's consistent policy is to solve both historical and newly emerging disputes over territorial sovereignty in land and at sea through peaceful means complying with international laws. Particularly, the Socialist Republic of Vietnam wishes to resolve the East Sea (South China Sea) issue, by peaceful means, in accordance with international law,

(continued from footnote 38)

areas; adopts policies to mobilize scientific and technological achievements in service of national security protection activities.", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=7310, (accessed October 7, 2018).

³⁹ Vietnam National Defence, The Third White Paper on Vietnam National Defence 2009, pp. 18-19, *available at* <http://aseanregionalforum.asean.org/files/library/ARF%20Defense%20White%20Papers/Vietnam-2009.pdf> (accessed August 8, 2015).

1982 United Nations Convention on the Law of the Sea. The Socialist Republic of Vietnam abides by the Declaration on the Conduct of Parties in the South China Sea (DOC) (adopted by the Foreign Ministers of ASEAN countries and the People's Republic of China at the 8th ASEAN Summit in Phnom Penh, Cambodia on November 4, 2002) and works to secure an early adoption of the Code of Conduct of Parties in the South China Sea (COC).⁴⁰

The Socialist Republic of Vietnam builds its national defence power on the basis of the overall strength of the whole nation, of the great solidarity of the masses, of the whole political system led by the Communist Party of the Socialist Republic of Vietnam, combining the strength of military forces and the all-people defence posture with the strength of people's security forces and posture. The Socialist Republic of Vietnam has established a policy to concurrently develop both its socio-economic and defence capabilities and closely coordinate defence-security and diplomatic activities to support the cause of industrialization and modernization, and rapid and sustainable economic development.

It is the Socialist Republic of Vietnam's consistent policy not to form an alliance with one country against another.⁴¹ The Socialist Republic of Vietnam consistently advocates neither joining any military alliances nor giving any other countries permission to have military bases or use its land to carry out military activities against other countries. At the same time, the Socialist Republic of Vietnam attaches great importance to developing defence ties with all other countries on the basis of respecting each other's independence, sovereignty, and mutual benefit. The Socialist

⁴⁰ Statement by H.E. Pham Binh Minh, Deputy Prime Minister, Minister of Foreign Affairs of the Socialist Republic of Viet Nam at the General Debate of the 69th Session of the UN General Assembly, *available at* <http://www.mofa.gov.vn/en/nr040807104143/nr111027144142/ns140929135754> (accessed August 7, 2015).

⁴¹ Such policy can be exemplified from the alliance between United States and South Vietnam during Vietnam War, with an objective to resist the Soviet Union or alliance between China and North Korea to resist United States. This is to say, Vietnam will not carry on a policy that leads herself into proxy war. See Prime Minister Nguyen Tan Dung's Speech delivered at Germany's Koerber Foundation on October 15, 2013, *available at* <http://en.nhandan.org.vn/politics/external-relations/item/2870702-prime-minister%E2%80%99s-speech-at-germany%E2%80%99s-koerber-foundation.html> (accessed October 16, 2014).

Republic of Vietnam highly values defence cooperation with neighbouring countries, and traditional friends while developing defence cooperation with other countries sharing the goal of peace, independence and development.

The Socialist Republic of Vietnam resolutely condemns and opposes to terrorism in any forms and simultaneously protests against any acts in the name of counter-terrorism to intervene into the internal affairs of other countries. Apart from taking necessary measures to prevent and respond to terrorism, the Socialist Republic of Vietnam supports the international community's endeavours and expansion of cooperation to prevent terrorist actions and support of terrorism in any forms. The Socialist Republic of Vietnam insists that the counter-terrorist measures and international cooperation in the fight against terrorism must be carried out within the framework of the United Nations, and in compliance with the fundamental principles of the United Nations Charter and international laws.

2.2 International Agreements on Politics and National Security Done by the Socialist Republic of Vietnam and Other Nations and Other International Organizations

Over the past years, Vietnam has signed and acceded to most of the core international conventions on human rights, such as:

- The International Covenant on Political and Civil Rights (adopted on December 16, 1966, entry into force on March 23, 1976, ratified on September 24, 1982)
- International Covenant on Economic, Social and Cultural Rights (adopted on December 16, 1966, entry into force on January 3, 1976, ratified on September 24, 1982)
- International Covenant on the Elimination of All Forms of Racial Discrimination (adopted on December 21, 1965, entry into force on January 4, 1969, ratified on June 9, 1981)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted on December 10, 1984, entry into force on June 26, 1987, ratified on November 11, 2014), etc.

The Socialist Republic of Vietnam has actively participated in regional efforts on human rights protection and promotion, including those of ASEAN. In particular, Vietnam attaches special importance to the work of the United Nations Human Rights Council, always actively participates in the Council's activities, and has recently been elected to be a member of the Council for the term 2014-2016.

Regarding national security, the Socialist Republic of Vietnam is consciously aware that in an increasingly interdependent world, the Socialist Republic of Vietnam's security is inseparable from the world's security in general and regional security in particular. Defence cooperation is one of the most important factors for maintaining peace and stability in the region and the world as well, and it is also an important factor for achieving the Socialist Republic of Vietnam's defence goals. Therefore, the Socialist Republic of Vietnam advocates expanding defence diplomacy and actively participating in defence and security cooperation in the regional and international community.

The Socialist Republic of Vietnam adopts the policy of multilateral and bilateral cooperation with other countries and international organizations in national security protection activities in accordance with Vietnamese laws and international laws; implements the international agreements related to national security protection, which the Socialist Republic of Vietnam has signed or acceded to.⁴² In its national socio-economic development and international integration, the Socialist Republic of Vietnam always attaches importance to the roles of multilateral institutions and forums, especially that of the United Nations, in the areas of international and regional security

⁴² Article 11 of Law No. 32/2004/QH11 of December 3, 2004 (Law on National Security), "International cooperation in the field of national security protection: The Socialist Republic of Vietnam State adopts the policy of multilateral and bilateral cooperation with other countries and international organizations in national security protection activities in accordance with Vietnamese laws and international laws; implements the international agreements related to the field of national security protection, which the Socialist Republic of Vietnam has signed or acceded to.", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=7310, (accessed October 7, 2018).

and development. The Socialist Republic of Vietnam has been an active and responsible member of important regional and global organizations, such as ASEAN, Non-Alignment Movement (NAM), Asia-Pacific Economic Cooperation, (APEC), Asia-Europe Meeting (ASEM). The Socialist Republic of Vietnam obtained its non-permanent membership of the UN Security Council in 2008-2009 and chairing of ASEAN in 2010. The Socialist Republic of Vietnam is currently campaigning for a seat on the UN Security Council (2020-2021).

Regarding multilateral agreements, the Socialist Republic of Vietnam has signed 8 out of 12 conventions on counter-terrorism of the United Nations and is considering participating in the remaining conventions. The Socialist Republic of Vietnam, together with other ASEAN countries, has signed the Southeast Asian Nuclear-Weapon-Free Zone Treaty (SEANWFZ) on December 15, 1995. The Socialist Republic of Vietnam has taken part in and strictly observed many conventions, agreements, and protocols on non-proliferation of weapons of mass destruction (WMD) and other international conventions on disarmament. The Socialist Republic of Vietnam is seriously considering international conventions and treaties on defence-security issues, and actively preparing necessary conditions for fully implementing the duties required.

The Socialist Republic of Vietnam affirms that UN peacekeeping operations have been crucial to the peaceful settlement of disputes and maintenance of international peace and security, and that UN peacekeeping operations can only succeed and sustain when they have strong political support along with sufficient human and other resources. Bearing that in mind, since 1996, the Socialist Republic of Vietnam has made financial contributions to UN peacekeeping missions. In addition, starting in June 2013, the Socialist Republic of Vietnam has sent officers to join the UN Mission in South Sudan as liaison officers. At home, the Socialist Republic of Vietnam Peacekeeping Center has been established to coordinate the training, preparation and deployment of future Vietnamese peacekeepers. The Socialist Republic of

Vietnam has made commitment to make more contributions to the UN peacekeeping missions.⁴³ Becoming a troop contributing country is an utmost important and serious undertaking by the Government of Socialist Republic of Vietnam. It demonstrates the Socialist Republic of Vietnam's determination and commitment to make responsible contributions to the work of the international community, striving for a peaceful and stable international environment.

The Socialist Republic of Vietnam's defence cooperation with other countries has deepened and increased effectively, especially with strategic partners. The Socialist Republic of Vietnam frequently holds defence and security dialogues at different levels with member states in the ASEAN, China, Russia, United States, Japan, France, India, and so on. Up to now, the Socialist Republic of Vietnam has made defence relations with 60 countries, including major powers.⁴⁴ For example, the Socialist Republic of Vietnam has signed Memorandum of Understanding on Defence Cooperation with the United States (2011), Australia (2010), Poland (2010), Malaysia (2008), Cambodia (2002), India (1994), etc., and has proposed to sign one with Israel. The Socialist Republic of Vietnam has set up its defence attaché offices in 34 countries. Forty-five countries have opened their defence attaché offices in Socialist Republic of Vietnam. Bilateral defence relations between The Socialist Republic of Vietnam and other countries have not only contributed to strengthening solidarity and friendship, but it has also enhanced understanding and mutual trust. Furthermore, it has promoted cooperation in various fields, prevented conflicts, addressed current security issues, and it has facilitated the socio-economic development of the country. Coordinating with patrols on the borders, on land, at sea, and cooperating on training, scientific and military technologies have been more practical and effective. On the other hand,

⁴³ Ministry of Foreign Affairs, Deputy PM affirms more contributions to peacekeeping missions, *available at* <http://www.mofa.gov.vn/en/nr040807104143/nr111027144142/ns140929143008> (accessed September 29, 2014).

⁴⁴ Ministry of National Defence, Promoting International Integration and Defense Diplomacy under the New Conditions, *available at* <http://mod.gov.vn/wps/portal/> (accessed February 21, 2014).

multilateral defence relations have recorded remarkable developments in both quantity and quality.

The Socialist Republic of Vietnam promotes its defence cooperation with other ASEAN member countries within the framework of building the ASEAN Political-Security Community in accordance with its bilateral relations with each country, enhances the information and experience sharing, reinforces cooperation in training and education, and coordinates to solve security issues of common concern. The Socialist Republic of Vietnam is committed to being more responsible to ASEAN and the region, promoting ASEAN's mode of cooperation and its centrality in building the ASEAN Community, which will become a reality in Southeast Asia by 2015. The Socialist Republic of Vietnam also joins other ASEAN members to make sure ASEAN will be at the center of the Asia-Pacific security architecture and Asia Pacific community.⁴⁵ The Socialist Republic of Vietnam has actively participated in all the mechanisms of cooperation on defence and security in the region, such as attending the ASEAN Defence Minister Meetings (ADMM), the ASEAN Defence Minister Meeting-Plus (ADMM+), the ASEAN Regional Forum (ARF) and other important conferences on defense and security. Therefore, the Socialist Republic of Vietnam's roles in the mechanism of defense cooperation and regional security are highly appreciated.

⁴⁵ Remarks by H.E. Pham Binh Minh, Deputy Prime Minister, Foreign Minister of Viet Nam on Viet Nam's Place in the World Order (New York, Sept. 24, 2014), *available at* <http://www.mofa.gov.vn/en/nr040807104143/nr11027144142/ns140926030628> (accessed August 8, 2015).

Chapter 3: Summary of Laws Relating to Society and Culture

3.1 Overview

After nearly thirty years of implementing the Renovation policy, the Vietnamese legal system, including the laws relating to society and culture, has been significantly improved along with the transformation of Vietnam's economy and society. On May 24, 2005, the Politburo of the Communist Party of Vietnam issued Resolution No. 48-NQ/TW on the Strategy for Development and Improvement of the Vietnamese Legal System until 2010 and directions towards 2020⁴⁶ (known as “the Legal Development Strategy”). This Strategy is greatly important in determination of the main development goals of the Vietnamese legal system, which is to develop and improve the laws regarding education and training, science and technology, health, culture and information, sports, ethnic or ethnical issues, religions, population, family, children and social policies. Since the implementation of the Legal Development's Strategy, a various number of laws, codes, statutes, ordinances, decrees, relating to society and culture have been promulgated to create a comprehensive legal framework. Analyzing the Legal Development's Strategy, these laws clearly develop social and cultural policies in the society, and still emphasize the State's role in management, regulation in each field along with providing policies suitable for the disadvantaged.

The laws in the field of education effectively implement the policy of standardization, modernization, and socialization of education in order to create a learning society and improve the quality of education. The laws clarify the State's role in educational management such as enhancing the autonomy and accountability of educational institutions, and encouraging fair competition between public and private education.

⁴⁶ Vietnam Ministry of Justice, *Về chiến lược xây dựng và hoàn thiện hệ thống pháp luật Việt Nam đến năm 2010, định hướng đến năm 2020*, available at <http://www.moj.gov.vn/qt/clqhkh/Pages/chien-luoc-quy-hoach-ke-hoach.aspx?ItemID=10&CatelID=1> (accessed October 12, 2018).

The legal frameworks of developing the labor market and protecting the legitimate rights and interests of employees have been formulated towards a more diversifying form of jobs, labor skills improvement, the high-qualified labor market segment, the standard occupational safety.

The laws in the field of science and technology have been substantially advanced compatible with the development of new technologies such as information technology, electronic transactions, biomedicine, etc. They also encourage research and development, in order to create a knowledge-based economy.

The laws in the field of culture have been improved to meet the goals of preserving and developing an advanced Vietnamese culture imbued with national identity. They reiterate that culture is the spiritual foundation which is considered as the driving force of the country's development. The laws reflect the State's ambition to ensure freedom and democracy in creative activities and to mobilize the entire society's participation in protecting cultural heritages.

Health laws have been significantly amplified the people's access to qualified medical services, generated grass-root medical networks with the application of advanced healthcare technology, ensuring equality between state-owned and private healthcare institutions, and enforced the regulations governing medical and pharmaceutical practitioners.

Social policy laws have been promulgated abundantly during the last ten years to guarantee that all citizens can access to public services, health insurance, social insurance, social security and social welfare. The laws provide favorable conditions towards special groups. Vietnam has ratified and acceded many international treaties protecting the children, the women, the elderly and the disabled.

The laws regarding natural resources and environment have been remarkably progressed under the principles of sustainable development, which sustains the balance between the utilization and protection of natural resources.

The current system of Vietnamese legal texts consists of: (1) Constitution; (2) Codes,

Laws⁴⁷, and Resolutions passed by the National Assembly; (3) Ordinances and Resolutions passed by the Standing Committee of the National Assembly; (4) Orders and Decisions of the President; (5) Decrees issued by the Government; (6) Decisions issued by the Prime Minister; (7) Resolutions of the Judiciary Council of the Supreme People's Court; (8) Circulars issued by the Chief Justice of the Supreme People's Court, the Chief Prosecutor of the Supreme People's Procuracy, ministers and equivalents, (9) Resolutions and Decisions issued by the People's Councils and People's Committees at the provincial, district and commune levels. (Article. 4 of Law No. 80/2015/QH13 passed by the National Assembly on the Promulgation of Legal Texts).⁴⁸

⁴⁷ equivalent to Act or Statute.

⁴⁸ Article 4 of Law No. 80/2015/QH13, "The system of legislative documents:

1. The Constitution.
2. Codes and Laws (hereinafter referred to as Laws), Resolutions of the National Assembly
3. Ordinances, Resolutions of Standing Committee of the National Assembly; Joint Resolutions between Standing Committee of the National Assembly and Management Board of Central Committee of Vietnamese Fatherland Front
4. Orders, Decisions of the President.
5. Decrees of the Government; Joint Resolutions between the Government and Management Board of Central Committee of Vietnamese Fatherland Front
6. Decision of the Prime Minister.
7. Resolutions of Judge Council of the People's Supreme Court.
8. Circulars of executive judge of the People's Supreme Court; Circulars of the Chief Procurator of the Supreme People's Procuracy; Circulars of Ministers, Heads of ministerial agencies; Joint Circulars between executive judge of the People's Supreme Court and the Chief Procurator of the Supreme People's Procuracy; Joint Circulars between Ministers, Heads of ministerial agencies and executive judge of the People's Supreme Court, the Chief Procurator of the Supreme People's Procuracy; Decisions of State Auditor General.
9. Resolutions of the People's Councils of central-affiliated cities and provinces (hereinafter referred to as provinces).
10. Decisions of the People's Committees of provinces.
11. Legislative documents of local governments in administrative - economic units.
12. Resolutions of the People's Councils of districts, towns and cities within provinces (hereinafter referred to as districts).
13. Decisions of the People's Committees of districts. (*continued on next page*)

3.2 Laws Concerning Education

Major legislations governing education in Vietnam include Law No. 38/2005/QH11 passed by the National Assembly on June 14, 2005 on Education (amended by Law No. 44/2009/QH12 passed by the National Assembly on November 25, 2009) (hereinafter “**Education Law**”), Law No. 08/2012/QH13 passed by the National Assembly on July 2, 2012 on Higher Education (hereinafter “**Law on Higher Education**”), and Law No. 74/2014/QH13 passed by the National Assembly on November 27, 2014 on Vocational Education (hereinafter “**Law on Vocational Education**”). Article 4 of the Education Law provides that the national education system consists of four levels of education: (1) Preschool education (kindergartens); (2) Fundamental education ranging from primary education, lower secondary education, and upper secondary education; (3) Vocational education; and (4) University degree or higher education; the bachelor, the master and the doctorate.⁴⁹

Preschool education for five-year-old children, primary education, and lower secondary education are mandatory.⁵⁰ The State approves national mandatory education plan and provides

(continued from footnote 48)

14. Resolutions of the People’s Councils of communes, wards and towns within districts (hereinafter referred to as communes).

15. Decisions of the People’s Committees of communes., *available at* <https://vanbanphapluat.co/law-no-80-2015-qh13-promulgation-of-legislative-documents> (accessed October 12, 2018).

⁴⁹ Article 4(2) of Law No. 38/2005/QH11 of June 14, 2005 (Education law), “2. Educational levels and training degrees of the national education system include:

- a) Preschool education with crèches and kindergartens;
- b) General education with primary education, lower secondary education, and upper secondary education;
- c) Vocational education training at elementary-level, intermediate-level, or college-level and other vocational training programs;
- d) Higher education including university education, master education, and doctoral education.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed June 30, 2015).

⁵⁰ Article 11 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), “1. Primary education and
(continued on next page)

suitable conditions to educational access. All citizens within the defined age groups are obliged to attain mandatory education. Families are responsible for ensuring members enroll in mandatory education.

Although education in Vietnam has been increasingly liberalized, the Ministry of Education and Training of Vietnam plays a leading role in education management, which is legislated in the Education Law and the Law on Higher Education. All national education institutions are established under the State's master plans and educational development plans. The State shall encourage public schools to play the leading role in the national education system.⁵¹

3.2.1 Laws Concerning Fundamental Education

a) *Levels and Institutions of Fundamental Education*⁵²

(continued from footnote 50)

lower secondary education are universal education levels. The State shall decide on plans for universalization of education; assure conditions for the universalization of education throughout the country.", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?Itemid=5484 (accessed June 30, 2015).

⁵¹ Article 48 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), "2. Schools of all types in the national education system are established according to the State plans and planning, aiming to develop the cause of education. The State shall create conditions for public schools to play the leading role in the national education system.", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?Itemid=5484 (accessed June 30, 2015).

⁵² The system of basic education is quite different than higher education system. Basic education is highly regulated and control by the Ministry of Education, and is also under management of the local government at the provincial and district level. See sub-section b) of 3.2.1 *infra* on the control of the Government over basic education. Basic education institutions do not have the autonomy that higher education institutions are entitled to with respect to formulating educational programs, curricula, teaching and learning plans for the permitted training majors; deciding enrolment quota, enrolling students, operating training programs, recognizing graduation and granting diplomas; organizing the institution's structure; recruiting, managing, and employing teachers and other staffs; mobilizing, managing and using resources; cooperating with domestic and foreign economic, educational, cultural, physical training and sport, medical, and scientific research
(continued on next page)

Fundamental education (general education) of Vietnam consists of three levels.⁵³

(1) Primary education, which is conducted for five-year terms, from the first to the fifth grade. The age of entrance to the first grade is six;

(2) Lower secondary education, which is four-year terms starting from the sixth to the ninth grade. Pupils entering the sixth grade must complete the primary education program, at the age of eleven;

(3) Upper secondary education, which is three-year terms from the tenth to the twelfth grade. Pupils entering the tenth grade must attain a lower secondary education diploma, at the age of fifteen. Primary education aims to ensure that students acquire simple and necessary knowledge about nature, society and human beings; basic listening, reading, speaking, writing and calculating skills; habits of physical training and hygiene; and initial understanding of singing,

(continued from footnote 52)

organizations. See Art. 60 of Law No. 38/2005/QH11 of June 14, 2005 (Education Law 2005), *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed 30 Jun 2015)). Basic education institutions are established or permitted to establish by the Chairperson of provincial-level People's Committee (for upper-secondary schools) or the Chairperson of district level People's Committee (for schools at lower levels), while higher education institutions are established or permitted to establish by the Prime Minister. See Art. 51 of Law No. 38/2005/QH11 of June 14, 2005 (Education Law 2005), *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed 30 Jun 2015).

⁵³ Article 26 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), "1. General education consists of:

a/ Primary education, which is conducted for five school years, from the first to the fifth grade. The age of entrance to the first grade is six;

b/ Lower secondary education, which is conducted for four school years, from the sixth to the ninth grade. Pupils entering the sixth grade must complete the primary education program, at the age of eleven;

c/ Upper secondary education, which is conducted for three school years, from the tenth to the twelfth grade. Pupils entering the tenth grade must have a lower secondary education diploma, at the age of fifteen., *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed June 30, 2015).

dance, music and fine-arts.⁵⁴ Lower secondary education aims to strengthen and develop the contents in primary education, provide pupils with the basic general knowledge about the Vietnamese language, mathematics, national history, and other knowledge about social science, natural science, law, informatics, foreign languages; and with necessary minimum understanding about techniques and vocational orientation. Upper secondary education must strengthen and develop the contents in lower secondary education and complete the contents of general education.

Institutions of general education consist of (1) primary schools, (2) lower secondary schools (middle schools), (3) upper secondary schools (high schools), and (4) multi-level general education schools (5) Centers for general techniques and vocational orientation⁵⁵ Schools are organized in the following types: public schools, local schools (established and funded by local communities), and private schools (established and funded by organizations or individuals with non-state-budget capital).⁵⁶ Chairpersons of district-level People's Committees have authority to

⁵⁴ Article 28 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), "...Primary education must ensure that pupils acquire simple and necessary knowledge about nature, society and human being; basic listening, reading, speaking, writing and calculating skills; habits of physical training and hygiene; and initial understanding of singing, dance, music and fine arts...", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed June 30, 2015).

⁵⁵ Article 30 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), "Institutions of general education includes:

1. Primary schools;
2. Lower secondary schools;
3. Upper secondary schools;
4. Multi-level general education schools;
5. Centers for general techniques and vocational orientation.", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed June 30, 2015).

⁵⁶ Article 48 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), "1. Schools in the national education system are organized in the following types:

a/ Public schools, which are established, invested with material foundations, and provided with regular expenditure funding by the State; (*continued on next page*)

decide on the establishment of crèches, kindergartens, primary schools and lower secondary schools, while Chairpersons of provincial-level People's Committees have authority to make decisions on the establishment of upper secondary schools.⁵⁷

b) Control of the Government over Fundamental Education

The Ministry of Education and Training strictly regulates fundamental education. The Minister of Education and Training promulgates fundamental education programs; approves and selects textbooks for official, stable and uniform use in teaching and learning at fundamental educational institutions; and provides standards and processes to develop and modify fundamental education programs and textbooks. The Minister of Education and Training is responsible for the quality of fundamental education programs and textbooks.⁵⁸

(continued from footnote 56)

b/ People-founded schools, which are established, invested with material foundations, and provided with operation funding by local communities;

c/ Private schools, which are established, invested with material foundations, and provided with operation funding by social organizations, socio-professional organizations, economic organizations, or individuals with non-state budget capital.”, *available at* [http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid](http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484)

=5484 (accessed June 30, 2015).

⁵⁷ Article 48 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), “1. The competence to establish public schools and permit the establishment of people-founded and private schools is provided for as follows:

a/ Presidents of district-level People’s Committees shall make decisions for crèches, kindergartens, primary schools, lower secondary schools, and semi-boarding general education schools for ethnic minority pupils;

b/ Presidents of provincial-level People's Committees shall make decisions for upper secondary schools, boarding general education schools for ethnic minority pupils and professional secondary education schools of provinces;”, *available at* [http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid](http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484) =5484 (accessed June 30, 2015).

⁵⁸ Article 29 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), “3. The Minister of Education and Training shall, based on appraisals made by the National Review Council for General Education Programs and Textbooks, approve general education programs and textbooks for official, consistent and uniform use in
(continued on next page)

Students who have completed primary education and meet the requirements set by the Minister of Education and Training are certified in their school records by the principals of their primary schools where they have completed primary education. Students who have completed lower secondary education and meet the requirements set by the Minister of Education and Training are awarded lower secondary education diplomas by the Heads of the Education and Training Offices at the district level. Students who complete upper secondary education and meet the requirements set by the Minister of Education and Training are eligible to take the examination and those who pass the examination will be awarded upper secondary education diplomas by the Directors of the Education and Training Departments at the provincial level.⁵⁹

3.2.2 Laws Concerning Higher Education

a) Levels of Higher Education

Higher education in Vietnam consists of the following:⁶⁰

(continued from footnote 58)

teaching and learning at general educational institutions.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed June 30, 2015).

⁵⁹ Article 29 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), “1. Pupils who complete primary education and meet the requirements set by the Minister of Education and Training shall be certified in their school records by the principals of their primary schools that they have completed primary education.
2. Pupils who complete lower secondary education and meet the requirements set by the Minister of Education and Training shall be awarded lower secondary education diplomas by the Heads of the Education and Training Offices of rural or urban districts, provincial towns or cities (hereinafter referred collectively to as district level).
3. Pupils who complete upper secondary education and meet the requirements set by the Minister of Education and Training shall be eligible to take examination and those who pass the examination will be awarded upper secondary education diplomas by the directors of the Education and Training Services of the provinces or centrally-run cities (hereinafter referred collectively to as provincial level).”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed June 30, 2015).

⁶⁰ Article 38 of Law No. 38/2005/QH11 of June 14, 2005 (Education law), “Higher education includes:
“...2. University education, which, depending on the discipline, is conducted for between four and six academic years for persons with upper secondary education diplomas or professional secondary education diplomas;
(continued on next page)

- (1) University education, which is typically conducted for between four and six academic years;
- (2) Master education, which is conducted from one to two academic years for persons with university diplomas;
- (3) Doctoral education, which is provided for four academic years for holders of university degrees (without holding master degree), and from two to three academic years, for holders of master degrees.

The Law on Higher Education also specifies graduation requirements for each level.⁶¹ The students completing the college (associate) program or the university (bachelor) program must take the graduation examination or write a graduation paper if eligible. The graduate students

(continued from footnote 60)

and from two and a half to four academic years for persons with professional secondary education diplomas in the same discipline; from one and a half to two academic years for persons with college diplomas in the same discipline;

3. Master education, which is conducted from one to two academic years for persons with university diplomas;

4. Doctoral education, which is conducted for four academic years for persons with university diplomas; and from two to three academic years for persons with master degrees...”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed June 30, 2015).

⁶¹ Article 38 of Law No. 08/2012/QH13 (Law on Higher Education), “Higher education diplomas: 1. The higher education diplomas are issued to students after graduated from a training level under a training form, including: College degree, university degree, master’s degree and doctorate degree.

a) The students completing the college program shall take the final exam or do the dissertation if eligible. If the exam is passed or the cumulative credit quantity is sufficient, and other output standards of the higher education institution are satisfied, the principal shall issue the college degree;

b) The students completing the university program shall take the final exam or do the dissertation if eligible. If the exam is passed or the cumulative credit quantity is sufficient, and other output standards of the higher education institution are satisfied, the principal shall issue the university degree;

c) The students completing the master’s program shall do the dissertation if eligible. If the dissertation is passed, the principal shall issue the master’s degree;”, *available at* <https://narc.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

completing the master or doctoral program must write and defend their master or doctoral dissertations in order to receive a master or doctorate degree.

b) Higher Education Institutions

Higher education institutions in the national educational system include universities and academies, local universities and national universities,⁶² and research institutes eligible of doctorate training.⁶³ Vietnamese higher education institutions are organized in two categories: (1) state-owned higher education institutions of which are established by the State and (2) private higher education institutions, which are established by social organizations, socio-professional organizations, private business organizations or individuals. In addition, there are higher education institutions invested by foreigners, including higher education institutions fully invested by foreigners and joint higher education institutions invested by both foreigners and domestic investors.

c) Control of the Government over Higher Education

The level of the Government control in higher education is lower than in fundamental education, but it is still higher compared to other countries. The Minister of Education and Training defines the core curriculum for each major of training for university degrees, including the content structure of all subjects, the duration of training, the proportion of training duration among different subjects, between theory, practice and internship. Colleges and universities can design their own curricula based on the core curriculum. The Minister of Education and Training also defines the

⁶² There are only two universities in Vietnam which are considered “national universities”; Vietnam National University – Hanoi and Vietnam National University - Ho Chi Minh City. They are more independent in administration than other public universities and academies (See Article 8 in note 17). There are three local universities in Vietnam which are Thai Nguyen University, Hue University and Da Nang University, having roles in local level and are governed by Circular No. 08/2014/TT-BGDDT.

⁶³ Article 7 of Law No. 08/2012/QH13 (Law on Higher Education), “Higher education institutions: 1. The higher education institutions in the national educational system include: a) Colleges; b) Universities, academies; c) Local universities, national universities (hereinafter referred to as universities); d) Scientific research institutes eligible of doctorate training...”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

knowledge volume, program structures, thesis, and dissertation for master and doctoral education. In recent years, higher education institutions have been given more and more autonomy.

National universities in Vietnam are conferred special status with more autonomy than other universities.⁶⁴ National universities in Vietnam possess a special status which results in more autonomous character than others. National universities have broad autonomy in academic and research activities, in financial, international relations and organizational affairs. The council president, the president and vice presidents of a national university are appointed and discharged by the Prime Minister.

For a higher education institution to offer new majors at undergraduate or graduate levels, it must satisfy certain requirements regarding teaching staff, facilities, libraries, teaching materials, etc.⁶⁵ The Minister of Education and Training has the authority to approve new majors. However, only the national universities or the institutions that meet the criteria can proceed to offer new majors.

⁶⁴ Article 8 of Law No. 08/2012/QH13 (Law on Higher Education), “National universities:

1. National universities are scientific and technological training and research centers of various professions, prioritized to develop by the State.

2. National universities have the initiative in the activities of training, doing scientific, financial, international relation research and organize their own structure....”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015). Currently, there are two national universities: Vietnam National University - Hanoi and Vietnam National University - Ho Chi Minh City.

⁶⁵ Article 33 of Law No. 08/2012/QH13 (Law on Higher Education), “Training new professions and majors: ...b) Having structurally, quantitatively and qualitatively qualified full-time teaching staff and scientific staff; c) Having facilities, equipment, libraries and teaching materials sufficiently satisfying the teaching and learning requirements; d) The training programs can satisfy the standards of knowledge and skills of the students after graduated and satisfy the requirements for transitional education among the levels and other training programs...”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

Higher education institutions can decide the number of students to be admitted annually⁶⁶ and the method of admission among the following methods: entrance examination, profile evaluation, or a combination of entrance examination and profile evaluation.⁶⁷ These institutions are also entitled to adopt international curricula that have been evaluated and recognized,⁶⁸ and have the autonomy and responsibility in developing, reviewing, and promulgating curricula for undergraduate and graduate levels.

Regarding textbooks, the Ministry of Education and Training is only responsible for textbooks in some general, mandatory subjects relating to political theory and national defense. On the other hand, Higher education institutions can publish their own textbooks, or select and approve textbooks to be used in other subjects.

d) Structure and Establishment of Higher Education Institutions

The Law on Higher Education stipulates the organizational structure of universities and academies.⁶⁹ Each public university has a school council; a president (chancellor) and vice

⁶⁶ Article 34 of Law No. 08/2012/QH13 (Law on Higher Education), “Enrolment targets and enrolment organization: 1. Enrolment targets: a) The enrolment targets are set on the basis of the requirements for socio-economic development and the workforce development planning, consistent with the quantitative and qualitative conditions of the teaching staff, facilities and equipment. Higher education institutions shall autonomously determine the enrolment targets, be responsible for disclosing the enrolment targets, the training quality and the conditions assuring the training quality...”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

⁶⁷ In the past, the Ministry of Education and Training decided the number of enrolled students for each institution and controlled the admission method and process.

⁶⁸ Article 36 of Law No. 08/2012/QH13 (Law on Higher Education), “Higher education programs and textbooks: 1. Training program: c) Higher education institutions are entitled to adopt foreign training programs of which the quality has been evaluated and recognized in order to serve the higher education training at different levels. d) Higher education institutions are autonomous and responsible for the development, appraisal and introduction of the training programs at university, master’s and doctorate levels...”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

⁶⁹ Article 14 of Law No. 08/2012/QH13 (Law on Higher Education), “Organizational structure of universities and academies: *(continued on next page)*

presidents; functional departments; academic departments; science and technology organizations; other organizations supporting academic and research activities; production, business and service facilities; a scientific and training council and several advisory councils. The school council, which is the administrative body representing the school ownership, is established at each public university or academy.⁷⁰ For private universities, this body is replaced by the Board of Directors. The Board of Directors is the only body representing the school ownership.

In order to establish a higher education institution in Vietnam, certain conditions must be fulfilled.⁷¹ First, a proposal consistent with the socio-economic development plan and the

(continued from footnote 69)

1. The organizational structure of public universities includes:

- a) The school council;
- b) The Principal, Deputy Principal of the university; the Director, Deputy Director of the academy;
- c) Functional Departments;
- d) Faculty, academic department; science and technology organizations;
- dd) Other organizations serving the training, scientific and technological research; production, trading and service facilities;
- e) Other campuses (if any);
- g) The Science and training council, the advisory councils.

2. The organizational structure of schools affiliated to a university shall comply with the university's charter.

3. Private universities shall have organizational structure as prescribed in Point b, c, d, dd, e and g Clause 1 of this Article and shall have the Board of Directors and Control Board.

4. Foreign-capitalized higher education institutions with independent organizational structure.”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

⁷⁰ Article 16 of Law No. 08/2012/QH13 (Law on Higher Education), “The school council:

- 1. The school councils are established at public colleges, universities and academies.
- 2. The school council is the administrative organization representing the school ownership...”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

⁷¹ Article 22 of Law No. 08/2012/QH13 (Law on Higher Education), “Conditions for establishing or approving the establishment of higher education institutions:

- 1. A higher education institution is established or authorized to be established when the following conditions are satisfied: *(continued on next page)*

approved higher education institution network planning must be prepared. Second, the provincial People's Committee where the head quarter of the institution is located must give written consent to the establishment of the institution and confirmation of land use right. Third, the founders must obtain a certification of financial capability in building the institution issued by relevant agencies. For foreign-funded institutions, an investment certificate from relevant agencies is required. The Prime Minister makes decisions on the establishment of public universities and academies and approves the establishment of private universities and foreign-funded higher education institutions. The Minister of Education and Training makes decisions on the establishment of public colleges and approves the establishment of private colleges. The persons having the authority to establish or approve the establishment of higher education institutions also have the authority to make decisions on the merger, division, separation, dissolution of higher education institutions.

e) Quality Assurance

The Law requires each higher education institution to establish a division specialized in quality assurance and to take other measures to assure higher education quality within the institution.⁷² Higher education institutions are subject to education accreditation at the request of

(continued from footnote 71)

- a) Having the establishment project consistent with the socio-economic development planning and the approved higher education institution network planning;
- b) Having the written consent from the provincial People's Committee where the head office of the higher education institution is situated about the establishment of the higher education institutions and the certification of the land tenancy;
- c) Having the certification of the financial capability of the investment in the construction of the higher education institution from competent agencies;
- d) For foreign-capitalized higher education institutions, the Investment certificate from competent agencies is required." available at <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

⁷² Article 50 of Law No. 08/2012/QH13 (Law on Higher Education)," Duties and authority of higher education institutions in higher education quality assurance:

1. Establishing the organizations specialized in higher education quality assurance. *(continued on next page)*

education management agencies, and they are entitled to choose an education accreditation organization among those approved by the Ministry of Education and Training to carry out the accreditation of the institution as well as its training programs. The Minister of Education and Training promulgates the national standards of higher education institutions; specifies the standards of higher education accreditation, the standards of higher education programs, the minimum requirements for implementing the programs, the process and period of higher education accreditation, the principles of operation, the conditions and standards of organizations and individuals engaging in education accreditation, the issuance and withdrawal of education accreditation certificates; and makes decisions on the establishment or approves the establishment of education accreditation organizations.

f) International Cooperation

The Law allows higher education institutions to do international cooperation in various forms⁷³ such as: running joint training programs; establishing representative offices of foreign

(continued from footnote 72)

2. Formulating and implementing plans for higher education quality assurance;
3. Actively assessing, innovating and improving the training quality; periodically registering for the assessment of the training program and the higher education institution.
4. Sustaining and developing the conditions for training quality assurance, including:
 - a) The teaching staff, management staff and employees;
 - b) The training programs, textbooks and teaching materials;
 - c) The classrooms, offices, library, information technology system, laboratories, workshops, dorms and other amenities;
 - d) The financial resources.
5. Publicly announcing the conditions for assuring the training quality, scientific research and training results, the quality assessment and assurance results on the websites of the Ministry of Education and Training, the higher education institution and means of mass media.” *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

⁷³ Article 44 of Law No. 08/2012/QH13 (Law on Higher Education), “The forms of international cooperation of higher education institutions:

1. Joint training.

(continued on next page)

higher education institutions in Vietnam; cooperating in research and technology transfers, co-organizing symposiums and conferences; training and exchanging lecturers, researchers, management staff and students; connecting libraries and exchanging information, materials, and results of research projects; participating in regional and international science, education organizations and professional associations, and establishing representative offices of Vietnamese higher education institutions in other countries.

g) Lecturers and Students

Lecturers in higher education institutions include: assistant lecturers, lecturers, senior lecturers, associate professors, and professors. The standard degree of lecturers at a university is the master degree or above.⁷⁴ Lecturers' retirement age is the same as stipulated in the Labor Code (60 for men and 55 for women), but lecturers holding doctorate degrees, professors or associate professors titles may extend the retirement age and continue teaching and doing research if such extension is requested by both the higher education institution and the lecturers

(continued from footnote 73)

2. Establishing representative offices of foreign higher education institutions in Vietnam.
3. Cooperating in scientific research and technology transfers, organizing science conventions and seminars.
4. Counseling, sponsoring, investing in the development of facilities and equipment.
5. Training, exchanging lecturers, researchers, management staff and students.
6. Connecting libraries, exchanging information serving the training, science and technology activities; providing training programs; exchanging the documents and results of training, science and technology activities.
7. Participating in regional and international science, education organizations and professional associations.
8. Establishing representative offices of Vietnamese higher education institutions in other countries.
9. Other forms of cooperation as prescribed by law provisions.", *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

⁷⁴ Article 54 of Law No. 08/2012/QH13 (Law on Higher Education), "Lecturers:...

2. The lecturer's titles include: assistant lecturer, lecturer, senior lecturer, associate professor, professor.
3. The standard degree of university lecturers is master's degree or above...", *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

themselves. In addition to full-time faculty, higher education institutions are entitled to invite visiting lecturers and speakers, both Vietnamese and foreigners.

Students in higher education institutions enjoy the policies on scholarships and social benefits, direct admission mechanism, education credit policy, and other benefits. Students of specific majors that is essential to the socio-economic development, national defense and security, are exempted from tuition fee and, are prioritized in scholarship candidates.

h) Finance

The Law provides that the financial sources of higher education institutions include:⁷⁵ the State budget (if any); tuition and enrolment fees; revenue from the activities of joint training, scientific and technology, production, business and services; sponsorship, aid, gift and presents from domestic or foreign organizations and individuals; investment from domestic or foreign organizations and individuals; and other lawful revenues as prescribed by law. The Government specifies the method for determining tuition and enrolment fees, and sets the tuition and enrolment fees framework for public higher education institutions. Higher education institutions can independently determine their tuition and enrolment fees within such framework.⁷⁶ Private

⁷⁵ Article 64 of Law No. 08/2012/QH13 (Law on Higher Education), "Financial sources of higher education institutions: The financial sources of higher education institutions include:

1. The State budget (if any);
2. Tuition fees and enrolment charges;
3. Revenue from the activities of associate training, scientific and technology; production, trading and services;
4. Sponsorship, aid, gift and presents from domestic or foreign organizations and individuals;
5. Investment from domestic or foreign organizations and individuals;
6. Other legal revenues as prescribed by law provisions." *available at* <https://narc.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

⁷⁶ Article 65 of Law No. 08/2012/QH13 (Law on Higher Education), "Tuition fees and enrolment charges:

1. Tuition fees and enrolment charges are the amount the students must pay to higher education institutions for defraying the training costs.
2. The Government shall specify the content and method for fixing the tuition fees and enrolment charges, the tuition fee and enrolment charge bracket at public higher education institutions. (*continued on next page*)

institutions and foreign-funded institutions are entitled to determine their tuition and enrolment fees. Higher education institutions providing high quality training programs are entitled to collect tuition equivalent to the training quality.

3.2.3 Laws Concerning Vocational School System

a) Vocational Education System

In Vietnam, “vocational education means a level of national education system which provides workers with elementary-level, intermediate-level, college-level vocational training and other vocational training programs in order to meet the needs of direct human resources in production, businesses and services, including: formal training and continuing training.”⁷⁷

Formal training is “a form of training which vocational education institutions and higher education institutions or enterprises registered to provided vocational education (hereinafter referred to as vocational education institutions) provide full-time courses in elementary-level, intermediate-level, and college-level vocational training.”⁷⁸

(continued from footnote 76)

3. Higher education institutions are entitled to independently determine the tuition fees and enrolment charges within the tuition fee and enrolment charge bracket specified by the Government.

4. Private higher education institutions and foreign-capitalized higher education institutions are entitled to independently determine the tuition fees and enrolment charges as prescribed by law.

5. The rates of tuition fees and enrolment charges must be disclosed simultaneously with the enrolment notice.

6. Higher education institutions providing high quality training programs are entitled to collect tuition fees equivalently to the training quality...”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed June 30, 2015).

⁷⁷ Article 3(1) of Law No. 74/2014/QH13 (Law on Vocational Education), “...1. *Vocational education* means a level of national education system which provides workers with elementary-level, intermediate-level, college-level vocational training and other vocational training programs in order to meet the demand of human resources in production, businesses and services, including: formal training and continuing training...”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=636> (accessed October 13, 2018).

⁷⁸ Article 3(5) of Law No. 74/2014/QH13 (Law on Vocational Education), “...5. *Formal training* means
(continued on next page)

Continuing training is “a form of in-service training, distance training, or guided self-study training applied to vocational training programs at elementary level, intermediate level, or college level or vocational training programs and other vocational training programs, which is conducted in a flexible manner in terms of programs, duration, methods, location to meet students’ needs.”⁷⁹ Continuing training programs include: (1) continuing training programs at the request of students; beginner courses to update and improve vocational knowledge and skills; (2) training programs in the form of apprenticeship; (3) technology transfer programs; (4) other training programs less than three months; and (5) training programs which grant degrees of college-level or intermediate-level vocational training or certificates in elementary-level vocational training.⁸⁰ Transferability among different levels in vocational training is ensured. Trainees who further their study from lower to higher level in the same majors or shift to other majors or other training levels are not required to re-study the contents they have learned.⁸¹

(continued from footnote 78)

a form of training which vocational training institutions and higher education institutions, or enterprises registering vocational training operation (hereinafter referred to as vocational training institutions) provide full-time courses in elementary-level, intermediate-level, and college-level vocational training...”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed October 13, 2018).

⁷⁹ Article 3(6) of Law No. 74/2014/QH13 (Law on Vocational Education), “...6. *Continuing training* means a form of in-service training, correspondence training, or guided self-study training regarding vocational training programs at elementary level, intermediate level, or college-level or vocational training programs and other vocational training programs, which is in a flexible manner in terms of programs, duration, methods, location to meet students’ needs...”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed October 13, 2018).

⁸⁰ Article 40 of Law No. 74/2014/QH13 (Law on Vocational Education), “1. Continuing training programs include: a) Continuing training programs at the request of students; refresher courses in update and improvement of vocational knowledge and skills; b) Training programs in the forms of apprenticeship; c) Technology transfer programs; d) Other training programs lasting under 03 months; dd) Continuing training programs which grant degrees of college-level or vocational secondary schools and certificates in elementary-level vocational training.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed October 13, 2018).

⁸¹ Article 9 of Law No. 74/2014/QH13 (Law on Vocational Education), “Bridge programs: 1. Bridge program shall be run according to training programs; the learners are not required to learn the completed
(continued on next page)

Elementary level aims to equip students with abilities to perform simple tasks of a particular job.⁸² It is conducted for a period between three months and less than one year, provided that the minimum hours are three hundred hours.⁸³

Intermediate level aims to equip students with abilities to perform elementary-level tasks with little complications in a particular task, requiring to apply technology to their jobs, and work independently or in groups.⁸⁴ The duration of intermediate-level training applied to year-based program is from one year to two years for persons who have a lower-secondary education diploma or above, varying from majors or training disciplines. For module-based or credit-based programs, the duration of training is the time for trainees to accumulate sufficient modules or credits required for each program.⁸⁵

(continued from footnote 81)

subjects again when they reach the higher level in the same or different disciplines.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed October 13, 2018).

⁸² Article 4(2)(a) of Law No. 74/2014/QH13 (Law on Vocational Education), “Objectives of vocational Training: 2. Specific objectives pertaining to every level of vocational education: a) Elementary level: equip students for abilities to perform simple tasks of a particular job;”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed October 13, 2018).

⁸³ Article 33(1) of Law No. 74/2014/QH13 (Law on Vocational Education), “1. The duration of training of elementary-level shall last from 03 months to under 01 year, provided that the minimum-learning hours are 300 hours with regard to students having education conformable with their vocations.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed October 13, 2018).

⁸⁴ Article 4(2)(b) of Law No. 74/2014/QH13 (Law on Vocational Education), “...2. Specific objectives pertaining to every level of vocational education:...b) Intermediate level: equip students for abilities to perform elementary-level tasks and some complicated and special tasks; apply technology to their jobs, work independently or work in groups;”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed October 13, 2018).

⁸⁵ Article 33(2) of Law No. 74/2014/QH13 (Law on Vocational Education), “2. The duration of training of intermediate-level applied to year-based program shall last from 1 year to 2 years with regard to the lower-secondary graduates according to their majors or vocational training. The duration of training of intermediate-level according to the accumulated duration of modules or credits is the time in which the number of modules
(continued on next page)

College level aims to equip students with abilities to perform intermediate-level tasks with a certain degree of complication, requiring the application of modern and complex technology, instruction and observation of other members in the groups in performing the tasks.⁸⁶ College-level training for year-based programs lasts from two to three years for persons who have an upper-secondary education degree, and from one year to two years for persons who have an intermediate-level vocational degree in the same major and an upper-secondary education degree or equivalent. For module-based or credit-based programs, the duration of training is the time for trainees who have an upper-secondary education degree to accumulate sufficient modules or credits required for each college-level program.⁸⁷

Elementary-level vocational trainees are admitted through profile evaluation, while intermediate-level and college-level vocational trainees are admitted either profile evaluation or entrance examination, or a combination of both profile evaluation and entrance examination.⁸⁸

(continued from footnote 85)

or credits accumulated with regard to every training program.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=636> (accessed October 13, 2018).

⁸⁶ Article 4(2)(c) of No. 74/2014/QH13 (Law on Vocational Education), “...2. Specific objectives pertaining to every level of vocational education:...c) College level: equip students for abilities to perform intermediate-level tasks and some complicated and special tasks; acquire abilities to create and apply modern technology to their jobs, instruct and observe other members in their groups in performing the tasks.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=636> (accessed October 13, 2018).

⁸⁷ Article 33(3) of No. 74/2014/QH13 (Law on Vocational Education), “3. The duration of training of the college-level applied to year-based program shall last from 2 to 3 years with regard to the upper-secondary graduates according to their majors or vocations; from 1 to 2 years with regard to the intermediate-level graduates according to their disciplines and the upper-secondary graduates or they have learned and passed the exams which satisfy the requirements pertaining to upper-secondary knowledge. The duration of training of college-level according to the method of accumulation of modules or credits is the time in which the number of modules or credits are accumulated with regard to every training program with regard to the upper-secondary graduates or the students who have learned and passes the exams which satisfy the requirements pertaining to upper-secondary knowledge.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=636> (accessed October 13, 2018).

⁸⁸ Article 32(2) of Law No. 74/2014/QH13 (Law on Vocational Education), “2. The enrollment shall be carried out as follows: *(continued on next page)*

b) Training Contracts

A training contract is an agreement concluded orally or in written on rights and obligations between the head of a vocational education institution, or the head of a vocational training class, or organization(s), or individual(s), and students involved in a continuing training program (except training programs which grant degrees of college-level or intermediate-level vocational training or certificates in elementary-level vocational training), or concluded when an enterprise recruit and train workers to work for it.⁸⁹ A vocational training contract must contain the name of the training discipline, professional skills expected to reach; location of training; duration of the training course; training fees and mode of payment; each party's liabilities to pay damages upon breach of contract; termination of contract; and other agreements not contrary to law and social ethics.⁹⁰ If enterprises recruit people for vocational training to work for them, apart from the above

(continued from footnote 88)

- a) The vocational education institution shall carry out the enrollment once a year or twice a year according to the determined enrollment quotas;
- b) The elementary-level enrollment shall be carried in the form of admission;
- c) The intermediate-level, or college-level enrollment shall be carried out in the form of admission or examination or the combination between admission and examination...", *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=636> (accessed October 13, 2018).

⁸⁹ Article 39(1) of Law No. 74/2014/QH13 (Law on Vocational Education), "1. A contract of training is an agreement concluded verbally or in writing on rights and obligations between the head of a vocational education institution, organization(s), individual(s) and students involving in the continuing training program as prescribed in Point a, b, c and d Clause 1 of Article 40 of this Law and when the enterprise employ and train workers in order for them to work for it", *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=636> (accessed October 13, 2018). According to Art. 39(1) of the new Law on Vocational Education, a training contract is compulsory only if the trainee participates in a continuing training program without degree granted, or if an enterprise recruits and trains workers to work for it. The contract can be oral or written.

⁹⁰ Article 39(2) of Law No. 74/2014/QH13 (Law on Vocational Education), "2. A contract of training must contain:

- a) Name(s) of vocation or vocational skills;
- b) Location of training;
- c) Duration of the course; *(continued on next page)*

contents, a vocational training contract must also cover the trainee's commitment on the duration of working for the enterprise; the enterprise's commitment to employ the trainees after completion of the training course; and agreement on working time and wage paid to trainee who directly turns out or participates in turning out products for the enterprise during his/her vocational training. Contracts on vocational training in the form of apprenticeship at enterprises must also contain agreements on the time of commencing payment of wage and the levels of wage according to each period of time.⁹¹

c) Vocational Training Institutions

Vocational training institutions include public, private, and foreign-funded vocational education centers, vocational secondary schools, and colleges.⁹² Vocational education centers

(continued from footnote 90)

- d) Tuition fees and method of payment of tuition fees;
- dd) Responsibility for compensation in case of breaches of the contract committed by each party;
- e) Termination of contract;
- g) Other agreements which are not unlawful and immoral.", *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=636> (accessed October 13, 2018).

⁹¹ Article 39(3) – (4) of Law No. 74/2014/QH13 (Law on Vocational Education), “3. If the enterprise trains employed people to work for it, except for regulations in Clause 2 of this Article, the contract of training shall contain:

- a) Commitment of trainees to the duration of working at the enterprise;
- b) Commitment of the enterprise to employ the trainees after completion of training;
- c) Agreement on working time and wage paid to the trainees who directly or indirectly make products for the enterprise over the duration of training.

4. The contract of training in the form of apprenticeship, except regulations in Clause 2 of this Article, there shall be agreement on the date on which the trainees are paid wage and the wages paid to trainees in certain periods.", *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=636> (accessed October 13, 2018).

⁹² Article 5(1)-(2) of Law No. 74/2014/QH13 (Law on Vocational Education), “1. Vocational education institutions include: a) Vocational education centers; b) Vocational training schools; c) Colleges.

2. Vocational education institutions shall be organized under following types:

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provide elementary-level vocational training, general vocational training and career counseling for students according to compulsory education programs; vocational training schools provide intermediate-level and elementary-level vocational training; and vocational colleges provide vocational training at all levels.⁹³

A vocational education institution, a higher education institution, or an enterprise can only provide vocational training programs after obtaining a certificate in vocational education registration.⁹⁴ To be granted such certificate, the institution must fulfill all requirements provided by the Law on Vocational Education.⁹⁵

(continued from footnote 92)

a) Public vocational education institution is a State-owned vocational education institution, whose facilities invested and constructed by the State; b) Private vocational education institution is a vocational education institution under ownership of a social organization, a socio-professional organization, a private economic organization or individual, or a vocational education institution invested and constructed by a social organization, a socio-professional organization, a private economic organization, or an individual; c) Foreign-invested vocational education institution includes wholly foreign-invested vocational education institution; joint-venture vocational education institution between domestic investors and foreign investors.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx? vID=636> (accessed October 13, 2018).

⁹³ Article 23(2) of Law No. 74/2014/QH13 (Law on Vocational Education), “2. Provision of vocational training: a) The vocational education center shall provide elementary-level vocational training, general vocational training and career counseling for students according to compulsory education programs; b) The vocational training schools shall provide intermediate-level and elementary-level vocational training; c) The vocational college shall provide college-level, intermediate-level and elementary-level vocational training.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx? vID=636> (accessed October 13, 2018).

⁹⁴ Article 19(2) of Law No. 74/2014/QH13 (Law on Vocational Education), “2. The vocational education institution may only enroll students or provide training when it is granted the Certificate in vocational education registration.” *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx? vID=636> (accessed October 13, 2018).

⁹⁵ Article 19(1) of Law No. 74/2014/QH13 (Law on Vocational Education), “1. A vocational education institution, a higher education institution, or an enterprise shall be granted the Certificate in vocational education registration if it meets all requirements below:

a) There is a decision on establishment or a permission for establishment;

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“A vocational education institution has the autonomy in its organization and personnel, finance, assets, training, technology, international cooperation, and training quality assurance; and it must ensure accountability to the competent authorities, students and the society with respect to its training activities and training quality.”⁹⁶

Chairmen of provincial/municipal People’s Committees make decision on the establishment of public vocational education institutions of their responsible provinces and permit the establishment of private or foreign-funded vocational education institutions in their localities (except colleges).⁹⁷ Ministers, heads of ministerial-level agencies and heads of central bodies of

(continued from footnote 95)

- b) There is land, facilities, or equipment meeting requirements pertaining to training activities according to the commitment;
- c) There are sufficient training programs, teaching and learning materials as prescribed;
- d) There are teaching staff and administrative officials of vocational education who have equalizations and sufficient quantity, uniform structure;
- e) There is necessary finance resource as prescribed to ensure the maintenance and development of the vocational education;
- f) There are regulations on organization and operation.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx? vID=636> (accessed October 13, 2018).

⁹⁶ Article 25(1) of Law No. 74/2014/QH13 (Law on Vocational Education), “1. The vocational training institution has autonomy in its organization and personnel, finance and assets, training and technology, international cooperation, training quality assurance as prescribed; ensures accountability to the competent authorities, students and the social for the organization and management of its training activities and quality.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx? vID=636> (accessed October 13, 2018).

⁹⁷ Article 18(6) of Law No. 74/2014/QH13 (Law on Vocational Education), “6. Competence in establishment, acquisition, or division or permission for establishment, acquisition, or division of vocational education institutions:

- a) The President of People’s Committee of province shall decide the establishment of vocational education centers, public vocational training schools of central-affiliated cities and provinces; permit the establishment of private vocational education centers or vocational training schools and foreign-invested vocational education centers or vocational training schools in the administrative divisions;

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socio-political organizations make authorize the establishment of their attached vocational education centers and vocational secondary schools. The head of the central agency in charge of state management of vocational education approves the establishment of public colleges and private or foreign-funded colleges.

Enterprises have the right to set up vocational education institutions for training human resources directly engaged in their business activities as well as training human resources for the society.⁹⁸ Enterprises can register to provide elementary-level vocational training and continuing training programs (except programs that grant intermediate-level or college-level degrees) for laborers working for them. They are supported by the State when they employ the disabled people

(continued from footnote 97)

b) Ministers, Heads of ministerial-level agencies, Heads of socio-political organizations in the central governments shall decide the establishment of vocational education centers, or public vocational training schools affiliated to their authorities or organizations.

c) The Heads of vocational education authorities in the central government shall decide the establishment of public colleges; permit the establishment of private colleges or foreign-invested colleges;

d) The competent persons establishing or permitting the establishment of vocational education institutions may make acquisition or division or permit the acquisition or division of the institutions.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=636> (accessed October 13, 2018).

⁹⁸ Article 51 of Law No. 74/2014/QH13 (Law on Vocational Education), “Rights of enterprises in vocational education:

1. Establish a vocational education institution to provide direct human resources for the business of the enterprise and the social.
2. Register vocational education operation to provide elementary-level vocational training and continuing training programs as prescribed in Point a, b, c and d Clause 1 Article 40 of this Law for workers in the enterprise and other workers; receive training funding for the disabled studying and working in the enterprise.
3. Cooperate with other vocational education institutions to provide elementary-level, intermediate-level, or colleges and continuing training programs.
4. Participate in the formulation of training curriculum and materials; teach, give probation, or assess learning outcomes of students in vocational education institutions.
5. Expenditures on vocational training operation of the enterprise shall be subtracted from taxable income in accordance with regulations of law on taxation.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=636> (accessed October 13, 2018).

and provide vocational training for them. Enterprises can also cooperate with other vocational education institutions in offering vocational training at all levels and forms. They can deduct expenses for their vocational training activities for the purpose of calculating taxable incomes.

d) Vocational Training Policies for the Disabled

The State encourages vocational education institutions to enroll disabled and handicapped persons for integrated training; encourages organizations and individuals to set up vocational education institutions reserved for the disabled and handicapped persons. Vocational education institutions for the disabled and handicapped persons are entitled to favorable policies and financed by the State for investment in facilities and vocational training equipment; are assigned land without collection of levies or leased land to construct buildings in places convenient for vocational training of the disabled and handicapped persons.⁹⁹

3.2.4 Laws Concerning Non-Formal Education (Continuing Education)

a) Continuing Education Programs

As mentioned above, “the national education system consists of formal education and continuing education”.¹⁰⁰ Therefore, continuing education can be deemed as non-formal education. Contents of continuing education are reflected in the following programs: (1) illiteracy eradication and post-literacy education programs; (2) programs on education to meet learners’

⁹⁹ Article 27 of Law No. 74/2014/QH13 (Law on Vocational Education), “Policies on vocational education institutions reserved for the disabled:

1. The State encourages vocational education institutions in enrollment of the disabled; encourages organizations or individuals in establishment of vocational education institutions reserved for the disabled.
2. The vocational education institutions reserved for the disabled shall benefit from the policies as prescribed in Article 26 of this Law and receive finance support to invest in training facilities and equipment; acquire land through land allocation or lease to construct buildings which is located in the place convenient to the disabled.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=636> (accessed October 13, 2018).

¹⁰⁰ Article 4(1) of Law No. 38/2005/QH11 of June 14, 2005 (Education law), “National education system: 1. The national education system consists of formal education and continuing education.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed October 14, 2018).

needs, updating knowledge and skills, and transferring technology; (3) programs on training, fostering, and raising professional qualifications; and (4) programs on education to obtain diplomas of the national education system.¹⁰¹ Forms of carrying out continuing educational programs to obtain diplomas of the national education system include in-service learning, distance learning and guided self-learning.¹⁰²

b) Continuing Education Institutions

Institutions of continuing education include centers for continuing education at the provincial and district levels, community-based learning centers at the commune level, and foreign language and computer skill-training centers established by organizations and individuals.¹⁰³ Programs of continuing education can also be carried out at the institutions of general education, vocational education and higher education, and through the mass media.

¹⁰¹ Article 45(1) of Law No. 38/2005/QH11 of June 14, 2005 (Education law), "Requirements on educational programs, contents and methods of continuing education:

1. Contents of continuing education are reflected in the following programs:

a/ Illiteracy eradication and post-literacy education programs;

b/ Programs on education to meet learners' needs; updating knowledge and skills, and transferring technology;

c/ Programs on training, fostering, and raising professional qualifications;

d/ Programs on education to obtain diplomas of the national education system.", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed October 14, 2018).

¹⁰² Article 45(2) of Law No. 38/2005/QH11 of June 14, 2005 (Education law), "2. Forms of carrying out continuing educational programs to obtain diplomas of the national education system are as follows:

a/ In-service learning;

b/ Distance learning;

c/ Guided self-learning.", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed October 14, 2018).

¹⁰³ Article 46(1) of Law No. 38/2005/QH11 of June 14, 2005 (Education law), "Institutions of continuing education:

1. Institutions of continuing education include:

(a) Centers for continuing education, organized at provincial and district levels;

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General education institutions, vocational education institutions, and higher education institutions must fulfill their training tasks, and can only offer the continuing education programs to obtain diplomas of the national education system when permitted by the competent government agencies in charge of education.

c) Continuing Higher Education

The Law on Higher Education defines that “continuing education, including in-service training and distance learning, is the form of education in which the classes and courses are provided at higher education institutions or other education facilities depending on the students’ demand in order to implement a university training program.”¹⁰⁴ “The training duration at each higher education level carried out in the form of continuing education must be at least one-semester longer than the training duration in the form of formal education.”¹⁰⁵ “The contents of training programs in the form of continuing education are similar to that of the training programs in the form of formal education.”¹⁰⁶

(continued from footnote 103)

(b) Community-based learning centers organized in communes, wards or townships (hereinafter referred collectively to as commune level).

(c) (supplemented in 2009) Foreign language and computer skill-training centers established by organizations and individuals.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484 (accessed October 14, 2018).

¹⁰⁴ Article 4(2) of Law No. 08/2012/QH13 (Law on Higher Education), “2. Continuing education, including in-service training and distance learning, is the form of education in which the classes and courses are provided at higher education institutions or associate education facilities depending on the students’ demand in order to implement a college or university training program.”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed October 14, 2018).

¹⁰⁵ Article 35(3) of Law No. 08/2012/QH13 (Law on Higher Education), “3. The training duration at each higher education level carried out in the form of continuing education must be at least one-semester longer than the training duration in the form of formal education.”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed October 14, 2018).

¹⁰⁶ Article 36(1)(e) of Law No. 08/2012/QH13 (Law on Higher Education), “1. Training program:
(continued on next page)

d) Continuing Vocational Training

As mentioned above, continuing vocational training programs include: (1) continuing training programs at the request of students; refresher courses to update and improve vocational knowledge and skills; (2) training programs in the form of apprenticeship; (3) technology transfer programs; (4) other training programs less than three months; and (5) training programs which grant degrees of college-level or intermediate-level vocational training or certificates in elementary-level vocational training.¹⁰⁷ “The methods of continuing training must promote active roles, self-training capacity and experience of students; use modern equipment and information technology and communication in order to improve the quality and effectiveness of teaching and learning.”¹⁰⁸ Vocational education institutions, enterprises, or vocational training classes organized by organizations or individuals may provide continuing training programs (except programs that grant college-level or intermediate-level degrees and elementary-level certificates).

(continued from footnote 106)

e) The contents of training programs in the form of continuing education are similar to that of the training programs in the form of formal education.”, *available at* <https://naric.edu.vn/static/files/VanbanQPPL/08-2012-QH13-Luat%20GDDH-TA.pdf> (accessed October 14, 2018).

¹⁰⁷ Article 40 of Law No. 74/2014/QH13 (Law on Vocational Education), “1. Continuing training programs include:

- a) Continuing training programs at the request of students; refresher courses in update and improvement of vocational knowledge and skills;
- b) Training programs in the forms of apprenticeship;
- c) Technology transfer programs;
- d) Other training programs lasting under 03 months;
- dd) Continuing training programs which grant degrees of college-level or vocational secondary schools and certificates in elementary-level vocational training.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed October 13, 2018)

¹⁰⁸ Article 41(3) of Law No. 74/2014/QH13 (Law on Vocational Education), “3. The methods of continuing training must promote active roles, self-training capacity and experience of students; use modern equipment and information technology and communication in order to improve the quality and effectiveness of teaching and learning.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed October 14, 2018).

Vocational education institutions or higher education institutions that have been registered to provide college-level training may offer degree-granting programs if they have provided formal training and they are permitted by the competent authority.¹⁰⁹

3.3 Laws Concerning Protection of Occupational Safety and Encouragement of Labor Skill Development

During the last three decades, labor laws in Vietnam have been continuously developed and improved towards a market-based economy, encouraging diverse employment relationships on the basis of freedom of contract and the free movement of labor while strengthening the protection of employees.¹¹⁰ Major legislations concerning labor in Vietnam include Law No. 10/2012/QH13 passed by the National Assembly on June 18, 2012 on Labor (hereinafter “**Labor Code**”), Law No. 12/2012/QH13 passed by the National Assembly on June 20, 2012 on Trade Unions (hereinafter “**Law on Trade Unions**”), Law No. 72/2006/QH11 passed by the National Assembly on November 29, 2006 on Vietnamese Workers Working Overseas under Contracts (hereinafter “**Law on Vietnamese Workers Working Overseas under Contracts**”), and Law No. 38/2013/QH13 passed by the National Assembly on November 16, 2013 on Employment

¹⁰⁹ Article 43 of Law No. 74/2014/QH13 (Law on Vocational Education), “Organization and management of continuing training:

2. The vocational education institutions, enterprises, or vocational training classes may provide training programs prescribed in Point a, b, c and d Clause 1 Article 40 of this Law.

3. The vocational education institutions or higher education institutions providing colleges may provide training programs prescribed in Point dd Clause 1 Article 40 of this Law if they have provided formal training and they are permitted by the training authority.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=636> (accessed October 14, 2018).

¹¹⁰ Before the Reform (Doi Moi) Policy was launched in 1986, in the context of a command economy with only two sectors (the state-owned sector and the collective sector), the private sector was virtually nonexistent; therefore, labor law in Vietnam mostly governed employment relations between the Government and public servants, between public institutions (such as public schools and public hospitals...) and their staff or between state-owned enterprises and their employees.

(hereinafter “**Law on Employment**”). In addition, there are numerous government decrees, ministerial circulars and regulations to implement these statutes, especially those promulgated by the Ministry of Labor, War Invalids and Social Affairs (MOLISA). Vietnamese labor law applies to all individuals working for Vietnamese organizations or Vietnamese individuals, regardless of their nationality, and is also applied when Vietnamese companies send their employees to work abroad.

3.3.1 Laws Concerning Labor Protection

a) General Labor Protection

The Labor Code sets forth fundamental rights of employees, including: (1) the right to work, to select works, vocations, to obtain vocational training and improvement without discrimination; (2) to receive salary equivalent to their vocational skills and grade based on the agreement with the employer; to receive work protection, to work in safe and hygienic conditions; to take official leave, paid annual leave and enjoy collective benefits; (3) to establish, join and participate in activities of the Trade Union, professional organizations and other organizations; to request and participate in discussions with the employer, exercise democracy and receive consultancy at workplaces in order to protect the employees’ lawful rights and interests; to participate in the management of the institution or enterprise under the regulations of the employer; (4) to unilaterally terminate the employment contract; and (5) to go on strike.¹¹¹

¹¹¹ Article 5(1) of Law No. 10/2012/QH13 (Labor Code), “1. An employee has the following rights:

a/ To work, freely choose a job or occupation, to participate in vocational training and to improve occupational skills and suffer no discrimination;

b/ To receive a wage commensurate with his/her occupational knowledge and skills on the basis of an agreement reached with the employer; to receive labor protection and work in assured conditions of labor safety and labor hygiene; to take leaves according to the prescribed regime, paid annual leaves and enjoy collective welfare benefits;

c/ To form and join and participate in activities of trade unions, occupational associations and other organizations in accordance with law; to request and participate in dialogues with the employer, implement

(continued on next page)

The Labor Code also provides a list of acts that employers are prohibited to commit, including: (1) discrimination by sex, race, social class, marital status, belief, religion, discrimination against HIV sufferers, disabled people or against the employees who establish, join, or participate in the Union activities; (2) maltreatment of employees or sexual harassment at workplaces; (3) coercive labor; (4) taking advantage of vocational training and apprenticeship to make profit, exploit labor or entice or coerce the vocational trainees and apprentices to commit unlawful acts; (5) using untrained employees or employees without national vocational certificates to do the jobs that required trained employees or employees with national vocational certificates; (6) deceitfully enticing and advertising in order to cheat employees or exploiting the employment services to send employees abroad to commit unlawful acts; and (7) illegally using underaged labor.¹¹²

(continued from footnote 111)

democracy regulations and be consulted at the workplace to protect his/her rights and legitimate interests; and to participate in management activities according to the employer's regulations;”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-i-general-provisions_t12-c007002-a68-mb.html (accessed October 14, 2018).

¹¹² Article 8 of Law No. 10/2012/QH13 (Labor Code), “Prohibited acts:

1. Discriminating on the basis of gender, race, skin color, social strata, marital status, belief, religion, HIV infection, disabilities or for the reason of establishing, joining trade unions and participating in trade union activities.
2. Maltreating employees and committing sexual harassment at the workplace.
3. Forcing labor.
4. Making use of apprenticeship or on-the-job training for the purpose of self-seeking and exploiting labor, or enticing or compelling apprentices or on-the-job trainees to carry out illegal activities.
5. Using employees who have no vocational training or national occupational skills certificates for the occupations or jobs which require employees who have received vocational training or national occupational skills certificates.
6. Enticing, promising or making false advertising to deceive employees or making use of employment services or the sending of labor to work abroad under contracts to commit illegal acts.
7. Illegally using minor employees., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-i-general-provisions_t12-c007002-a68-mb.html (accessed October 14, 2018).

b) Labor Protection through Regulation of Employment Contracts

To protect the employee, the Code provides that an employment contract must be in writing and made into two copies (the employee keeps one copy and the employer keeps one). For temporary jobs with terms under three months, the parties may conclude verbal contracts.¹¹³

The employer must provide the employee with information about the work, work location, work conditions, working hours, break time, labor safety, labor hygiene, salary, method of salary payment, social insurance, internal rules on protection of trade secrets and technical know-how, and other issues directly related to the conclusion of the employment contract conclusion requested by the employee.¹¹⁴ The employer is prohibited to keep original copies of the identity documents, certificates and qualifications of the employee and to request the employee to provide cash or property to secure the performance of the employment contract.¹¹⁵

¹¹³ Article 16 of Law No. 10/2012/QH13 (Labor Code), “Forms of labor contract:

1. A labor contract must be established in writing and made in two copies, one to be kept by the employee and the other by the employer, except the case stated in Clause 2 of this Article.
2. For temporary jobs with a duration of under 3 months, the parties may enter into a verbal labor contract.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

¹¹⁴ Article 19 (1) of Law No. 10/2012/QH13 (Labor Code), “Obligation to provide information before entering into a labor contract:

1. An employer shall provide an employee with information about the job, workplace, working conditions, working hours, rest time, occupational safety and hygiene, wage, forms of wage payment, social insurance, health insurance, regulations on business confidentiality, technological confidentiality, and other issues directly related to the entry into the labor contract as requested by the employee.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

¹¹⁵ Article 20 of of Law No. 10/2012/QH13 (Labor Code), “Prohibited acts of employers when entering into and performing labor contracts:

1. Keeping the employees’ original identity cards, diplomas and certificates.
2. Requesting employees to make a deposit in cash or property as security for the performance of labor contracts.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

(1) Types of Employment Contracts

An employment contract must be concluded in one of the following kinds: (1) employment contracts without fixed term (a contract in which both parties do not specify the term and the expiry date of the contract); (2) fixed-term employment contracts (a contract in which both parties specify the term and the expiry date of the contract within 12 to 36 months), and (3) seasonal employment contracts or employment contracts with terms under 12 months.¹¹⁶ In case of a fixed-term employment contract or an employment contract with a term under 12 months, if the employee keeps working when the employment contract expires, both parties must conclude the new contract within 30 days as from its expiry date. If the new contract is not concluded, the fixed-term employment contract will automatically become a contract without fixed term, while the contract with a term under 12 months will automatically become a contract with a fixed term of 24 months. If the new contract is concluded, it can only be a fixed-term contract for one more time. After that, if the employee keeps working, an employment contract without fixed term must be concluded.

(2) Contents of an Employment Contract

An employment contract must include the following material terms: work and working location; term of the employment contract; payment; grade increase and pay rise policy; working

¹¹⁶ Article 22(1) of Law No. 10/2012/QH13 (Labor Code), “1. A labor contract must be entered into in one of the following types:

a/ Indefinite-term labor contract;

An indefinite-term labor contract is a contract in which the two parties do not determine the duration and the time of termination of the contract.

b/ Definite-term labor contract;

A definite-term labor contract is a contract in which the two parties determine the duration and the time of termination of the contract within a period of between 12 months and 36 months.

c/ A seasonal or work-specific labor contract that has a duration of under 12 months.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

hours and rest hours; conditions on occupational safety and hygiene; social insurance and health insurance; vocational training and improvement courses.¹¹⁷

(3) The Right of Employees to Terminate the Contract

The employee working under a fixed-term employment contract, seasonal employment contract or employment contract with a term under 12 months is entitled to unilaterally terminate the contract before the expiry date in the following cases: (1) the employee is not provided with the right work, the workplace or the working conditions as agreed in the employment contract; (2) the salary is not adequately or timely paid as agreed in the employment contract; (3) the employee suffers from maltreatment, sexual harassment, or coercive labor; (4) the employee or their family encounters difficulties that the employment contract cannot continue to be performed; (5) the employee is elected to perform specialized duties at elective state bodies or designated to hold a position in the government; (6) the pregnant female employee has to quit job under the direction of a competent medical examination and treatment facility; (7) the employee suffering from sickness or accident cannot recover after 90 consecutive days of treatment for employees working under fixed-term employment contracts, or after one fourth of the contract term for

¹¹⁷ Article 23 (1) of Law No. 10/2012/QH13 (Labor Code), “Contents of a labor contract: 1. A labor contract must have the following principal contents:

- a/ Name and address of the employer or the lawful representative of the employer;
- b/ Full name, date of birth, gender, residence address, identity card number or other lawful documents of the employee;
- c/ Job and workplace;
- d/ Term of the labor contract;
- e/ Wage, form of wage payment, deadline for wage payment, wage-based allowances and other additional payments;
- f/ Regimes for promotion and wage raise;
- g/ Working time, rest time;
- h/ Labor protection equipment for the employee;
- i/ Social insurance and health insurance;
- j/ Training, retraining and occupational skill improvement.”, available at http://www.bolualtaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

employees working under seasonal employment contracts or employment contracts with terms under 12 months.¹¹⁸ The employees working under employment contracts without fixed term are entitled to unilaterally terminate the contracts without cause, but the employer must be notified at least 45 days in advance.

When the employer illegally terminates the employment contract, he/she must re-employ the employee under the contract and pay compensation equal to the salary, social insurance, health insurance for the days the employee is forced to stop working plus the salary of at least two months under the employment contract.¹¹⁹ In case the employee does not wish to continue working, the employer must also give the employee severance pay in addition to the

¹¹⁸ Article 37 (1) of Law No. 10/2012/QH13 (Labor Code), “The right of employees to unilaterally terminate labor contracts: 1. An employee working under a definite-term labor contract, a seasonal labor contract or performing a certain job of under 12 months may unilaterally terminate the labor contract prior to its expiry in the following cases:

a/ He/she is not assigned to the job or workplace or is not given the working conditions as agreed in the labor contract;

b/ He/she is not paid in full or on time as agreed in the labor contract;

c/ He/she is maltreated, sexually harassed or is subject to forced labor;

d/ He/she is unable to continue performing the labor contract due to personal or family difficulties;

e/ He/she is elected to perform a full-time duty in a people-elected office or is appointed to hold a position in the state apparatus;

f/ A female employee who is pregnant and must take leave as prescribed by a competent health establishment;

g/ If he/she is sick or has an accident and remains unable to work after having received treatment for 90 consecutive days, in case he/she works under a definite-term labor contract, or for a quarter of the contract's term, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

¹¹⁹ Article 42 (1) of Law No. 10/2012/QH13 (Labor Code), “Obligations of an employer when unilaterally terminating a labor contract illegally: 1. To reinstate the employee in accordance with the original labor contract; to pay the wage and social insurance and health insurance premiums for the period during which the employee was not allowed to work, plus at least 2 months' wage in accordance with the labor contract.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

compensation. If the employer does not wish to re-employ the employee and the employee agrees, apart from the compensation and the severance pay, both parties will agree on extra compensation equal to the salary of at least 2 months under the employment contract. If no vacancy for the position in the employment contract is available but the employee still wishes to continue working, apart from the aforementioned compensation, both parties will negotiate to modify the employment contract.

In case of changes in the enterprise's structure or technology affecting the jobs of multiple employees, or for economic reasons that many employees face the risk of unemployment or dismissal, the employer is responsible to devise and implement an employment plan.¹²⁰ If new positions are available, the employees must be retrained and employed. In case the employer cannot create new jobs and the employees must be dismissed, the employer must give the redundancy pay to the employees. The dismissal of multiple employees is only allowed after discussion with the internal labor representative organization and the provincial government agency in charge of labor must be notified 30 days in advance.

In case of merger, division, or separation of the enterprise, the succeeding employer must be responsible to continue employing the existing employees and modify the employment contracts.¹²¹ In case there are not enough vacancies for the existing employees, the succeeding employer must be responsible to continue devising and implementing the employment plan. For ownership transfers or property use right transfers, the preceding employer must devise the

¹²⁰ Article 44(1) of Law No. 10/2012/QH13 (Labor Code), "Obligations of an employer in case of changing structure, technology or economic reasons: 1. In case there is a change in the structure or technology that affects the employment of many employees, the employer shall elaborate and implement a labor utilization plan in accordance with Article 46 of this Code...", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

¹²¹ Article 45 (1) of Law No. 10/2012/QH13 (Labor Code), "Obligations of an employer in case of merger, consolidation, split or separation of enterprises or cooperatives; 1. In case of merging, consolidating, splitting or separating an enterprise or a cooperative, the succeeding employer shall continue employing the existing workforce and modify and supplement the labor contracts.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

employment plan. In case the employer dismisses the employee, the employer must give the redundancy pay to the employee. In case the enterprise is shut down, dissolved or bankrupt, the employees' salary, severance pay, social insurance, health insurance, unemployment insurance and other benefits under the collective bargaining agreement and the employment contracts must be paid first.¹²²

c) Labor Protection through Regulation of Working Hours and Rest Hours

The Labor Code provides that working hours cannot exceed eight (08) hours per day or 48 hours per week. The employer has the right to determine the working hours on a daily or a weekly basis. In case of weekly basis, the normal working hours cannot exceed 10 hours per day and 48 hours per week. The working hours cannot exceed six hours per day for those whose works are extremely hard, harmful and dangerous under the list issued by MOLISA.¹²³

The employee who works for eight or six hours consecutively is entitled to a break of at least half an hour, which must be included in the number of working hours. In case of working nightshift, the employee is entitled to a break of at least 45 minutes, which must be included in

¹²² Article 47(4) of Law No. 10/2012/QH13 (Labor Code), "Responsibilities of an employer in case of terminating labor contracts: 4. In case an enterprise or a cooperative has its operation terminated, is dissolved or goes bankrupt, the payment of wages, severance allowances, social insurance, health insurance, unemployment insurance and other benefits of its employees according to the collective labor agreement and signed labor contracts will be prioritized.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iii-labor-contract_t12-c007002-a66-mb.html (accessed October 14, 2018).

¹²³ Article 104 of Law No. 10/2012/QH13 (Labor Code), "Normal working time:

1. Normal working time must not exceed 8 hours per day or 48 hours per week.
2. An employer may determine the working time on an hourly, daily or weekly basis; in case of working on a weekly basis, the normal working time must not exceed 10 hours per day and not exceed 48 hours per week. The State encourages employers to apply 40 working hours per week.
3. The working time must not exceed 6 hours per day for employees who perform extremely heavy, hazardous or dangerous jobs on a list issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vii-working-time-and-rest-time_t12-c007002-a62-mb.html (accessed October 14, 2018).

the number of working hours.¹²⁴ The employee who works by shift is entitled to a break of at least 12 hours before starting another shift.¹²⁵ Every week, each employee is entitled to a rest of at least 24 consecutive hours.¹²⁶ An employee who has worked for an employer for at least 12 months is entitled to annual leave fully paid under the employment contract (12 working days for employees working in normal working conditions; 14 working days for employees working in heavy, dangerous, or toxic jobs, or in places with harsh living conditions; and 16 working days for persons working in extremely heavy, dangerous, or toxic jobs, or in places with extremely harsh living conditions).¹²⁷ The length of annual leave of the employee is increased one day for every five years

¹²⁴ Article 108 of Law No. 10/2012/QH13 (Labor Code), "Rest breaks during working hours:

1. An employee who works for 8 hours consecutively or 6 hours under Article 104 of this Code is entitled to a break of at least 30 minutes in the middle of working which must be counted in the working hours.
2. An employee who works at night is entitled to a break of at least 45 minutes in the middle of working which must be counted in the working hours.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vii-working-time-and-rest-time_t12-c007002-a62-mb.html (accessed October 14, 2018).

¹²⁵ Article 109 of Law No. 10/2012/QH13 (Labor Code), "Breaks between shifts: Employees who work in shifts are entitled to a break of at least 12 hours before moving to another shift.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vii-working-time-and-rest-time_t12-c007002-a62-mb.html (accessed October 14, 2018).

¹²⁶ Article 110(1) of Law No. 10/2012/QH13 (Labor Code), "Weekly breaks: 1. Every week, an employee is entitled to a break of at least 24 consecutive hours...", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vii-working-time-and-rest-time_t12-c007002-a62-mb.html (accessed October 14, 2018).

¹²⁷ Article 111(1) of Law No. 10/2012/QH13 (Labor Code), "Annual leave: 1. An employee who has been working for an employer for full 12 months is entitled a fully paid annual leave as stated in his/her labor contract as follows:

- a/ Twelve working days for an employee working in normal conditions;
- b/ Fourteen working days for an employee doing a heavy, hazardous or dangerous job; or an employee working in a place with harsh living conditions on the list issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health, or for minor or disabled employees;
- c/ Sixteen working days for an employee doing an extremely heavy, hazardous or dangerous job; an employee working in a place with extremely harsh living conditions on the list issued by the Ministry of Labor, War Invalids

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working for an employer.¹²⁸ An employee is entitled to have days off fully paid on the national holidays prescribed in the Labor Code.¹²⁹ He or she can also take leave for personal reasons but fully paid in case of marriage (3 days), marriage of children (1 day), death of parents, mother-in-law, father-in-law, wife or husband or child (3 days).¹³⁰

d) Labor Protection through Regulation of Wages

The employee cannot earn an amount below the minimum wage level, which is reviewed from time to time.¹³¹ Different minimum levels depend on the location of the workplace.

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and Social Affairs in coordination with the Ministry of Health.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vii-working-time-and-rest-time_t12c007002-a62-mb.html (accessed October 14, 2018).

¹²⁸ Article 112 of Law No. 10/2012/QH13 (Labor Code), “Annual leave increased based on the length of employment: The annual leave of an employee stipulated in Clause 1, Article 111 of this Code will be increased 1 day for every 5 years’ working for an employer.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vii-working-time-and-rest-time_t12-c007002-a62-mb.html (accessed October 14, 2018).

¹²⁹ Article 115(1) of Law No. 10/2012/QH13 (Labor Code), “Public and New Year holidays:

1. An employee is entitled to fully paid days off on the following public and New Year holidays: a/ Calendar New Year Holiday: 1 day (the first day of January of the calendar year); b/ Lunar New Year Holidays: 5 days; c/ Victory Day: 1 day (the thirtieth day of April of each calendar year); d/ International Labor Day: 1 day (the first day of May of each calendar year); e/ National Day: 1 day (the second day of September of each calendar year); f/ Commemorative Celebration of Vietnam’s Forefather - Kings Hung: 1 day (the tenth of March of the lunar year).”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vii-working-time-and-rest-time_t12-c007002-a62-mb.html (accessed October 14, 2018).

¹³⁰ Article 116 of Law No. 10/2012/QH13 (Labor Code), “Personal leave, unpaid leave: 1. An employee may take fully paid leave for personal reasons in the following cases: a/ Marriage: 3 days; b/ Marriage of his/her child: 1 day; c/ Death of a blood parent or a parent of his/her spouse, his/her spouse or child: 3 days.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vii-working-time-and-rest-time_t12-c007002-a62-mb.html (accessed October 14, 2018).

¹³¹ Article 90 (1) of Law No. 10/2012/QH13 (Labor Code), “...An employee’s wage must not be lower than the minimum wage set by the Government.” *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vi-wages_t12-c007002-a63-mb.html (accessed October 15, 2018).

The employee must be paid directly, fully and in a timely manner. In special cases that the wage is not paid in a timely manner, it must not be later than one month and the employer must pay the employee an additional amount at least equal to the deposit interest rates announced by the State Bank of Vietnam at the time of payment.¹³²

The employee who works overtime is paid at least 150% on weekdays, or at least 200% on weekly days-off, or at least 300% on holidays and days-off with pay. The employee working at night is additionally paid at least 30% of the wage under a normal working day. If working overtime at night, the employee is also paid an additional 20% of the wage in the day time.¹³³

e) Labor Protection through the Regulation on Labor Discipline

The employer has the right to impose sanctions on the employee who violates labor discipline, but the employer must follow strict rules under the Labor Code. For example, the employer must prove the employee's fault; the representative organization of the employees must

¹³² Article 96 of Law No. 10/2012/QH13 (Labor Code), "Principles of wage payment: An employee must be paid with a full wage in a direct and timely manner. In special cases in which an employer cannot pay a wage on time to an employee, the employer may not postpone the payment for more than 1 month and shall pay the employee with an additional amount at least equal to the deposit interest rate announced by the State Bank of Vietnam at the time of wage payment.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vii-working-time-and-rest-time_t12-c007002-a62-mb.html (accessed October 14, 2018).

¹³³ Article 97 of Law No. 10/2012/QH13 (Labor Code), "Wage for overtime work and night work:

1. An employee who performs overtime work must be paid according to the wage unit or wage for his/her current job as follows:
 - a/ On normal days, at least equal to 150%;
 - b/ On weekends, at least equal to 200%;
 - c/ On public holidays and paid leave days, at least equal to 300%, excluding the wage for public holidays and paid leave days of employees who receive daily wages.
2. An employee who performs night work must be paid with an additional amount at least equal to 30% of the wage calculated according to the wage unit or the wage for a job performed during normal workdays.
3. An employee who performs overtime work at night must be paid under Clauses 1 and 2 of this Article. He/she must be paid with an additional amount equal to 20% of the wage calculated according to the wage unit or the wage for a job performed during daytime., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-vi-wages_t12-c007002-a63-mb.html (accessed October 14, 2018).

participate in the process; the employee must be present and has the right to defend himself/herself or to request a lawyer or someone else to defend him/her. In case of an employee under 18 years old, his/her parents or the legal representative must participate in the hearing. The hearing on labor discipline must be recorded in writing. It is not allowed to impose multiple forms of sanctions on one offense. If the employee at the same time commits many acts of violation of the labor discipline; only the highest form of sanction will be imposed corresponding to the most serious act of violation. The employer is not permitted to impose labor discipline sanctions on the employee who is taking sick leave or leave with the employer's permission, who is in custody or detention, who is awaiting the results of the competent authority to investigate his/her offenses such as theft, embezzlement, gambling, assault, or trade secret misappropriation. Moreover, no labor discipline sanction can be imposed on the employee suffering from mental illness or other diseases that cause loss of consciousness ability or loss of control of his/her behavior.¹³⁴

¹³⁴ Article 123 of Law No. 10/2012/QH13 (Labor Code), "Principles and order for handling violations of labor discipline:

1. The handling of a violation of labor discipline is provided as follows:

- a/ The employer shall prove the fault of the employee;
- b/ The representative organization of the grassroots-level employees' collective must participate in the handling;
- c/ The employee must be present and may defend himself/herself or ask a lawyer or another person to defend him/her; if the employee is under 18 years old, his/her parent or at-law representative must participate in the handling;
- d/ The handling of the violation of labor discipline must be recorded in the minutes.

2. It is prohibited to impose more than one form of discipline for a single violation of labor discipline.

3. For an employee who simultaneously commits more than one violation of labor discipline, it is only allowed to apply the highest form of discipline corresponding to the most serious violation.

4. Labor discipline may not be imposed for violations committed by an employee who is currently:

- a/ Taking sickness or convalescence leave or a leave with the employer's consent;
- b/ Kept in custody or temporary detention;
- c/ Waiting for results of verification and conclusion of a competent agency for acts of violation specified in Clause 1, Article 126 of this Code;
- d/ A female employee and pregnant or on maternity leave; rearing a child under 12 months of age.

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While handling labor discipline cases, the employer is prohibited to harm the employee's body or dignity, to impose monetary fines or pay cuts on the employee instead of labor discipline sanctions, or to apply labor discipline sanctions to the employee committing an act of violation not stipulated in the labor rules.¹³⁵

f) Protection of Specified Categories of Individuals

(i) Protection of Female Employees

The State ensures the equal working rights of female employees and encourages employers to create conditions for female employees to work regularly, to apply the flexible timetable working regime, and to allow female employees to work shorter hours and work at home. The State also has preferential tax policy for employers who employ many female employees and takes measures to make preschools and kindergartens available at places where there are many female employees.¹³⁶

(continued from footnote 134)

5. No labor discipline will be imposed on an employee who violates the internal working regulations while suffering a mental disorder or another disease which deprives him/her of the capacity to perceive or control his/her acts.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-viii-labor-discipline-and-material-responsibilities_t12-c007002-a61-mb.html (accessed October 14, 2018).

¹³⁵ Article 128 of Law No. 10/2012/QH13 (Labor Code), "Prohibited acts when handling violations of labor discipline:

1. Infringing upon the body or dignity of the employee.
2. Applying a fine or wage reduction instead of a disciplinary measure.
3. Disciplining an employee who has committed a violation which is not defined in the internal working regulations., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-viii-labor-discipline-and-material-responsibilities_t12-c007002-a61-mb.html (accessed October 14, 2018).

¹³⁶ Article 153 Law No. 10/2012/QH13 (Labor Code), "State policies toward female employees:

1. To protect the female employees' right to employment equality.
2. To encourage employers to create conditions for female employees to have regular employment, and to extensively implement systems of flexible working hours, part-time work or home-based work for female employees.
3. To introduce measures to create employment opportunities, improve working conditions, raise vocational

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The employer has the obligations to ensure gender equality and take measures to promote gender equality in recruitment, utilization, training, working time, break time, salary and other aspects; to consult with female employees or their representative upon making decision on the rights and interest of women; to ensure that there are enough suitable bathrooms and toilets at the workplace; to assist and support the building of nursery school, kindergarten or partial cost of child care at kindergartens for female employees.¹³⁷

The employer may not mobilize a female employee to work at night, work overtime or take distant business trips if the female employee is pregnant from the seventh month or from the six month (if working in upland and remote areas, border and island areas), or if the female employee

(continued from footnote 136)

qualifications and healthcare, and increase material and spiritual welfare for female employees in order to assist them in effectively bringing into play their vocational capacity and harmoniously combining their working lives with family lives.

4. To formulate policies on tax reductions for employers using many female employees in accordance with tax laws.

5. To develop various forms of training which are favorable for female employees to acquire standby vocational skills suitable to their physical and physiological characteristics and their motherhood function.

6. The State shall develop plans and measures to organize crèches and kindergartens in areas with large numbers of female employees., *available at* http://www.bolualtaodong.com/labor-code/labor-code-2012/chapter-viii-labor-discipline-and-material-responsibilities_t12-c007002-a61-mb.html (accessed October 14, 2018).

¹³⁷ Article 154 of Law No. 10/2012/QH13 (Labor Code), “Obligations of employers toward female employees:

1. To ensure gender equality and implement measures to promote gender equality in recruitment, employment, training, working time, rest time, wages and other policies.

2. To consult female employees or their representatives when taking decisions on issues related to the rights and interests of women.

3. To ensure sufficient bathrooms and appropriate toilets in the workplace.

4. To assist and support in building crèches and kindergartens, or cover part of childcare expenses at crèches and kindergartens incurred by female employees.”, *available at* http://www.bolualtaodong.com/labor-code/labor-code-2012/chapter-x-separate-provisions-for-female-employees_t12-c007002-a59-mb.html (accessed October 14, 2018).

is nursing child under 12 months old.¹³⁸ The female employee who performs heavy work during pregnancy from the seventh month must be transferred to lighter work or be reduced one working hour every day but still receives full payment.

The employer cannot fire the female employee or unilaterally terminate the employment contract with the female employee for the reason of marriage, pregnancy, maternity leave, or nursing child under 12 months old.¹³⁹ Moreover, during above-mentioned conditions, female employees cannot be imposed labor discipline sanctions. The female employee is entitled to take maternity leave of six months. In case she gives birth to twins or more, she is entitled to one additional month leave for each child. During maternity leave, she is entitled to maternity benefits under the law on social insurance.¹⁴⁰ She is also guaranteed the old job upon returning

¹³⁸ Article 155(1) of Law No. 10/2012/QH13 (Labor Code), "Protection of maternity for female employees: 1. An employer may not mobilize female employees to work at night, work overtime or go on a long working trip in the following cases: a/ The employee is in her seventh month of pregnancy, or in her sixth month of pregnancy in case of working in a mountainous, remote, distant, border or island area; b/ The employee is nursing a child under 12 months of age.", *available at* http://www.bolualtaodong.com/labor-code/labor-code-2012/chapter-x-separate-provisions-for-female-employees_t12-c007002-a59-mb.html (accessed October 14, 2018).

¹³⁹ Article 155(3) of Law No. 10/2012/QH13 (Labor Code), "3. An employer may neither dismiss a female employee nor unilaterally terminate the labor contract with a female employee for the reason of her marriage, pregnancy, maternity leave, or that she is nursing a child under 12 months of age, except the case in which the employer is an individual who dies, or is declared by a court to have lost his/her civil act capacity, or to be missing or dead, or the employer is an institution that ceases operation.", *available at* http://www.bolualtaodong.com/labor-code/labor-code-2012/chapter-x-separate-provisions-for-female-employees_t12-c007002-a59-mb.html (accessed October 14, 2018).

¹⁴⁰ Article 157(1)(2) of Law No. 10/2012/QH13 (Labor Code), Maternity leave:

1. A female employee is entitled to 6 months of prenatal and postnatal leave. In case a female employee gives birth to twin or more babies, counting from the second child upward, for each child the mother is entitled to 1 more month off. Prenatal leave must not exceed 2 months.
2. During the maternity leave, a female employee is entitled to maternity policies provided by the law on social insurance.", *available at* http://www.bolualtaodong.com/labor-code/labor-code-2012/chapter-x-separate-provisions-for-female-employees_t12-c007002-a59-mb.html (accessed October 14, 2018). Please note that the phrase "law on social security" does not refer to a specific act, but refer generally to an area of law governing social insurance.

to work after maternity leave.¹⁴¹

The employer shall prohibit to employ female employees to do work that can adversely affect the reproductive function and child nursing under the list issued by MOLISA, such as work regularly under water or work regularly in mine.¹⁴²

(ii) Protection of Underage Employees

Under Vietnamese law, the underage employee is the employee under 18 years old.¹⁴³ The employer can only employ the underage employee for suitable jobs to ensure the physical, intellectual, and personality development of the employee. When employing underage employee, the employer must make a separate monitoring book, recording the name, date of birth, current job, and the results of periodical health examinations, and must produce it upon the requirement of the competent authorities.¹⁴⁴

The employer may not employ the underage employee to perform heavy, hazardous and dangerous jobs or the jobs negatively affecting his/her personality under the list issued by

¹⁴¹ Article 158 of Law No. 10/2012/QH13 (Labor Code), "Guarantee of employment for female employees after maternity leave: "A female employee shall be guaranteed the old employment when she returns to work after taking the maternity leave...", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-x-separate-provisions-for-female-employees_t12-c007002-a59-mb.html (accessed October 14, 2018).

¹⁴² Article 160 of Law No. 10/2012/QH13 (Labor Code), "Prohibited work for female employees:

1. Work that is harmful to child bearing and nursing functions as specified in the list of jobs issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health.
2. Work that requires the body constantly immersed in water.
3. Regular underground work in mines., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-x-separate-provisions-for-female-employees_t12-c007002-a59-mb.html (accessed October 14, 2018).

¹⁴³ Article 161 of Law No. 10/2012/QH13 (Labor Code), "Minor employees: A minor employee is an employee under 18 years of age.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed October 14, 2018).

¹⁴⁴ Art. 162 of the Labor Code, http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed 30 Jun 2015).

MOLISA in coordination with the Ministry of Health. The working hours of the underage employee from 15 years old to under 18 years old must not exceed 08 hours per day and 40 hours per week. The working hours of person under 15 years old must not exceed 04 hours per day and 20 hours per week without working overtime or working at night. The underage employee cannot be employed to produce and trade in alcohol, wine, beer, tobacco, substances affecting the mind and other drugs. The employer must provide opportunities for the underage employee to have education.¹⁴⁵

The employer is prohibited to employ underage employees to perform the following jobs: carrying and lifting heavy objects beyond the physical ability of the underage employee; producing and using or transporting chemicals, gases, or explosives; maintaining equipment and machinery; demolishing constructional building; processing metals; and diving or offshore fishing; and other work harming the health, safety or morality of the underage person. The employer is also prohibited to employ the underage employee to work underwater, underground, in caves or tunnels, at construction sites, slaughter facilities, casinos, bars, discotheques, karaoke rooms,

¹⁴⁵ Article 163 of Law No. 10/2012/QH13 (Labor Code), “Principles of employment of minors:

1. Employment of minors is prohibited in heavy, toxic and dangerous jobs or in workplaces or jobs which may adversely affect their personality, as determined in the list issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health.

2. The working time of minor employees aged from full 15 years to under 18 years must not exceed 8 hours per day and 40 hours per week.

The working time of employees aged under 15 years must not exceed 4 hours per day and 20 hours per week and the employer may not employ these minors to work overtime or at night.

3. Persons aged from full 15 to under 18 years may work overtime and at night in some occupations and jobs stipulated by the Ministry of Labor, War Invalids and Social Affairs.

4. An employer may not employ minors to manufacture and trade in alcohol, wine, beer, cigarettes, stimulants and other habit-forming substances.

5. An employer shall create opportunities for minor employees and employed persons aged under 15 years to receive general education., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed October 14, 2018).

hotels, motels, saunas and massage rooms, and other workplaces harming the health, safety or morality of the underage employee.¹⁴⁶

(iii) Protection of Elderly Employees

The elderly employee is the person who continues working after reaching the age of 60 for men and 55 for women.¹⁴⁷ He/she is entitled to reduce daily working hours. During the final year before retirement, the employee is entitled to reduce the normal working hours or apply the part-time working regime. The employer cannot employ the elderly employee to do the hard, hazardous and dangerous job adversely affecting the health of the elderly employee.¹⁴⁸

¹⁴⁶ Article 165(1) of Law No. 10/2012/QH13 (Labor Code), "Prohibited jobs and workplaces for minor employees:

1. Employment of minors is prohibited in the following jobs:

a/ Carrying and lifting of heavy objects which are beyond a minor's physical strength;

b/ Manufacture use or transportation of chemicals, gas and explosives;

c/ Maintenance of equipment and machines;

d/ Demolition of construction works;

e/ Melting, blowing, casting, rolling, molding and welding of metals;

f/ Sea diving, offshore fishing;

g/ Other jobs which are harmful to the health, safety or morality of minor employees.", *available at* http://www.bolualtaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed October 14, 2018).

¹⁴⁷ Article 166 of Law No. 10/2012/QH13 (Labor Code), "Elderly employees: 1. Elderly employee is a person who continues to work after the age defined in Article 187 of this Code." (60 for men and 55 for women), *available at* http://www.bolualtaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed October 14, 2018).

¹⁴⁸ Article 167 of Law No. 10/2012/QH13 (Labor Code), "Employment of elderly employees:

1. When necessary, an employer may reach agreement with an elderly employee who has sufficient health conditions on the extension of the labor contract or the conclusion of a new labor contract in accordance with the provisions of Chapter III of this Code....

3. An employer may not employ elderly employees in heavy or dangerous jobs or jobs exposed to toxic substances that adversely affect their health, except in special cases as stipulated by the Government.", *available at* http://www.bolualtaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed October 14, 2018).

(iv) Protection of Disabled Employees

The employer must ensure that the working conditions, tools, labor safety and hygiene are suitable for the disabled employees and must regularly take care of their health. The employer must also consult with the disabled employees when making decisions on the issues related to their interests.¹⁴⁹ The employer is prohibited to employ disabled employees whose have lost 51% or more of the working capacity, or employ disabled employees to work overtime, work at night, or to do heavy, hazardous or dangerous work, or exposure to toxic substances under the list issued by MOLISA in coordination with the Ministry of Health.¹⁵⁰

(v) Protection of Employees Working as Housemaids

The employer must sign a written employment contract with the employee working as a housemaid with a term agreed by both parties.¹⁵¹ Each party has the right to unilaterally terminate

¹⁴⁹ Article 177 of Law No. 10/2012/QH13 (Labor Code), "Employment of disabled persons:

1. An employer shall ensure working conditions, working tools and occupational safety and hygiene suitable to disabled employees and take regular care for their health.
2. An employer shall consult disabled employees before deciding on matters involving their rights and interests.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed October 14, 2018).

¹⁵⁰ Article 178 of Law No. 10/2012/QH13 (Labor Code), "Prohibited acts in employment of disabled persons:

1. Employing a disabled person who has lost 51% or more of his/her working ability to work overtime and at night.
2. Employing a disabled person to perform a heavy or dangerous job or a job exposed to toxic substances on the list issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed October 14, 2018).

¹⁵¹ Article 180 of Law No. 10/2012/QH13 (Labor Code), "Labor contracts for domestic employees:

1. An employer shall sign a written labor contract with a domestic employee.
2. The duration of a labor contract for a domestic employee may be negotiated by both parties. Either party may unilaterally terminate the labor contract with an advance notice of 15 days.
3. The two parties shall agree and clearly write in the labor contract the form and time of wage payment, daily working hours and accommodation.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.htm (accessed October 14, 2018).

the employment contract at any time but must give notice 15 days in advance. The employer has the obligations to fully implement all terms stated in the contract, pay the housemaid an amount equal to social insurance and health insurance as prescribed by law so that the employee can pay insurance for herself, respect the housemaid, provide clean, healthy accommodation for the housemaid if agreed, create opportunities for the housemaid to have education or vocational training, and pay for travel expenses when the housemaid terminates work and returns home.¹⁵²

The employer is prohibited from maltreatment, sexual harassment, labor coercing, using force against the housemaid, assigning the housemaid the work not specified in the employment contract, or keeping the housemaid's personal documents.¹⁵³

g) Labor Protection through Regulation on Trade Unions

The employee working at the enterprises, agencies and organizations has the right to establish, join and run the trade union. The main function of a trade union organization is to represent and protect employees' lawful rights and interests. Therefore, most decisions relating

¹⁵² Article 181 of Law No. 10/2012/QH13 (Labor Code), "Obligations of an employer:

1. To fully implement the agreements stated in the labor contract.
2. To pay to the domestic employee his/her social insurance and health insurance as provided by law to enable the latter to self-manage his/her insurance.
3. To respect the honor and dignity of the domestic employee.
4. To provide a clean and hygienic accommodation for the domestic employee, if so agreed.
5. To create opportunities for the domestic employee to receive education and vocational training.
6. To pay travel expenses for the domestic employee to return home at the end of his/her service, except the case in which the domestic employee terminates the labor contract ahead of time.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed October 14, 2018).

¹⁵³ Article 183 of Law No. 10/2012/QH13 (Labor Code), "Prohibited acts of an employer:

1. Mistreating, sexually harassing, forcing labor and using violence against the domestic employee.
2. Assigning work to the domestic employees not in accordance with the labor contract.
3. Keeping personal documents of the domestic employee.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xi-separate-provisions-for-minor-employees-and-other-types-of-employees_t12-c007002-a58-mb.html (accessed October 14, 2018).

to employee benefits should involve the trade union representative, such as execution of a collective bargaining agreement, decisions regarding labor discipline and termination of employment contracts.¹⁵⁴

The employer is required to facilitate and support the establishment of the trade union as well as to create favorable conditions for the trade union to operate. Any act that obstructs the establishment and activities of the trade union is strictly prohibited, such as hindering the establishment, joining and operation of the trade union of the employee; requiring the employees not to participate in or leave the trade union; discriminating on salary, working hours and the rights and obligations in the labor relationship to prevent the establishment, joining and operation of trade union of the employee.¹⁵⁵

¹⁵⁴ Article 188(1) of Law No. 10/2012/QH13 (Labor Code), “The role of trade unions in industrial relations:

1. Grassroots level trade unions play the role of representing and protecting the rights and legitimate interests of trade union members and employees; participate in negotiating, signing and supervising the implementation of collective labor agreements, wage scales and wage tables, labor norms, wage payment regulations and bonus regulations, internal working regulations, democracy regulations in enterprises, agencies or organizations; participate in and assist the settlement of labor disputes; hold dialogues and cooperate with employers to build harmonious, stable and progressive industrial relations in enterprises, agencies or organizations.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xiii-trade-unions_t12-c007002-a56-mb.html (accessed October 14, 2018).

¹⁵⁵ Article 190 of Law No. 10/2012/QH13 (Labor Code), “Prohibited acts of employers related to the establishment, joining and operation of trade unions:

1. Obstructing or causing difficulties to employees in the establishment, joining and operation of trade unions.
2. Coercing employees to establish, join and operate a trade union.
3. Asking employees not to join or to withdraw from a trade union.
4. Discriminating employees regarding wages, working time and other rights and obligations in industrial relations to obstruct employees in the establishment, joining and operation of trade unions.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xiii-trade-unions_t12-c007002-a56-mb.html (accessed October 14, 2018).

h) Employees' Right to Go on Strike

Employees may voluntarily go on strike in case of collective labor disputes on interests. However, strikes must be organized and led by the executive committee of the company's trade union or representatives of employees.¹⁵⁶ Employees must also adhere to statutory procedures and steps for the organization of strikes.¹⁵⁷

Employers are not required to pay salary or other benefits to employees who participate in a strike. Employers are prohibited, however, from terminating employment contracts or applying labor disciplinary penalties to employees or strike organizers, transferring employees or strike organizers to do other jobs or to work at other locations, or revenging employees or strike organizers because of their preparation for or participation in a strike.¹⁵⁸

¹⁵⁶ Article 210 of Law No. 10/2012/QH13 (Labor Code), "Organization and leadership of strikes:

1. In a unionized place, a strike must be organized and led by the executive committee of the grassroots-level trade union.
2. In a non-unionized place, a strike must be organized and led by the higher-level trade union at the request of employees.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xiv-settlement-of-labor-disputes_t12-c007002-a55-mb.html (accessed October 14, 2018).

¹⁵⁷ Article 211 of Law No. 10/2012/QH13 (Labor Code), "Sequence of going on strike:

1. Collecting opinions of the employees' collective.
2. Issuing a decision to go on strike.
3. Going on strike.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xiv-settlement-of-labor-disputes_t12-c007002-a55-mb.html (accessed October 14, 2018).

¹⁵⁸ Article 219 of Law No. 10/2012/QH13 (Labor Code), "Prohibited acts before, during and after a strike:

4. Terminating the labor contracts with, imposing labor disciplinary measures on or transferring employees and strike leaders to other jobs or other locations due to their preparation for or involvement in the strike.
5. Taking revenge actions on employees who are on strike or leaders of the strike....", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-xiv-settlement-of-labor-disputes_t12-c007002-a55-mb.html (accessed October 14, 2018).

3.3.2 Laws Concerning Safety, Occupational Health, and Working Environment

a) Duties of Employers and Employees with Respect to Labor Safety and Hygiene

All enterprises, agencies, organizations and individuals related to labor must comply with the law on labor safety and hygiene. The employer must rely on the standards and national technical regulations, the local technical regulations on labor safety and hygiene to formulate the rules and working procedures to guarantee the labor safety and hygiene suitable for each type of machinery, equipment and workplace.¹⁵⁹

The employer has the following obligations with respect to labor safety and hygiene:¹⁶⁰

¹⁵⁹ Article 136(2) of Law No. 10/2012/QH13 (Labor Code), National technical regulations on occupational safety and hygiene: 2. Based on the national standards and technical regulations and local technical regulations on occupational safety and hygiene, employers shall elaborate internal working regulations and procedures for each type of machine, equipment and workplace to ensure occupational safety and hygiene.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

¹⁶⁰ Article 138(1) of Law No. 10/2012/QH13 (Labor Code), "Employers' and employees' obligations for occupational safety and hygiene: 1. An employer has the following obligations:

- a/ To ensure that the workplace meet the requirements on space, airiness, dust, steam, toxic gas, radiation, electricity of magnetic field, heat, moisture, noise, vibration and other harmful factors as prescribed in relevant technical regulations. These factors must be checked and measured on a regular basis;
- b/ To ensure safe and hygienic working conditions for machines, equipment and workshops as required by the promulgated or applied national technical regulations or standards on occupational safety and hygiene at workplace;
- c/ To check and evaluate dangerous and harmful factors at the workplace in order to put forward measures to avert and minimize dangers and harms and improve working conditions and healthcare for employees;
- d/ To examine and maintain machines, equipments, workshops and warehouses on a periodical basis;
- e/ To display signboards of instructions for occupational safety and hygiene for machines, equipment and workplaces at easy-to-read and -see locations at the workplace;
- f/ To consult the representative organization of the grassroots-level employees' collective when planning and implementing activities to ensure occupational safety and hygiene.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

- (1) To ensure that the workplace meets the requirements of space, ventilation, dust, steam, toxic gas, radiation, electro magnetism, heat, humidity, noise, vibration and other harmful elements and those factors must be tested and measured periodically.
- (2) To ensure the conditions on labor safety and hygiene for machinery, equipment, workshop to comply with the national technical regulations on labor safety and hygiene or meet standards on labor safety and hygiene at the workplace that have been published and applied.
- (3) To test and assess the dangerous and harmful factors at the workplace in order to set out measures to minimize hazards, harmfulness and improve the working conditions and health care for the employees;
- (4) To test and maintain the machinery, equipment, workshops and warehouses periodically;
- (5) To have instructions on labor safety and hygiene for the machinery, equipment and workplace and make them visible at the workplace;
- (6) To gather opinions of the representative organization of the employees when making a plan and implementing the activities to guarantee labor safety and hygiene.

The employee has the following obligations with respect to labor safety and hygiene:¹⁶¹

¹⁶¹ Article 138(2) of Law No. 10/2012/QH13 (Labor Code), “Employers’ and employees’ obligations for occupational safety and hygiene: 2. An employee has the following obligations:

a/ To observe regulations, processes and internal rules on occupational safety and hygiene which are relevant to assigned jobs;

b/ To use and maintain equipped personal protection equipment and occupational safety and hygiene tools at the workplace;

c/ To promptly report to responsible persons when discovering risks of labor accident, occupational disease, toxic or dangerous incidents; to participate in first aid and overcoming the consequences of labor accidents as requested by the employer.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

- (1) To comply with the regulations, procedures and rules on labor safety and hygiene related to the work and duties assigned;
- (2) To use and maintain the personal protective equipment and the equipment for labor safety and hygiene at the workplace;
- (3) To promptly report to the responsible person upon detecting the risk of occupational accident and disease, toxic or dangerous incident; to participate in emergency and remedy the consequence of occupational accident upon the employer's order.

The employer must appoint a person in charge of labor safety and hygiene. This person must be trained on labor safety and hygiene.¹⁶²

The employee has the right to refuse to perform the work or leave the workplace and still receive payment of full salary and is not considered violation of labor discipline upon clearly seeing the risk of occupational accidents and diseases that seriously threatens his/her life or health, and he/she must immediately notify the direct supervisor. The employer cannot force the employee to continue working or return to that workplace if the danger has not been remedied.¹⁶³

¹⁶² Article 139 of Law No. 10/2012/QH13 (Labor Code), "Occupational safety and hygiene officers:

1. An employer shall assign a person in charge of occupational safety and hygiene. For production and business establishments operating in the fields with many risks of labor accidents and occupational diseases and having 10 or more employees, their employers shall assign full-time occupational safety and hygiene officers with suitable professional qualifications.

2. Occupational safety and hygiene officers must be trained in occupational safety and hygiene.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

¹⁶³ Article 140 (2) of Law No. 10/2012/QH13 (Labor Code), "Handling of incidents and response to emergency cases: 2. An employee may refuse to work or leave the workplace while still having the full wage paid and not being regarded as violating labor discipline when he/she is fully aware of the danger of labor accident or occupational diseases or serious threat to his/her life or health, and shall immediately report to the direct supervisor. The employer may not order employees to continue performing such work or to return to such workplace if the danger has not been eliminated., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

b) Dealing with Occupational Accidents and Diseases

Occupational accident is an accident that causes injury to any part and function of the body or death to employee and that occurs during the working process. This definition also applies to apprentices and trainees. The person suffering occupational accident must receive a timely emergency and considerate treatment. All occupational accidents and diseases and other serious incidents at the workplace must be investigated, recorded and periodically reported.¹⁶⁴

Occupational diseases are diseases caused by the harmful working conditions of the occupation effecting on the employee. The person suffering from occupational disease must be treated carefully, examined health periodically and has separate health record.¹⁶⁵

In case an employee suffers occupational accident and disease, the employer must pay the costs not included in the amount paid by health insurance, if the employee is covered by a health insurance policy, or must pay all medical expenses in full, if the employee is not covered

¹⁶⁴ Article 142 of Law No. 10/2012/QH13 (Labor Code), "Labor accidents:

1. Labor accident is an accident that causes injury to any bodily part and function of an employee or causes death, and occurs during the performance of work and in connection with the performance of a job or task. This provision also applies to apprentices, on-the-job trainees and employees on probation.
2. Victims of labor accidents must be promptly provided with first aid and adequate treatment.
3. All labor accidents, occupational diseases and serious incidents happening at workplace must be notified, investigated, documented, statistically calculated and reported on a regular basis according to the Government's regulations.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

¹⁶⁵ Article 143 of Law No. 10/2012/QH13 (Labor Code), "Occupational diseases:

1. Occupational disease is an illness caused by the harmful working conditions of an occupation on an employee. The Ministry of Health shall assume the prime responsibility for, and coordinate with the Ministry of Labor, War Invalids and Social Affairs in, issuing a list of occupational diseases after consulting the Vietnam General Confederation of Labor and the employers' representative organization.
2. An employee suffering an occupational disease must be provided with adequate treatment and regular checks-up and have a separate medical record., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

by health insurance. Moreover, the employer must make full payment of salary under the employment payment to the employee suffering from the occupational accident or disease and having to take leave during treatment, and must also pay compensation to such employee.¹⁶⁶

If the employee is covered by a mandatory social insurance policy, he/she is entitled to the benefits under the Law on Social Insurance.¹⁶⁷

The employee who suffers from occupational accident or disease not resulting from the employee's fault and loses at least 5% of his/her working capacity will be compensated by the employer. If the occupational accident or disease is due to the employee's fault, he/she can still receive an amount at least equal to 40% of the compensation he/she receives when he/she is not at fault.¹⁶⁸

¹⁶⁶ Article 144 of Law No. 10/2012/QH13 (Labor Code), "Employers' responsibilities for labor accidents and occupational diseases of employees:

1. To bear the part of the costs which must be jointly paid and costs which are not covered by health insurance for employees who have health insurance; to pay all medical expenses incurred from first aid and emergency aid until stable treatment for employees who do not have health insurance.
2. To pay full wages under labor contracts to employees who have labor accidents or suffer occupational diseases during the medical treatment period.
3. To pay compensations to employees who have labor accidents or suffer occupational diseases in accordance with Article 145 of this Code.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

¹⁶⁷ Article 145(1) of Law No. 10/2012/QH13 (Labor Code), "Rights of employees who have labor accidents or suffer occupational diseases: 1. An employee who participates in compulsory social insurance is entitled to the benefit regime for labor accidents and occupational diseases as provided by the Law on Social Insurance.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

¹⁶⁸ Article 145(3)(4) of Law No. 10/2012/QH13 (Labor Code), "Rights of employees who have labor accidents or suffer occupational diseases:

3. An employee who has a labor accident or suffers an occupational disease not due to his/her fault and loses 5% or more of his/her working ability is entitled to compensation by his/her employer as follows:

(continued on next page)

c) Prevention of Occupational Accident and Diseases

Machinery, equipment and materials subject to strict requirements on labor safety must be inspected before being utilized and periodically inspected by the organization of technical inspection of labor safety.¹⁶⁹ Every year, the employer must have a plan and measures for labor safety and hygiene and improve the working conditions. The employee who performs work with toxic and dangerous factors must be fully equipped with the means of personal protection by the employer and must use them during the working process. The means of personal protection must also meet the quality standard.¹⁷⁰

The employer and the person in charge of labor safety and hygiene must take part in a training course on labor safety and hygiene and received the certificate on labor safety and hygiene. The employer must also organize the training on labor safety and hygiene to the

(continued from footnote 168)

a/ At least equal to one and half month's wage stipulated in the labor contract in case of losing between 5% and 10% of the working ability, then an additional 0.4 month's wage stipulated in the labor contract for every increase of 1% in case of losing between 11% and 80% of the working ability;

b/ At least equal to 30 months' wage stipulated in the labor contract in case of losing 81% or more of the working ability, or to family members of the employee who dies from a labor accident.

4. In case the employee is at fault, he/she is still entitled to an allowance at least equal to 40% of the rate specified in Clause 3 of this Article.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

¹⁶⁹ Article 147(1) of Law No. 10/2012/QH13 (Labor Code), "1. Machines, equipment and supplies subject to strict labor safety requirements must be appraised by a technical labor safety appraisal institution before they are put into operation and must be appraised on a periodical basis when they are in use.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 14, 2018).

¹⁷⁰ Article 149 of Law No. 10/2012/QH13 (Labor Code), "Personal protection equipment in work:

1. An employee doing a dangerous or toxic job must be adequately provided with and shall use personal protection equipment in the working process according to the regulations of the Ministry of Labor, War Invalids and Social Affairs.
2. Personal protection equipment must meet applicable quality standards.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 19, 2018).

employees, apprentices and trainees upon recruitment, and provide instructions on labor safety and hygiene regulations to the person visiting and working at the facility under the scope of management of the employer. The employees performing work with strict requirements on labor safety and hygiene must attend a training course of labor safety and hygiene, taking the examination and receiving the certificate.¹⁷¹ The employer must fully disclose to the employee the situation of occupational accidents, occupational diseases, dangerous and harmful factors, and measures to ensure labor safety and hygiene at the workplace.¹⁷²

d) Healthcare for Employees

The employer must rely on the healthcare standards regulated for each type of work to recruit and assign work for employees. Every year, the employer must organize periodic health examinations for employees, including apprentices and trainees. Female employees must receive the gynecology examination; the persons who perform hard and hazardous work, the disabled and underage employees, and the elderly employees must receive health examinations at least every 6 months. Employees working in conditions at risk of occupational disease must receive

¹⁷¹ Article 150 of Law No. 10/2012/QH13 (Labor Code), "Training in occupational safety and hygiene: 1. Employers and occupational safety and hygiene officers shall participate in training courses and take examinations and tests on occupational safety and hygiene conducted by occupational safety and hygiene training service institutions, for which they will be granted certificates. 2. An employer shall organize training in occupational safety and hygiene for employees, apprentices and on-the-job trainees upon recruitment and work arrangement; and provide guidance on occupational safety and hygiene regulations for visitors to workplaces managed by the employer. 3. An employee who performs a job subject to strict occupational safety and hygiene requirements shall participate in a training course and take a test on occupational safety and hygiene in order to obtain a certificate...", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 19, 2018).

¹⁷² Article 150 of Law No. 10/2012/QH13 (Labor Code), "Information on occupational safety and hygiene: Employers shall provide adequate information on the situation of labor accidents, occupational diseases and dangerous and harmful factors and measures to ensure occupational safety and hygiene for employees at workplace.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 19, 2018).

occupational disease examinations as prescribed by the Ministry of Health. The employee suffering an occupational accident or a disease must receive a medical examination for disability rating, determination of the degree of reduction of working capacity and must be under the treatment, working rehabilitation and in convalescence. The employee, after suffering from occupational accident or disease, if being able to continue working, must be assigned a job suitable to his/her health condition in accordance with the conclusions of the Labor Medical Examination Council. The employer must administer the health records of employees and a general monitoring record in accordance with the regulations of the Ministry of Health. For employees working at places where there are toxic and infectious factors, the employer must have measures of decontamination and sterilization for the employees at the end of the working hours.¹⁷³

Recently, the National Assembly of Vietnam (the legislative body) passed Law No.

¹⁷³ Article 152 of Law No. 10/2012/QH13 (Labor Code), "Health care for employees:

1. Based on health criteria for each type of work, an employer shall recruit and arrange work for employees.
2. Annually, an employer shall organize periodical health checks-up for employees, including apprentices and on-the-job trainees, obstetrics and gynecology checks for female employees, and health checks-up at least once every 6 months for employees doing heavy and harmful jobs and disabled, minor and elderly employees.
3. An employee who works in conditions with risks of occupational disease must have occupational disease checks according to regulations of the Ministry of Health.
4. An employee who has a labor accident or suffers an occupational disease shall undergo a medical assessment to determine his/her level of injury or disability and the level of working ability loss, and is entitled to treatment, care and working ability rehabilitation in accordance with law.
5. After having a labor accident or suffering an occupational disease, if still continuing to work, an employee shall be assigned to a work suitable to his/her health based on the conclusion of the Labor Medical Assessment Council.
6. An employer shall manage health records of employees and general observation records according to regulations of the Ministry of Health.
7. An employer shall provide employees who work at a workplace exposed to toxic and infectious factors with sterilization and disinfection measures upon completion of the working hours.", *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-ix-occupational-safety-and-hygiene_t12-c007002-a60-mb.html (accessed October 19, 2018).

84/2015/QH13 on June 25, 2015 on Occupational Safety and Hygiene (hereinafter “**Law on Occupational Safety and Hygiene**”), specifically addressing labor safety and hygiene. The Law expands the scope of application to laborers who do not work under an employment contract, such as freelance workers at construction sites as well, so that labor safety and hygiene are ensured more widely.¹⁷⁴

3.3.3 Laws Concerning Encouragement of Labor Skill Development

The Labor Code and the Law on Employment both contain provisions encouraging labor skill development. Under the Labor Code, the employees are entitled to choose their vocation and vocational training at workplaces suitable to their demands for employment. The eligible employers are supported by the State to establish vocational training facilities or hold vocational training classes at workplaces to train, retrain, or improve the vocational skill and grade for their employees and provide vocational training to other learners.¹⁷⁵

¹⁷⁴ Article 2 of Law No. 85/2015/QH13 (Law on Occupational Safety and Health), “Subjects of application:

1. Workers working with labour contracts, workers on probation, apprentices and interns working for employers.
2. Cadres, civil servants, public employees, persons working in the people’s armed forces.
3. Persons working without labour contracts.
4. Vietnamese workers working overseas with labour contracts; foreign workers working in Vietnam.
5. Employers.
6. Other agencies, organisations, individuals in relation to OSH. Subjects stipulated in Clauses 1, 2, 3 and 4 of this Article hereafter are commonly called workers., *available at* <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/99774/119205/F-595449136/VNM99774.pdf> (accessed October 19, 2018).

¹⁷⁵ Article 59 of Law No. 10/2012/QH13 (Labor Code), “Apprenticeship and vocational training:

1. An employee is entitled to choose an occupation and apprenticeship at a workplace which is appropriate to his/her employment demand.
2. The State encourages any eligible employer to establish a vocational training center or open vocational training classes at the workplace in order to train and retrain for improving occupational qualifications and skills for its current employees and providing vocational training for other apprentices in accordance with the law on vocational training.”, *available at* <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/99774/119205/F-595449136/VNM99774.pdf> (accessed October 19, 2018).

The employer must have the annual plan and prepare budget to provide vocational training or vocational skill and grade improvement courses for the employees and train the employees before they change their jobs to be recruited by the employer. The employer must send reports on the results of vocational skill and grade training and improvement to the provincial State labor management agency in the annual labor report.¹⁷⁶

When the employer recruits vocational learners and apprentices to work for him/her, the employer is not required to register the vocational training activities and is not allowed to collect tuitions. The vocational learners and apprentices in this case must be at least 14 years old and physically capable of doing the work. Both parties must sign the vocational training contract, which must be made into two copies and each party keeps one copy.¹⁷⁷

The employer is responsible to encourage the employee to participate in the vocational

¹⁷⁶ Article 60 of Law No. 10/2012/QH13 (Labor Code), “Responsibilities of an employer for training and retraining for vocational qualification and skill improvement:

1. An employer shall prepare annual training plans and budgets and organize training for improving vocational qualifications and skills for his/her current employees and training for employees before switching them to perform other jobs.

2. An employer shall report on the results of vocational qualification and skill improvement training to the provincial-level state management agency of labor in its annual report on labor., *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iv-apprenticeship-training-and-retraining-for-vocational-qualification-and-skill-improvement_t12-c007002-a65-mb.html (accessed October 20, 2018).

¹⁷⁷ Article 61(1) of Law No. 10/2012/QH13 (Labor Code), “Apprenticeship and on-the-job training to work for the employer: 1. An employer that recruits apprentices or on-the-job trainees to work for the employer does not have to register such vocational training activity and may not collect tuition fees. In this case an apprentice or on-the-job trainee must be at least full 14 years old and have appropriate health conditions required by the relevant occupation, except for some occupations specified by the Ministry of Labor, War Invalids and Social Affairs.

The two parties shall enter into a vocational training contract, which must be made in 2 copies, each to be kept by one party.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iv-apprenticeship-training-and-retraining-for-vocational-qualification-and-skill-improvement_t12-c007002-a65-mb.html (accessed October 20, 2018).

skill assessment in order to be issued with the national occupational skill certificate.¹⁷⁸ The Law on Employment provides that assessment and grant of certificates of national occupational skills aim to recognize the levels of occupational skills of workers based on their qualifications. Workers may participate in the assessment and be granted certificates of national occupational skills in order to improve their occupational capacity or seek appropriate employment or employment requiring such certificates.¹⁷⁹ Certificates of national occupational skills are valid nationwide. In case of mutual recognition of certificates of national occupational skills between Vietnam and other countries, the certificates of national occupational skills are valid in the countries where they are recognized and vice versa.

Employers may receive financial support for training and retraining to improve occupational skills qualifications for job maintenance for the workers who currently pay unemployment insurance premiums, when meeting all of the following conditions:¹⁸⁰ (a) having

¹⁷⁸ Article 61(4) of Law No. 10/2012/QH13 (Labor Code), “4. The employer shall create conditions for the employee to take vocational skill assessment exams in order to get a national vocational skills certificate.”, *available at* http://www.boluatlaodong.com/labor-code/labor-code-2012/chapter-iv-apprenticeship-training-and-retraining-for-vocational-qualification-and-skill-improvement_t12-c007002-a65-mb.html (accessed October 20, 2018).

¹⁷⁹ Article 29 of Law No. 38/2013/QH13 (Law on Employment), “Purposes of assessment and grant of certificates of national occupational skills:

1. Assessment and grant of certificates of national occupational skills aim to recognize the levels of occupational skills of workers based on their qualifications.

2. Workers may participate in the assessment and be granted certificates of national occupational skills in order to improve their occupational capacity or seek appropriate employment or employment requiring such certificates.”, *available at* http://www.itpc.gov.vn/investors/how_to_invest/law/Law_No.38_2013_2/mldocument_view/?set_language=en (accessed October 20, 2018).

¹⁸⁰ Article 47(1) of Law No. 38/2013/QH13 (Law on Employment), “Support conditions, time and levels:

1. Employers may receive financial support for training and retraining to improve occupational skills qualifications for job maintenance for the workers defined in Clause 1, Article 43 of this Law who currently pay unemployment insurance premiums, when fully meeting the following conditions:

a/ Having fully paid unemployment insurance premiums for workers obliged to participate in unemployment
(continued on next page)

fully paid unemployment insurance premiums for workers obliged to participate in unemployment insurance for at least full 12 consecutive months by the time of request for support; (b) having difficulties due to economic recession or other *force majeure* causes, forcing them to undergo restructuring or change of technology; (c) lacking funds for training and retraining workers to improve their occupational skills qualifications; (d) having a plan on training and retraining to improve occupational skills qualifications for job maintenance, which must be approved by a competent state agency. The duration of support for training and retraining to improve occupational skills qualifications for job maintenance for workers must comply with the approved plan, but must not exceed 6 months.

Employers are responsible to organize training and retraining courses to improve occupational skills qualifications and assign workers under approved plans; use funds for eligible workers and proper purposes and report training results to competent state agencies after completion of training or retraining courses.¹⁸¹

3.3.4 Laws Concerning Protection of Migrant Workers

Vietnamese migrant workers are protected under the Labor Code and the Law on

(continued from footnote 180)

insurance for at least full 12 consecutive months by the time of request for support;

b/ Meeting difficulties due to economic recession or other *force majeure* causes, forcing them to undergo restructuring or change production and business technologies;

c/ Lacking funds for organizing training and retraining to improve occupational skills qualifications for workers;

d/ Having a plan on training and retraining to improve occupational skills qualifications for job maintenance, approved by a competent state agency.", *available at* http://www.itpc.gov.vn/investors/how_to_invest/law/Law_No.38_2013_2/mldocument_view/?set_language=en (accessed October 20, 2018).

¹⁸¹ Article 48(1) of Law No. 38/2013/QH13 (Law on Employment), "Responsibility for training and retraining to improve occupational skills qualifications: 1. Employers shall organize training and retraining to improve occupational skills qualifications and use workers under approved plans; use funds for eligible workers and proper purposes and report training results to competent state agencies after completion of training or retraining courses.", *available at* http://www.itpc.gov.vn/investors/how_to_invest/law/Law_No.38_2013_2/mldocument_view/?set_language=en (accessed October 20, 2018).

Vietnamese Workers Working Overseas under Contracts (2006). The Vietnamese government's policies on Vietnamese migrant workers are to create favorable conditions for qualified Vietnamese citizens to work abroad; to protect the lawful rights and interests of migrant workers, enterprises and non-business organizations sending workers abroad; to support investment in opening new labor markets, high-income markets and markets receiving large numbers of workers; to support job training and foreign-language teaching for workers; to adopt preferential credit policies for social policy beneficiaries to work abroad; and to encourage the sending of workers with professional and technical skills abroad and the sending of workers to high-income markets.¹⁸²

Vietnamese workers may work overseas in one of the following forms:¹⁸³

¹⁸² Article 5 of Law No. 72/2006/QH11 (Law on Vietnamese Guest Workers), "State policies on Vietnamese guest workers:

1. To create favorable conditions for qualified Vietnamese citizens to work abroad.
2. To protect the lawful rights and interests of guest workers, enterprises and non-business organizations sending workers abroad.
3. To support investment in opening new labor markets, high-income markets and markets receiving large numbers of workers; support administrator training, job training and foreign-language teaching for workers.
4. To adopt preferential credit policies for social policy beneficiaries to work abroad.
5. To encourage the sending of many workers with professional and technical skills abroad, the sending of workers to high-income markets, to foreign-based constructions, projects, production or business establishments set up or invested by contract-winning or -receiving enterprises, organizations or individuals.", available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3788 (accessed October 20, 2018).

¹⁸³ Article 6 of Law No. 72/2006/QH11 (Law on Vietnamese Guest Workers), "Forms of work overseas: Workers may work overseas in one of the following forms:

1. Under contracts signed with enterprises providing guest worker services or with non-business organizations licensed to send workers abroad;
2. Under guest worker contracts signed with contract-winning or -receiving enterprises or with offshore-investing organizations or individuals that send workers abroad.
3. Under guest worker contracts in the form of skill-improvement internship contracts, signed with enterprises sending workers abroad for internship to improve their skills; (*continued on next page*)

- (1) Under contracts signed with enterprises providing guest worker services or with non-business organizations licensed to send workers abroad;
- (2) Under guest worker contracts signed with contract-winning enterprises or with offshore-investing organizations or individuals that send workers abroad.
- (3) Under guest worker contracts in the form of skill-improvement internship contracts, signed with enterprises sending workers abroad for internship to improve their skills;
- (4) Under individual contracts.

Vietnamese workers are prohibited to work abroad in certain areas, industries or jobs in order to ensure safety for migrant workers, such as: combat zones or zones with threat of hostilities, the affected-by-radioactivity zones, the contaminated areas, the having-particularly-dangerous epidemic disease zones, and regions where the host country prohibits foreign workers. Vietnamese migrant workers are also forbidden to work in certain occupations which are extremely hard, harmful, or dangerous or occupations that have negative effect on the Vietnamese fine customs.¹⁸⁴

A Vietnamese worker working abroad has many rights which are protected under the Law,¹⁸⁵ such as: the right to request information on Vietnamese policies and laws on migrant

(continued from footnote 183)

4. Under individual contracts.”, available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3788 (accessed October 20, 2018).

¹⁸⁴ Article 1 of Decree No. 126/2007/NC-DP (Decree Detailing and Guiding the Implementation of a Number of Articles of the Law on Vietnamese Laborers to Work Aboard under the Contract), “Zones, business lines, and jobs prohibited to work abroad (clause 4 Article 7 of the Law): 1. They are the zones with hostilities or threat of hostilities, the affected-by-radioactivity zones, the contaminated areas, the having-particularly-dangerous epidemic disease zones. 2. The areas where the State shall receive labor and ban foreign workers from working. 3. The occupations and extremely hard, harmful and dangerous works not in accordance with the constitution of Vietnamese; works affecting fine customs of Vietnam on the prohibited list provided attached to this Decree.”, available at <https://vanbanphapluat.co/decreed-no-126-2007-nd-cp-detailing-and-guiding-the-implementation-of-a-number> (accessed October 20, 2018).

¹⁸⁵ Article 44 of Law No. 72/2006/QH11 (Law on Vietnamese Guest Workers), *(continued on next page)*

workers as well as information on relevant policies, laws, customs and practices of the host country; to receive wages, payments and other incomes, medical examination and treatment, social insurance and other benefits under contracts; to have his/her rights and interests protected while working abroad by the enterprise, organization, or individual that sends him/her abroad and by the foreign-based Vietnamese diplomatic mission or consulate in accordance with Vietnamese law, the law of the host country as well as the international law and practice; to be advised on and supported in the exercise of their rights and enjoyment of benefits stated in the labor contract or internship contract; to transfer home his/her salary, remunerations, incomes and other personal properties in accordance with the laws of Vietnam and the host country; to enjoy the benefits from the overseas employment support fund under the provisions of law; and to file complaints or denunciations or bring lawsuits against illegal acts in the sending of workers abroad.

(continued from footnote 185)

“Rights of guest workers: A guest worker has the following rights:

1. To request the enterprise, non-business organization, offshore-investing organization or individual to supply information on Vietnamese policies and law on guest workers; information on relevant policies and laws as well as customs and practice of the host country; and on rights and obligations of related parties while he/she works abroad.
2. To enjoy salaries, remunerations and other incomes, medical examination and treatment, social insurance and other benefits provided for in contracts as well as the treaty or agreement defined in Clause 1 or 2, Article 40 of this Law.
3. To have his/her lawful rights and interests protected while working abroad by the enterprise, non-business organization, offshore-investing organization or individual and by the foreign-based Vietnamese diplomatic mission or consulate in accordance with the Vietnamese law, the law of the host country as well as the international law and practice; to be advised on and supported in the exercise of their rights and enjoyment of benefits stated in the labor contract or internship contract.
4. To transfer home his/her salary, remunerations, incomes and other personal properties in accordance with the laws of Vietnam and the host country.
5. To enjoy the benefits from the overseas employment support fund under the provisions of law.
6. To lodge complaints or denunciations or initiate lawsuits against illegal acts in the sending of workers abroad.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3788 (accessed October 20, 2018).

Vietnamese workers who work overseas under contracts signed with enterprises providing guest worker services or with non-business organizations licensed to send workers abroad, or under guest worker contracts signed with contract-winning enterprises or with offshore-investing organizations or individuals have further rights, such as to sign a guest worker contract with the enterprise, organization or individual; to receive training in work skills and foreign language skills to meet the requirements of the employment contract; to borrow money from a credit institution in order to work abroad; to receive compensation in case the enterprise, organization or individual breaches the guest worker contract, and to renew the employment contract or sign a new employment contract in accordance with the law of the host country.¹⁸⁶

Enterprises providing guest worker services are strictly regulated. They must fulfill the authorized capital requirement, obtain permits to send worker abroad when meeting all of the statutory conditions, register their labor supply contracts with MOLISA and seek MOLISA's approval of those contracts. In addition, they must deposit an amount of money with the competent agency to secure their obligations to the migrant workers under contract, and must comply with the reporting requirements stipulated by the law.¹⁸⁷

¹⁸⁶ Article 46 of Law No. 72/2006/QH11 (Law on Vietnamese Guest Workers), "Rights and obligations of guest workers under guest worker contracts with service enterprises: Apart from the rights and obligations provided in Articles 44 and 45 of this Law, a guest worker under a guest worker contract with a service enterprise has the following rights and obligations: ...

2. To receive training in job and foreign language skills to meet the requirements of the labor contract.
3. To be entitled to borrow capital from a credit institution in accordance with law in order to work abroad.
4. To enjoy compensation in case the service enterprise breaches the guest worker contract.
5. To extend the labor contract or sign a new labor contract in accordance with the law of the host country."

, available at http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3788 (accessed October 20, 2018).

¹⁸⁷ Article 8 of Law No. 72/2006/QH11 (Law on Vietnamese Guest Workers), "Enterprises providing guest worker services:

1. The provision of guest worker services is a conditional business line.
2. Enterprises providing guest worker services (below called service enterprises) must have legal capital under

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3.4 Laws Concerning Public Health

Vietnam's health sector has witnessed some dynamic changes during the last 20 years. The transition from a command economy in the 1980s and the implementation of a series of neoliberal health policy reform measures in 1989 affected the delivery and financing of Vietnam's health care services. The legalization of private medical practice, liberalization of the pharmaceutical industry, and introduction of user charges at public health facilities have effectively transformed Vietnam's nearly universal, publicly-funded and provided health services into a highly unregulated private-public mix system.

The biggest concern of the Vietnamese government is to make healthcare universal and affordable to its population. Along with the improvement of the social welfare, Vietnam has made efforts to improve the legal framework in relation with the healthcare sector. In recent years, a number of laws concerning public health have been passed, such as:

- Law No. 21-LCT/HDNN8 passed by the National Assembly on June 30, 1989 on Protection of People's Health (hereinafter "**Law on Protection of People's Health**");
- Law No. 25/2008/QH12 passed by the National Assembly on November 14, 2008 on Health Insurance (amended by Law No. 46/2014/QH13 passed by the National Assembly on June 13, 2014) (hereinafter "**Law on Health Insurance**");
- Law No. 40/2009/QH12 passed by the National Assembly on November 23, 2009 on Medical Examination and Treatment (hereinafter "**Law on Medical Examination and Treatment**");

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government regulations and guest worker service-provision licenses granted by a competent state agency.

3. Licensed enterprises shall directly organize the provision of guest worker services.

4. The Government shall specify types of enterprises allowed to provide guest worker services based on the domestic socio-economic development situation in each period and the international economic integration roadmap.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3788 (accessed October 20, 2018).

- Law No. 105/2016/QH13 passed by the National Assembly on April 6, 2016 on Pharmacy (hereinafter “**Law on Pharmacy**”);
- Law No. 55/2010/QH12 passed by the National Assembly on June 17, 2010 on Food Safety (hereinafter “**Law on Food Safety**”);
- Law No. 03/2007/QH12 passed by the National Assembly on November 21, 2007 on Prevention and Control of Infectious Diseases (hereinafter “**Law on Prevention and Control of Infectious Diseases**”);
- Law No. 64/2006/QH11 passed by the National Assembly on June 29, 2006 on Prevention and Control of HIV/AIDS;
- Law No.23/2000/QH10 passed by the National Assembly on December 9, 2000 on Prevention and Fight against Drugs (Narcotics) (amended by Law No. 16/2008/QH12 passed by the National Assembly on June 3, 2008) (hereinafter “**Law on Prevention and Fight against Drugs**”);
- Law No. 09/2012/QH13 passed by the National Assembly on June 8, 2012 on Prevention and Control of Tobacco Harms (hereinafter “**Law on Prevention and Control of Tobacco Harms**”); and so on.

3.4.1 Laws on Public Health

The Law on Protection of People’s Health only provides general principles for the protection of people’s health. For example, “citizens have the right to health protection, rest, recreation, exercise, and occupational hygiene, nutritional hygiene, and living environmental sanitation and health care.”¹⁸⁸ Health protection is the responsibility of the entire population. “The

¹⁸⁸ Article 1(1) of Law No. 21-LCT/HDNN8 (Law on Protection of Peoples Health), “Rights and obligations of citizens in health protection: 1 - Citizens have the right to be protected health, taken a rest, recreated, and done their excercises; be guaranteed occupational hygiene, nutritional hygiene, and living environmental sanitation and to be served medical care.”, *available at* <https://vanbanphapluat.co/law-no-21-lct-hdnn8-of-june-30-1989-of-people-s-health> (accessed October 20, 2018).

State takes care to protect and enhance people's health, incorporates the issue of protection of people's health into the economic - social development plans and state budget, and decides on the policies and measures to protect and improve people's health.”¹⁸⁹ “The Ministry of Health is responsible for management and improvement of quality and development of the systems for disease prevention, epidemic combat, medical examination and treatment, production and circulation of drugs and medical devices, and inspection of the implementation of the regulations on professional skill of health services and pharmacy.”¹⁹⁰

a) Laws on Health Insurance

Social health insurance was first introduced in Vietnam in 1992. From 1992 to present, the scope of health insurance coverage has been continuously expanded. In 2008, the National Assembly passed the Law on Health Insurance, which was later amended in 2014 (effective from January 1, 2015). The amendment in 2014, aiming to achieve universal health insurance coverage, has made health insurance a form of compulsory insurance implemented by the State to take care of the health of the insured for non-profit purposes.

Methods of Payment for Health Insurance

The employers must pay monthly health insurance premiums for the employees and transfer the premiums deducted from the employees' salaries to the health insurance fund. The health insurance agencies must pay monthly health insurance premiums to the health insurance

¹⁸⁹ Article 3(1) of Law No. 21-LCT/HDNN8 (Law on Protection of Peoples Health), “Responsibilities of the State: 1 - State takes care to protect and enhance people's health; set the protection of people's health into the economic - social development plans and state budget; decide on the regime and policies and measures to protect and improve people's health.”, *available at* <https://vanbanphapluat.co/law-no-21-lct-hdnn8-of-june-30-1989-of-people-s-health> (accessed October 20, 2018).

¹⁹⁰ Article 3(2) of Law No. 21-LCT/HDNN8 (Law on Protection of Peoples Health), “2 - Ministry of Health is responsible for management, completion, improvement of quality and development of disease prevention system, anti-epidemic, medical examination and treatment, production and circulation of drugs and medical devices, inspection of the implementation of the regulations on professional skill of health services and pharmacy.”, *available at* <https://vanbanphapluat.co/law-no-21-lct-hdnn8-of-june-30-1989-of-people-s-health> (accessed October 20, 2018).

fund. The State budget must transfer the quarterly health insurance premiums and support to the health insurance fund. The representatives of the households, organizations and individuals must periodically send the quarterly, biannual or annual payments subject to their responsibilities to the health insurance fund.¹⁹¹

Costs Covered by Health Insurance

The health insurance fund covers costs of medical examination and treatment, function rehabilitation, regular pregnancy check-ups and birth giving, and costs of transfer of the patients from district hospitals to superior hospitals with regard to the provisions of laws.¹⁹²

¹⁹¹ Article 15 of Law No. 25/2008/QH12 (Law on Health Insurance), “Methods of payment of health insurance premiums:

1. Monthly, employers shall pay health insurance premiums for employees and make deductions from the latter's salaries and remuneration for payment of health insurance premiums into the health insurance fund.
2. For agricultural, forestry, fishery and salt-making enterprises which do not pay salaries on a monthly basis, employers shall, once every three or six months, pay health insurance premiums for employees and make health insurance premiums from the latter's salaries or remuneration for paying into the health insurance fund.
3. Monthly, social insurance institutions shall pay health insurance premiums for persons defined in Clauses 3, 4, 5, 6 and 8, Article 12 of this Law, into the health insurance fund.
4. Annually, agencies and organizations managing persons defined in Clauses 7, 9, 10, 11, 12, 13, 14, 17 and 18, Article 12 of this Law shall pay health insurance premiums for these persons into the health insurance fund.
5. Annually, agencies and organizations managing people with meritorious services to the revolution and persons defined at Points a, b and c, Clause 16, Article 12 of this Law shall pay health insurance premiums for their relatives into the health insurance fund.
6. Monthly, scholarship-awarding agencies, organizations and units shall pay health insurance premiums for persons defined in Clause 19, Article 12 of this Law, into the health insurance fund.
7. The Government shall specify methods of payment of health insurance premiums for persons defined in Clauses 20, 21, 22, 23, 24 and 25, Article 12 of this Law.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10507 (accessed October 20, 2018).

¹⁹² Art. 21(1) of Law No. 25/2008/QH12 (Law on Health Insurance), “Scope of health insurance benefits:

1. The insured has the following costs covered by the health insurance fund:
 - a) Costs of medical examination and treatment, function rehabilitation, regular pregnancy check-ups and birth giving;
 - b) (Repealed by Law No. 46/2014/QH13)

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The Law on Health Insurance also specifies cases not eligible for health insurance benefits, such as convalescence at convalescence establishments; medical check-up; prenatal tests and diagnosis for non-treatment purposes; use of obstetric supportive techniques, family planning services or abortion services; use of aesthetic services; medical examination and treatment for addiction to drugs or alcohol, etc.¹⁹³

If the insured receives medical services at the medical establishment where he/she registers to have medical examination and treatment, the health insurance fund typically covers 80% of the medical costs. For some prioritized groups such as persons in the armed forces, war veterans, children under 6 years old, the poor or the ethnic persons who live in disadvantaged areas, etc., in such case, the health insurance covers full amount of the medical costs.¹⁹⁴

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c) Costs of transferal from district hospitals to higher-level hospitals, for persons defined in Clauses 9, 13, 14, 17 and 20, Article 12 of this Law in case of emergency or for inpatients who need technical transferal.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10507 (accessed October 20, 2018).

¹⁹³ Article 21(1) of Law No. 25/2008/QH12 (Law on Health Insurance), "Scope of health insurance benefits:

1. The insured has the following costs covered by the health insurance fund:

a) Costs of medical examination and treatment, function rehabilitation, regular pregnancy check-ups and birth giving;

b) (Repealed by Law No. 46/2014/QH13)

c) Costs of transferal from district hospitals to higher-level hospitals, for persons defined in Clauses 9, 13, 14, 17 and 20, Article 12 of this Law in case of emergency or for inpatients who need technical transferal.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10507 (accessed October 20, 2018).

¹⁹⁴ Article 22(1) of Law No. 25/2008/QH12 (Law on Health Insurance), "Levels of health insurance benefits: 1. An insured who uses medical care services defined in Articles 26, 27 and 28 of this Law has medical care costs covered by the health insurance fund at the following levels:

a) 100% of the costs, for persons defined in Clauses 2, 9 and 17, Article 12 of this Law;

b) 100% of the costs, for cases in which the cost of a check-up is below the level prescribed by the Government and conducted at a commune hospital;

c) 95% of the costs, for persons defined in Clauses 3, 13 and 14, Article 12 of this Law;

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b) Law on Medical Examination and Treatment

The Law on Medical Examination and Treatment was enacted in 2009, creating a standard for both public and private medical practice.

Rights and Obligations of Patients

The Law provides that patients have the rights to medical examination and treatment with quality, respect for privacy, respect for honor and protection of health in medical examination and treatment, freedom of choice in medical examination and treatment, provision of information on case history dossiers and medical examination and treatment expenses, refusal of medical treatment and discharge from medical examination and treatment establishments.¹⁹⁵ Patients have the obligations to respect practitioners, to observe regulations on medical examination and treatment, and to pay medical examination and treatment expenses.¹⁹⁶

Medical Practitioners

To practice medicine, medical practitioners, including doctors, assistant doctors, nurses, midwives, technicians, herbalists, and owners of family herbal remedies or treatment methods, must obtain medical practice certificates.¹⁹⁷ For Vietnamese nationals, they must fulfill four requirements:¹⁹⁸

(continued from footnote 194)

d) 80% of the costs, for other persons.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10507 (accessed October 20, 2018).

¹⁹⁵ Article 7-12 of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

¹⁹⁶ Article 14-16 of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

¹⁹⁷ Article 17 of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), “Applicants for medical practice certificates: 1. Doctors, assistant doctors. 2. Nurses. 3. Midwives. 4. Technicians. 5. Herbalists. 6. Owners of family herbal remedies or treatment methods.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

¹⁹⁸ Article 18 of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), “Conditions for Vietnamese to obtain a medical practice certificate: *(continued on next page)*”

(1) possessing professional diplomas in health granted or recognized in Vietnam, or certificates of herbalists, or certificates of owners of family herbal remedies or treatment methods, depending on their forms of medical practice; (2) possessing a written certification of the practice duration, except for herbalists and owners of herbal remedies or treatment methods; (3) possessing a health certificate for practicing medical examination and treatment; and (4) not falling into cases of being banned from professional practice. For foreigners and overseas Vietnamese, to obtain a medical practice certificate in Vietnam, in addition to the above requirements, they must also meet the requirements on language skills, have judicial history records certified by competent authorities of their own countries, and obtain a work permit granted by a competent Vietnamese state agency in charge of labor.¹⁹⁹ A medical practice certificate is granted once and is valid nationwide.²⁰⁰

(continued from footnote 198)

1. To possess any of the following diplomas and certificates relevant to the form of medical practice: a/ Professional diplomas in health granted or recognized in Vietnam: b/ Certificates of herbalists; c/ Certificates of owners of herbal remedies or treatment methods. 2. To possess a written certification of the practice duration, except for herbalists and owners of herbal remedies or treatment methods. 3. To possess a health certificate for practicing medical examination and treatment. 4. Not to fall into cases of being banned from professional practice or work related to the medical or pharmaceutical profession under court rulings or decisions; being examined for penal liability: serving penal sentences or rulings of courts or administrative sanction decisions on confinement to educational or medical treatment establishments: being disciplined by caution or a higher level related to professional medical examination and treatment; or losing civil act capacity or having civil act capacity restricted.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

¹⁹⁹ Article 19 of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), “Conditions for foreigners and overseas Vietnamese to obtain a medical practice certificate in Vietnam: 1. To meet all the conditions specified in Article 18 of this Law. 2. To meet requirements on language skills in medical examination and treatment specified in Article 23 of this Law. 3. To have judicial history records certified by competent authorities of their own countries. 4. To possess a work permit granted by a competent Vietnamese state agency in charge of labor under the labor law.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

²⁰⁰ Article 25(2) of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), “2. A medical
(continued on next page)

Medical Establishments

Forms of medical examination and treatment establishments include hospital; medical assessment establishment; general clinic; specialized clinic, family doctor clinic; traditional medicine diagnosis and treatment clinic; obstetrics clinic; diagnosis establishment; health service establishment; commune-level health center and equivalent; and other forms of medical examination and treatment.²⁰¹

(continued from footnote 200)

practice certificate shall be granted once and is valid nationwide.” In addition, a medical practice certificate is valid for a life-time and has no expiration date. Medical practitioners have to apply for a reissuance only when their certificates are lost, damaged, or revoked by the competent government agencies due to violations of law.

See Article 25 (4) of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), “4. A practitioner who loses his/her medical practice certificate or whose medical practice certificate is damaged may be granted another certificate.” and Article 27(3)) of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), “3. Those losing their medical practice certificates, or with damaged ones, or having such certificates revoked under Points a and b. Clause 1, Article 29 of this Law shall only make a written application for a re-granted medical practice certificate.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

²⁰¹ Article 41(1) of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), “Organizational forms of medical examination and treatment establishments:

1. Organizational forms of medical examination and treatment establishments include:

a/ Hospital:

b/ Medical assessment establishment:

c/ General clinic;

d/ Specialized clinic, family doctor clinic;

e/ Traditional medicine diagnosis and treatment clinic;

f/ Obstetrics clinic:

g/ Diagnosis establishment:

h/ Health service establishment;

i/ Commune-level health center and equivalent;

j/ Other forms of medical examination and treatment.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

Medical examination and treatment establishments must have a decision of incorporation issued by a competent state agency, for medical establishments set up by the State, or a business registration certificate or investment license for other medical establishments, and must obtain an operation license granted by the Minister of Health, the Minister of Defense or the Director of a Provincial-level Health Department.²⁰² A medical establishment may obtain an operation license when it (1) meets requirements under national technical regulations on medical examination and treatment establishments promulgated by the Minister of Health, (2) has sufficient practitioners relevant to its scope of professional operation, and (3) the person responsible for its professional and technical operations must have provided medical examination and treatment for at least 36 months.²⁰³

“Prohibited Acts

1. Refusing to provide or intentionally delaying first aid for patients.

²⁰² Article 42 of of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), “Conditions on operation of medical examination and treatment establishments:

1. To have an establishment decision issued by a competent state agency, for medical examination and treatment establishments set up by the State, or a business registration certificate or investment license under law. for other medical examination and treatment establishments.
2. To possess an operation license granted by the Minister of Health, the Minister of National Defense or the director of a provincial-level Health Department.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

²⁰³ Article 43(1) of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), “Conditions for a medical examination and treatment establishment to obtain an operation license:

1. A medical examination and treatment establishment may obtain an operation license when fully meeting the following conditions:
 - a/ To meet requirements under national technical regulations on medical examination and treatment establishments promulgated by the Minister of Health;
 - b/ To have sufficient practitioners relevant to its scope of professional operation;
 - c/ The person responsible for its professional and technical operations must have provided medical examination and treatment for at least 36 months.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

2. Providing medical examination and treatment without a medical practice certificate or an operation license or during the time subject to suspension from professional practice or operation.
3. Practicing medical examination and treatment or providing medical examination and treatment services outside the scope of professional operation under a medical practice certificate or operation license, except cases of emergency.
4. Hiring, borrowing, leasing or lending medical practice certificates or operation licenses.
5. Practitioners selling drugs to patients in any forms, except herb doctors, herb assistant doctors, herbalists and owners of family remedies.
6. Applying medical professional methods and techniques which have not been recognized and using drugs which have not been licensed for circulation, in medical examination and treatment.
7. Advertising professional capacity and qualifications untruthfully or beyond the scope of professional operation under medical practice certificates or operation licenses; abusing traditional herbal medicament knowledge or other medical knowledge to advertise treatment methods or drugs untruthfully.
8. Using superstitions in medical examination and treatment.
9. Practitioners drinking alcohol or beer or smoking or having an alcoholic concentration in blood or breath when providing medical examination and treatment.
10. Infringing patients' rights; failing to observe professional and technical regulations in medical examination and treatment; taking advantage of positions and powers in medical examination and treatment: abusing the profession to harm the honor, dignity and body of patients: erasing and modifying case history dossiers to falsify information on medical examination and treatment.
11. Harming the health, life, honor and dignity of practitioners.

12. Obstructing patients in need of compulsory treatment in admitting to medical establishments or intentionally providing treatment for those not in need of compulsory treatment.
13. Medical officials, civil servants and public employees establishing, engaged in the establishment or management and administration of, private hospitals or medical establishments set up and operating under the Enterprise Law or the Law on Cooperatives, unless they are assigned by competent state agencies to manage and administer state-funded medical examination and treatment establishments.
14. Bribe giving, taking and broking in medical examination and treatment.”²⁰⁴

3.4.2 Laws Concerning Contagious Diseases (Infectious Diseases)

The Law on Prevention and Control of Infectious Diseases (2007) sets forth basic principles and measures for prevention and control of infectious diseases; border quarantine; epidemic combat; and conditions to assure the prevention and control of infectious diseases in humans.

a) Classification of Infectious Diseases

Infectious disease means a disease that transmits directly or indirectly from humans or animals to humans due to agents of infectious disease, which include viruses, bacteria, parasites or fungi capable of causing an infectious disease. Infectious diseases are divided into three classes:²⁰⁵

²⁰⁴ Article 6 of Law No. 40/2009/QH12 (Law on Medical Examination and Treatment), *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471 (accessed October 20, 2018).

²⁰⁵ Article 3(1) of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Classification of infectious diseases: 1. Infectious diseases are divided into the following classes:
a/ Class A, consisting of extremely dangerous infectious diseases that can transmit very rapidly and spread widely with high mortality rates or with unknown agents.

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(i) Class A, consisting of extremely dangerous infectious diseases that can transmit very rapidly and spread widely with high mortality rates or with unknown agents, including poliomyelitis, influenza A-H5N1, plague, smallpox, Ebola virus, Lassa virus and Marburg virus hemorrhagic fever, West Nile fever, yellow fever cholera, SARS and dangerous infectious diseases newly emerging and with unknown agents.

(ii) Class B, consisting of dangerous infectious diseases that can rapidly transmit and can be fatal, such as HIV/AIDS, influenza, tuberculosis, mumps, malaria, scarlet fever, measles; chicken pox, typhoid, etc.

(iii) Class C, consisting of less dangerous infectious diseases that are not rapidly transmittable, such as worm-related diseases.

b) Principles and Policies of Prevention and Control of Infectious Diseases

The Law on Prevention and Control of Infectious Diseases sets forth four principles in

(continued from footnote 205)

Class-A infectious diseases include poliomyelitis; influenza A-H5N1; plague; smallpox; Ebola virus, Lassa virus and Marburg virus hemorrhagic fever; West Nile fever; yellow fever; cholera; SARS and dangerous infectious diseases newly emerging and with unknown agents;

b/ Class B, consisting of dangerous infectious diseases that can rapidly transmit and be fatal.

Class-B infectious diseases include adenovirus disease; HIV/AIDS; diphtheria; influenza; rabies; pertussis; pulmonary tuberculosis; human streptococcus suis; amebiasis; bacillary dysentery; mumps; dengue fever; dengue hemorrhagic fever; malaria; scarlet fever; measles; hand-foot-mouth disease; anthrax; chicken pox; typhoid; tetanus; German measles; viral hepatitis; Neisseria meningitis; viral meningitis; leptospirosis; Rota virus diarrhea;

c/ Class C, consisting of less dangerous infectious diseases that are not rapidly transmittable.

Class-C infectious diseases include Chlamydia; syphilis; worm-related diseases; gonorrhea; trachoma; Candida Albicans disease; Nocardia disease; leprosy; Cytomegalo virus disease; herpes; taeniasis; fascioliasis; paragonimiasis; Fasciolopsis buski; scrub typhus; Rickettsia fever; Hantavirus hemorrhagic fever; trichomonas; Pyodermatitis; coxsackie virus pharyngitis, stomatitis and carditis; Giardiasis; Vibrio Parahaemolyticus enteritis, and other infectious diseases.”, *available at* http://moj.gov.vn/vb-pq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

preventing and dealing with infectious diseases:²⁰⁶

(1) Prevention is crucial with information, education, communication and surveillance regarded as major measures. Technical medical measures must be combined with social and administrative measures.

(2) There must be inter-sector coordination and social mobilization in the prevention and control of infectious diseases, and the prevention and control of infectious diseases must be integrated into socio-economic development programs.

(3) Information on epidemics must be publicized timely and accurately.

(4) Anti-epidemic activities must be carried out in a proactive, active, timely and thorough manner. The State's policies on prevention and control of infectious diseases are²⁰⁷ "(1) to prioritize and support preventive medical training; (2) to prioritize investment in enhancing the capacity for surveillance personnel and systems to detect infectious diseases and in the research and production of vaccines and bio-medical products; (3) to support and encourage scientific researches, exchanges and trainings of specialists and transfer of technology in the prevention and control of infectious diseases; (4) to support medical treatment for persons suffering from

²⁰⁶ Article 4 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Principles of prevention and control of infectious diseases:

1. Prevention of disease is key with infectious disease information, education and communication and surveillance regarded as major measures. To combine technical medical measures with social and administrative measures in preventing and controlling infectious diseases.

2. To organize inter-branch coordination and social mobilization in the prevention and control of infectious diseases; to integrate activities of prevention and control of infectious diseases into socio-economic development programs.

3. To publicize in a timely manner accurate information on epidemics.

4. To carry out anti-epidemic activities in a proactive, active, timely and thorough manner.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²⁰⁷ Article 5 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

infectious diseases due to occupational risks and in other necessary cases; (5) to support compensation for the cull of cattle and poultry carrying agents of infectious disease; (6) to mobilize contributions in terms of finance, technique and labor from the entire society to the prevention and control of infectious diseases; (7) to expand cooperation with international organizations and other countries in the region and the world in the prevention and control of infectious diseases.”

The Law prohibits the intentional transmission of agents of infectious disease.²⁰⁸ The persons carrying an infectious disease and the persons suspected of carrying an infectious disease and pathogen carriers are prohibited from performing jobs likely to transmit agents of infectious disease. The Law also prohibits other acts such as concealing or failing to report timely infectious disease cases; intentionally reporting false information on infectious diseases; discriminating against and publishing negative images of and information on persons suffering from an infectious disease; failing to take measures for preventing and controlling infectious diseases in a timely manner; and failing to comply with measures for preventing and controlling infectious diseases at the request of competent agencies and organizations.²⁰⁹

²⁰⁸ A person who intentionally transmits agents of infectious diseases to others will be subject to criminal liability (one year to five years in prison, or up to 12 years in prison in very serious cases). See Article 186 of Law No. 15/1999/QH10 (Penal Code), “Spreading dangerous epidemics to human beings:

1. Those who commit one of the following acts of spreading dangerous epidemics to other persons, shall be sentenced to between one and five years of imprisonment:

a) Taking out of epidemic areas animals, plants, animal or plant products or other objects capable of spreading dangerous epidemics to human beings;

b) Bringing into or permitting to bring into Vietnam animals, plants or animal or plant products, which are infected with diseases or carry dangerous disease germs capable of spreading to human beings;

c) Other acts of spreading dangerous epidemics to human beings.” However, intentional transmission of HIV to another person shall be penalized under a separate law provision. See Article 117 of Law No. 15/1999/QH10 (Penal Code), “Spreading HIV to other persons: 1. Those who know that they are infected with HIV and intentionally spread the disease to other persons shall be sentenced to between one and three years of imprisonment. “, available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46817423.pdf> (accessed June 30, 2015).

²⁰⁹ Article 8 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Prohibited acts: (continued on next page)

c) Prevention of Infectious Diseases

The Law provides the following measures to prevent infectious diseases: (1) providing information, education and communication on the prevention of infectious diseases; (2) sanitation measures; (3) surveillance of infectious diseases; (4) biosafety in testing; (5) use of vaccines and bio-products for prevention of diseases; and (6) measures to prevent the transmission of infectious diseases within medical examination and treatment establishments.

(1) Information and Education Measures

All the people are entitled to gain access to information on the prevention and control of infectious diseases.²¹⁰ Institutions in charge of information and education include the armed forces, the Ministry of Health, Ministry of Information and Communications, Ministry of Education

(continued from footnote 209)

1. Intentionally transmitting agents of infectious disease.
2. Persons suffering from an infectious disease, persons suspected of suffering from an infectious disease and pathogen carriers are prohibited from performing jobs likely to transmit agents of infectious disease as prescribed by law.
3. Concealing and failing to report or reporting not in a timely manner cases of contracting infectious diseases in accordance with law.
4. Intentionally declaring or reporting untrue information on infectious diseases.
5. Discriminating against and publishing negative images of and information on persons suffering from an infectious disease.
6. Failing to apply or applying not in a timely manner measures for preventing and controlling infectious diseases as prescribed by this Law.
7. Failing to comply with measures for preventing and controlling infectious diseases at the request of competent agencies and organizations.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²¹⁰ Article 10(1) of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Target groups of information, education and communication on prevention and control of infectious diseases: 1. Everyone is entitled to access to information, education and communication on prevention and control of infectious diseases.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

and Training, other ministries and agencies, the People's Committees at all levels, and the media.²¹¹

(2) Sanitation Measures

Educational institutions must be built in high and clean areas far from polluting places and have sufficient clean water and toilet facilities, spacious and adequately lit classrooms. Food provided in these institutions must meet quality, hygiene and safety standards. These institutions

²¹¹ Article 12 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Responsibilities for information, education and communication on prevention and control of infectious diseases:

1. Agencies, organizations and people's armed forces units shall, within the scope of their respective tasks and powers, conduct information, education and communication on prevention and control of infectious diseases.
2. The Ministry of Health shall assume the prime responsibility for, and coordinate with concerned agencies in, providing accurate and timely information on infectious diseases.
3. The Ministry of Information and Communication shall direct mass media agencies to regularly supply information and conduct communication on prevention and control of infectious diseases and integrate programs on prevention and control of infectious diseases into other information and communication programs.
4. The Ministry of Education and Training shall assume the prime responsibility for, and coordinate with the Ministry of Health, the Ministry of Labor, War Invalids and Social Affairs and concerned ministries and ministerial-level agencies in, developing the contents of education about prevention and control of infectious diseases in combination with other education contents.
5. People's Committees at all level shall direct and organize the work of information, education and communication on prevention and control of infectious diseases in their localities.
6. Mass media agencies shall prioritize broadcasting time and volumes for information, education and communication on prevention and control of infectious diseases on radio and television stations; and volume and positions of articles and news on printed, audiovisual and electronic press according to regulations of the Ministry of Information and Communication. Information, education and communication on prevention and control of infectious diseases on the mass media are free of charge, unless these activities are conducted under separate contracts signed with programs or projects or financed by domestic or foreign individuals and organizations.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

are responsible for educating learners about sanitation for prevention and control of infectious diseases.²¹²

Clean water must meet national technical standards according to regulations of the Minister of Health. Clean water supply establishments must take technical measures to keep environmental sanitation and conduct self-examination to ensure the quality of clean water. The health authorities must regularly examine the quality of clean water supplied by these establishments and supervise regular medical check-up for laborers working at these establishments.²¹³

²¹² Article 13 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Sanitation for prevention and control of infectious diseases in education establishments within the national education system:

1. Education establishments must be built in high and clean areas far from polluting places and have sufficient clean water and toilet facilities, spacious and adequately lit classrooms; food provided in these establishments must be up to quality, hygiene and safety standards.
2. Education establishments are responsible for providing learners with education about sanitation for prevention and control of infectious diseases, including personal hygiene, sanitation in daily-life and working activities, and environmental sanitation.
3. Healthcare units of education establishments are responsible for providing public information on sanitation for disease prevention; examining and supervising environmental sanitation and food safety and hygiene, and applying measures for preventing and controlling infectious diseases.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²¹³ Article 14 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Sanitation in clean water supply, sanitation of water sources for daily-life use:

1. Clean water must ensure national technical standards according to regulations of the Minister of Health.
2. Clean water-supplying establishments shall apply technical measures to keep environmental sanitation and conduct self-examination to ensure the quality of clean water.
3. Competent state agencies in charge of health shall regularly examine the quality of clean water supplied by establishments and supervise the organization of regular medical checks-up for laborers working at these establishments.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

The raising, transportation, slaughter and cull of cattle, poultry and other animals must ensure sanitation to prevent causing pollution to the environment and water sources used for daily life and dispersing agents of infectious disease.²¹⁴

Organizations and individuals engaged in farming, cattle-raising, fishing, processing, packaging, preservation, transportation and trading of food must ensure that the food is not contaminated with agents of infectious disease and must comply with the laws on food hygiene and safety. Consumers have the right to gain access to information on food hygiene and safety; are responsible for keeping food safety and hygiene; fully comply with guidelines on food hygiene and safety; and report cases of food poisoning and food-borne diseases.²¹⁵

²¹⁴ Article 15 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Sanitation in the raising, transportation, slaughter and cull of cattle and poultry and other animals: 1. Raising, transportation, slaughter and cull of cattle, poultry and other animals must ensure sanitation, neither causing pollution to the environment and water sources used for daily life nor dispersing agents of infectious disease. 2. Competent state agencies in charge of animal health shall guide organizations and individuals to take measures to ensure sanitation in the raising, transportation, slaughter and cull of cattle, poultry and other animals to order to prevent transmission of diseases to humans.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²¹⁵ Article 16 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Food hygiene and safety: 1. Organizations and individuals engaged in cultivation, animal raising, gathering, fishing, preliminary processing, processing, packaging, preservation, transportation and trading of food shall ensure that food is not contaminated with agents of infectious disease and comply with other provisions of law on food hygiene and safety. 2. Consumers have the right of access to information on food hygiene and safety; are responsible for keeping food safety and hygiene; fully observe guidelines on food hygiene and safety; and report cases of food poisoning and food-borne diseases. 3. Competent state agencies in charge of food hygiene and safety shall guide organizations and individuals to take measures to ensure food hygiene and safety for preventing and controlling infectious diseases.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

Works under construction must comply with all national technical standards of sanitation in construction according to regulations of the Minister of Health. Investment projects on construction of industrial parks, urban centers, residential areas or infectious disease examination and treatment establishments can be implemented only after the health impact assessment reports have been appraised by competent health agencies. Infectious disease examination and treatment establishments and establishments likely to transmit agents of infectious disease must be located at an environmentally safe distance from residential areas and natural reserves.²¹⁶

Dead persons must be buried within 48 hours after death,²¹⁷ except for corpses preserved

²¹⁶ Article 17 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Sanitation in construction:

1. Works under construction must observe all national technical standards of sanitation in construction according to regulations of the Minister of Health.
2. Investment projects on construction of industrial parks, urban centers, residential areas or infectious disease examination and treatment establishments can be executed only after their health impact assessment reports have been appraised by competent health agencies.
3. Infectious disease examination and treatment establishments and establishments likely to transmit agents of infectious disease must be located at an environmentally safe distance from residential areas and nature reserves according to regulations of the Minister of Health.
4. Agencies, organizations and individuals shall assure sanitation in construction.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²¹⁷ Article 18 (1) of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Sanitation in the lying of corpses in state, embalmment, burial, and transportation of corpses or remains:

1. Dead persons must be buried within 48 hours after death, except for corpses preserved according to regulations of the Minister of Health; if the dead is a person suffering from an infectious disease or suspected of suffering from an infectious disease of class A, his/her corpse must be disinfected and buried within 24 hours.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018). In Vietnam, it is common for a family to bury a dead person. Burying timely is important and deemed as a sanitary measure to prevent the corpse’s decomposition from causing environmental pollution and diseases, especially if the dead person had an infectious disease before death. If the dead person is homeless, the local authorities at the commune level are responsible for burying the dead person at the local cemeteries. See Article 7 of Decree No. 35/2008/NC-DP (Decree on Construction, Management and use of Cemeteries), “Social policies towards special subjects: *(continued on next page)*

according to regulations of the Minister of Health. If the dead is a person suffering from an infectious disease or suspected of suffering from a class A infectious disease, his/her corpse must be disinfected and buried within 24 hours.²¹⁸

All agencies, organizations and individuals must take measures to keep clean their places of residence, public places, places of production and business and means of transport and duly treat industrial waste and garbage. Everyone is responsible for practicing personal hygiene to prevent infectious diseases.²¹⁹

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1. When homeless persons without relatives or with relatives who have no conditions to take care of the interment die in any localities, administrations of such localities shall pay all interment costs according to local conditions.
2. When sans-relative persons living in any localities die, the administrations of such localities shall organize the interment at local cemeteries with costs taken from the deceased's property (if any) or local budget.
3. Foreigners living in Vietnam and overseas Vietnamese, who wish to be interred in Vietnam after their death, will be considered and permitted for interment at cemeteries in Vietnam.
4. For those who die of natural calamities or epidemics, local administrations of all levels shall support and organize interment for the dead, meeting safety and anti-epidemic hygiene requirements without causing environmental pollution according to the Health Ministry's regulations.”, *available at* <https://luatminhkhue.vn/en/decreedecree-no-35-2008-nd-cp-dated-march-25-2008-of-the-government-on-construction-management-and-use-of-cemeteries.aspx> (accessed October 20, 2018).

²¹⁸ Article 18 (1) of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²¹⁹ Article 19 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Other sanitation activities for preventing infectious diseases:

1. Agencies, organizations and individuals shall take measures to keep clean their places of residence, public places, places of production and business and means of transport and treat industrial waste and garbage; and other measures to ensure sanitation in accordance with relevant legal provisions with a view to preventing the emergence and spread of infectious diseases.
2. Everyone is responsible for practicing personal hygiene to prevent infectious diseases.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

(3) Surveillance of Infectious Diseases

Surveillance of infectious diseases includes monitoring cases of infection, suspected infection and carrying of pathogens of infectious diseases, monitoring agents of infectious diseases, and monitoring vectors (transmitting intermediaries).²²⁰ Monitoring cases of infection, suspected infection and carrying pathogens of infectious disease is to collect information on places, time and cases of morbidity and mortality; status of disease; status of immunology; major demographic characteristics and other necessary information. In case of necessity, competent health agencies may take testing samples from persons suspected of suffering infectious diseases for monitoring.

Monitoring agents of infectious disease is to collect information relating to types, bio-characteristics and ways of transmission from sources of transmission. Monitoring vectors is to collect information relating to the quantity, density and composition of vectors and extent of their infection with agents of infectious disease.²²¹

²²⁰ Article 20 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Infectious disease surveillance activities:

1. Supervising cases of infection, suspected infection and carrying of pathogens of infectious diseases.
2. Supervising agents of infectious disease.
3. Supervising vectors.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²²¹ Article 21 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), Contents of infectious disease surveillance:

1. Supervising cases of infection, suspected infection and carrying pathogens of infectious disease is to collect information on places, time and cases of morbidity and mortality; status of disease; status of immunology; major demographic characteristics and other necessary information.

In case of necessity, competent health agencies may take testing samples from persons suspected of suffering infectious diseases for supervision.

2. Supervising agents of infectious disease is to collect information relating to types, bio-characteristics and ways of transmission from sources of transmission.

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Infectious disease surveillance reports, which include periodical reports, quick reports, and irregular reports, must be made in writing and sent to competent health agencies. Upon receiving reports, these agencies must process information and notify reporting agencies. If an epidemic is confirmed, they must immediately report to the superior health agencies and the persons having the authority to declare epidemics.²²²

(4) Biosafety in Testing

Laboratories must meet all biosafety requirements and may only conduct tests within their scope of specialization after obtaining biosafety standard conformity certificates from health agencies.²²³ The collection, transportation, preservation, storage, study, exchange and destruction of medical swabs related to agents of infectious disease must comply with regulations on management of medical swabs. Only qualified establishments may preserve, store, use, study, exchange and destroy medical swabs of class-A infectious diseases.²²⁴ Persons working

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3. Supervising vectors is to collect information relating to the quantity, density and composition of vectors and extent of their infection with agents of infectious disease., *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²²² Article 22 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Infectious disease surveillance report:

1. Infectious disease surveillance reports shall be sent to competent state agencies in charge of health. An infectious disease surveillance report contains information specified in Article 21 of this Law.

2. Infectious disease surveillance reports must be made in writing. In case of emergency, such a report may be transmitted by fax, e-mail, telegraph, telephone or verbally and a written version must be sent within 24 hours afterwards.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²²³ Article 24(1) of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Assurance of biosafety in laboratories: 1. Laboratories must satisfy biosafety conditions suitable to their level and may conduct tests within their scope of specialization after obtaining biosafety standard conformity certificates from state agencies in charge of health.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²²⁴ Article 25 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Management of medical swabs: *(continued on next page)*

in laboratories in contact with agents of infectious disease must be provided with training in knowledge and skills and personal protection outfits to prevent infection with agents of infectious disease, and they must strictly follow technical processes in conducting tests.²²⁵

(5) Use of Vaccines and Bio-Products for Prevention of Diseases

Vaccines and medical bio-products may be used voluntarily or mandatorily, and must be used for proper purposes and target groups and according to proper schedule, categories and technical processes at qualified health establishments.²²⁶

Everyone has the right to use vaccines and medical bio-products to protect the health of their own and their community. Medical practitioners and health workers directly involved in taking care of and treating persons suffering from infectious diseases and the persons working in

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1. The collection, transportation, preservation, storage, study, exchange and destruction of medical swabs related to agents of infectious disease must comply with regulations on management of medical swabs.
2. Only qualified establishments may preserve, store, use, study, exchange and destroy medical swabs of class-A infectious diseases.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²²⁵ Article 26 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Protection of persons working in laboratories:

1. Persons working in laboratories in contact with agents of infectious disease must be provided with training in knowledge and skills and personal protection outfits to prevent infection with agents of infectious disease.
2. Persons working in laboratories in contact with agents of infectious disease shall observe technical processes in conducting tests.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²²⁶ Article 27 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Principles of use of vaccines and medical bio-products:

1. Vaccines and medical bio-products in use must meet all conditions specified in Article 36 of the Pharmacy Law.
2. Vaccines and medical bio-products may be used voluntary or obligatory manner.
3. Vaccines and medical bio-products must be used for proper purposes and target groups and according to proper schedule, categories and technical processes.
4. Vaccines and medical bio-products must be used at qualified health establishments.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

laboratories in contact with agents of infectious diseases may use vaccines and medical bio-products free of charge.²²⁷ Persons who are at risk of contracting infectious diseases in epidemic zones and who are to enter epidemic zones are obliged to use vaccines and medical bio-products for diseases for which vaccines and medical bio-products are available. Children and pregnant women are obliged to use vaccines and medical bio-products for infectious diseases under the immunization program. Mandatory use of vaccines and medical bio-products are free of charge for persons at risk of contracting infectious diseases in epidemic zones; persons appointed by competent agencies to enter epidemic zones; and children and pregnant women.²²⁸

²²⁷ Article 28 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Voluntary use of vaccines and medical bio-products:

1. Everyone has the right to use vaccines and medical bio-products to protect the health of their own and their community.
2. The State shall support and encourage citizens to voluntarily use vaccines and medical bio-products.
3. Medical practitioners and health workers directly involved in taking care of and treating persons suffering from infectious diseases, person working in laboratories in contact with agents from infectious diseases may use free of charge vaccines and medical bio-products.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²²⁸ Article 29 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Obligatory use of vaccines and medical bio-products:

1. Persons who are at risk of contracting infectious diseases in epidemic zones and who are to enter epidemic zones are obliged to use vaccines and medical bio-products for diseases for which vaccines and medical bio-products are available.
2. Children and pregnant women are obliged to use vaccines and medical bio-products for infectious diseases under the expanded program on immunization.
3. Parents or guardians of children and everyone shall follow requests of competent health establishments in the obligatory use of vaccines and medical bio-products.
4. Obligatory use of vaccines and medical bio-products is free of charge in the following cases:
 - a/ Persons at risk of contracting infectious diseases in epidemic zones;
 - b/ Persons appointed by competent agencies to enter epidemic zones;
 - c/ Persons specified in Clause 2 of this Article.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

(6) Measures to Prevent the Transmission of Infectious Diseases Within Medical Examination and Treatment Establishments

These measures include isolation of persons suffering from infectious diseases; disinfection and sterilization of the environment and treatment of wastes at medical examination and treatment establishments; personal protection and personal hygiene; and other professional measures as prescribed by law.²²⁹ All concerned parties, such as the medical examination and treatment establishments, the medical practitioners and health workers, the patients and their relatives are responsible for complying with measures to prevent the transmission of infectious diseases.²³⁰

²²⁹ Article 31 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Measures for preventing transmission of infectious diseases within medical examination and treatment establishments:

1. Isolation of persons suffering from infectious diseases.
2. Disinfection and sterilization of the environment and treatment of wastes at medical examination and treatment establishments.
3. Personal protection, personal hygiene.
4. Other professional measures as prescribed by law.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²³⁰ Article 32 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Responsibilities of medical examination and treatment establishments in the prevention of transmission of infectious diseases:

1. To take isolation measures suitable to each class of diseases; to take comprehensive care of infectious disease patients. A patient who refuses to comply with the isolation request of a medical examination and treatment establishment shall be subjected to an isolation measure according to regulations of the Government.
2. To organize the implementation of measures to disinfect and sterilize the environment and treat wastes in medical examination and treatment establishments.
3. To ensure adequate protective outfits and personal hygiene conditions for medical practitioners, health workers, patients and patients' relatives.
4. To monitor the health of medical practitioners and health workers personally taking care of and treating persons suffering from class-A infectious diseases.
5. To report information relating to persons suffering from infectious diseases to preventive medicine agencies of the same level.

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d) Border Quarantine

Border quarantine includes medical declaration, medical inspection, and medical treatment if necessary. Border quarantine is conducted at border gates and is applied to persons and means of transport entering, leaving or transiting Vietnam; goods imported into, exported from, or transiting Vietnam; and corpses, remains, medical micro-organic samples, bio-products, tissues and parts of human bodies transported across Vietnam's borders.²³¹

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6. To take other professional measures in accordance with law." and Article 33 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Responsibilities of medical practitioners and health workers in the prevention of transmission of infectious diseases within medical examination and treatment establishments:

1. To take measures for preventing transmission of infectious diseases specified in Article 31 of this Law.
2. To give counseling on measures for preventing transmission of infectious diseases for patients and their relatives.
3. To keep secret information relating to patients." and Article 34 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Responsibilities of patients and their relatives in the prevention of transmission of infectious diseases within medical examination and treatment establishments:

1. Patients have the following responsibilities:

a/ To honestly declare the developments of their diseases;

b/ To strictly follow instructions of medical practitioners and health workers and rules of medical examination and treatment establishments;

c/ For persons suffering from a class-A infectious disease, immediately after being discharged from hospital, to register for health monitoring with health establishments of wards, communes or townships where they reside.

2. Patients' relatives shall follow instructions of medical practitioners and health workers and rules of medical examination and treatment establishments.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²³¹ Article 35 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Objects and places of border quarantine:

1. Border quarantine is applied to: a/ Persons entering, leaving or transiting Vietnam; b/ Means of transport entering, leaving or transiting Vietnam; c/ Goods imported into, exported from, or transiting Vietnam; d/ Corpses, remains, medical micro-organic samples, bio-products, tissues and parts of human bodies transported across Vietnam's borders.

2. Border quarantine is conducted at border gates.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

The abovementioned objects of border quarantine are subject to medical declaration. Medical inspection includes inspection of health-related papers and physical inspection. Physical inspection is conducted on objects originating from or going through epidemic zones or suspected of suffering from an infectious disease or carrying agents of infectious disease. Medical treatment is conducted after medical inspection has been conducted and objects of border quarantine are detected to carry agents of a class-A infectious disease. If there is information reported by owners of means of transport or explicit evidence that a means of transport, a person or cargo carries agents of a class-A infectious disease, such means of transport, persons or cargo must be isolated for medical inspection before they are allowed to enter, leave to transit Vietnam.²³²

e) Epidemic Combat

Announcement of Epidemics

All cases of epidemic must be announced. The announcement of an epidemic and its termination must be made public, accurate and timely by the competent person. The Chairman

²³² Article 36 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Contents of border quarantine:

1. Objects of border quarantine specified in Clause 1 Article 35 of this Law are subject to medical declaration.
2. Medical inspection includes inspection of health-related papers and physical inspection. Physical inspection shall be conducted of objects originating from or going through epidemic zones or suspected of suffering from an infectious disease or carrying agents of infectious disease.
3. Medical disposal shall be conducted after medical inspection has been conducted and objects of border quarantine are detected to carry agents of a class-A infectious disease. If receiving information reported by owners of means of transport or obtaining explicit evidences that a means of transport, a person or cargo carries agents of a class-A infectious disease, the means of transport, persons or cargo on board the means of transport must be isolated for medical inspection before it/they are allowed to carry out procedures for entering, leaving or transiting Vietnam; if it/they fails/fail to comply with the isolation request of the border quarantine body, an isolation measure shall be taken against it/them.
4. Infectious disease surveillance shall be conducted in border-gate areas under the provisions of Section 3, Chapter II of this Law.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

of the People's Committee at the provincial level has the authority to announce epidemics for class-A and class-B infectious diseases at the request of the Director of the Health Department at the provincial level. The Minister of Health has the authority to announce epidemics at the request of the Chairman of the People's Committee at the provincial level, for class-A infectious diseases and for some class-B infectious diseases of which epidemic has been announced in two or more provinces and municipalities. The Prime Minister announces epidemics at the request of the Minister of Health, for class-A infectious diseases which quickly spread from one province to another and seriously affect human life and health. Within 24 hours after receiving a request, the competent person must make decision on epidemic announcement.²³³

When no new cases of infection are detected after a particular period of time and other conditions are met for each epidemic, and anti-epidemic measures have been taken as stipulated

²³³ Article 38 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), "Principles, competence, time limit and conditions for epidemic announcement:

1. Epidemic announcement must abide by the following principles:

a/ All cases of epidemic must be announced;

b/ Announcement of an epidemic and its termination must be public, accurate, timely and duly made.

2. The competence to announce an epidemic is stipulated as follows:

a/ Provincial-level People's Committee presidents announce epidemics at the request of provincial-level Health Service directors, for class-A and class-B infectious diseases;

b/ The Minister of Health announce epidemics at the request of provincial-level People's Committee presidents, for class-A infectious diseases and for some class-B infectious diseases which have been announced in two or more provinces and centrally run cities;

c/ The Prime Minister announce epidemics at the request of provincial-level People's Committee presidents, for class-A infectious diseases, which quickly spread from one province to another, seriously affecting human life and health.

3. Within 24 hours after receiving a request for epidemic announcement, competent persons specified in Clause 2 of this Article shall make decision on epidemic announcement.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

by law, the person who has the authority to announce epidemics will announce termination of epidemics.²³⁴

Declaration of a State of Emergency

When an epidemic rapidly spreads on a wide area, seriously threatening human health and life and the national socio-economic situation, a state of emergency must be declared in a public, accurate, and timely manner by the competent authority. The National Assembly Standing Committee must issue a resolution to declare a state of emergency at the request of the Prime Minister. In case the National Assembly Standing Committee cannot meet immediately, the President will issue an order to declare a state of emergency.²³⁵ After the epidemic has been stamped out, at the request of the Prime Minister, the National Assembly Standing Committee will

²³⁴ Article 40 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Conditions and competence for announcing epidemic termination:

1. Conditions for announcing termination of an epidemic include:

a/ No new cases of infection are detected after a particular period of time and other conditions are met for each epidemic as stipulated by the Prime Minister;

b/ Anti-epidemic measures have been taken as prescribed in Section 3, Chapter IV of this Law.

2. Persons competent to announce epidemics are competent to announce termination of epidemics at the request of competent agencies specified in Clause 2, Article 38 of this Law.”, *available at* http://moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²³⁵ Article 42 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Principles and competence for declaring a state of emergency in case of epidemic:

1. Declaration of a state of emergency in case of an epidemic must comply with the following principles:

a/ When an epidemic rapidly spreads on a wide area, seriously threatening human health and life and the national socio-economic situation, a state of emergency must be declared;

b/ Declaration of a state of emergency must be public, accurate, timely and duly made.

2. The National Assembly Standing Committee shall issue a resolution to declare a state of emergency at the request of the Prime Minister; in case the National Assembly Standing Committee cannot meet immediately, the President shall issue an order to declare a state of emergency.”, *available at* http://moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

issue a resolution or the President will issue an order to terminate the state of emergency that has been declared.²³⁶

Anti-Epidemic Measures

Anti-epidemic measures include: establishment of anti-epidemic steering committees; epidemic declaration and reporting; first aid and medical examination and treatment; medical isolation; sanitation, disinfection and sterilization in epidemic zones; personal protection measures; control of entry into and exit from class-A epidemic zones and other anti-epidemic measures to be taken during an epidemic (such as suspending operation of public food and drink establishments likely to transmit the epidemic disease in epidemic zones; imposing a ban on trading in and consumption of certain kinds of food which have been identified to be vectors by competent health agencies; and prohibiting mass gatherings or suspending activities and services in public places in epidemic zones).²³⁷

f) Infectious Disease Prevention and Control Establishments

Infectious disease prevention and control establishments include: (1) preventive medical establishments, and (2) infectious disease examination and treatment establishments, including infectious disease hospitals, infectious disease departments of general hospitals of districts, towns and provincial cities and higher levels, and other health establishments having the task of infectious disease examination and treatment.²³⁸

²³⁶ Article 44 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Competence to terminate a state of emergency upon the end of an epidemic: After the epidemic has been stamped out, at the request of the Prime Minister, the National Assembly Standing Committee shall issue a resolution or the President shall issue an order to terminate the state of emergency it/he/she has declared.”, *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²³⁷ Article 46-56 of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²³⁸ Article 57 of of Law No.03/2007/QH12 (Law on Prevention and Control of Infectious Diseases), “Infectious disease prevention and control establishments: *(continued on next page)*”

3.4.3 Laws Concerning Control on Alcohol Beverages and Tobacco

a) Control on Alcohol Beverages

The legislative body of Vietnam (the National Assembly) has not passed any law addressing the control of alcohol beverages.²³⁹ However, a decree on wine production and trading was promulgated by the Government in 2012 (Decree No. 94/2012/ND-CP dated November 12, 2012); and a decision of the Prime Minister promulgating the National Policy for preventing harms of abusing alcoholic beverages towards 2020 was issued in 2014 (Decision No. 244/QĐ-TTg dated February 12, 2014).²⁴⁰

Decree 94/2012/ND-CP stipulates that wine is the kind of product subject to trading restriction by the State.²⁴¹ Wine producers and traders (distributors, wholesalers and retailers) must obtain licenses, which are issued by the Ministry of Industry and Trade (for wine producers producing 3 million liters or above per year and for wine distributors), the Department of Industry

(continued from footnote 238)

1. Infectious disease prevention and control establishments include:

a/ Preventive medicine establishments;

b/ Infectious disease examination and treatment establishments, including infectious disease hospitals, infectious disease departments of general hospitals of districts, towns and provincial cities and higher levels, and other health establishments having the task of infectious disease examination and treatment.

2. General hospitals of districts, towns, provincial cities and higher levels shall set up infectious disease departments.

3. The Minister of Health shall issue regulations on locations, design, conditions on technical and physical bases, equipment and personnel of infectious disease examination and treatment establishments.", *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3028 (accessed October 20, 2018).

²³⁹ A bill on preventing and controlling harms of abusing alcoholic beverages is being drafted by the Ministry of Health.

²⁴⁰ A decree on beer production and trading is being drafted by the Ministry of Industry and Trade.

²⁴¹ Article 4 of Decree No. 94/2012/NC-DP (Decree on Wine Production and Wine Trading), "Rules for managing the production and the sale of wine: 1. Wine belongs the articles restricted from trading by the State. Wine producers and wine traders (distributors, wholesalers, retailers) must have licenses, except for the small-scale production of wine to sell to the enterprises licensed to produce wine for further processing.", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie168486.pdf> (accessed October 20, 2018).

and Trade at the provincial level (for wine producers producing below 3 million liters per year and for wine wholesalers), and the Bureau of Industry and Trade at the district level (for wine retailers).²⁴²

Wine is the product for which producers must apply for a Declaration of Compliance as specified in the Law of Food Safety.²⁴³ Wine can only be sold in Vietnam when it is labeled in accordance with the law on food labels.²⁴⁴ The wine produced for sale at home and the imported

²⁴² Article 9 of Decree No. 94/2012/ NC-DP (Decree on Wine Production and Wine Trading), “The License for mass production of wine:

The enterprise may only commence their production or business on the date of issue of the License.

2. The authority to issue the License for mass production of wine:

a) The Ministry of Industry and Trade shall issue the Licenses for wine production to the projects of investment in wine production that reach at least 3 million liters per year.

b) The Services of Industry and Trade shall issue the Licenses for wine production to the project of investment in wine production that reach under 3 million liters per year...” and Article 18 of Decree No. 94/2012/ NC-DP (Decree on Wine Production and Wine Trading), “The License for wine trading: 1. The quantity of the Licenses for wine distribution, wine wholesaling, and wine retailing is determined according to the following rules;

a) The quantity of the Licenses for wine distribution is determined based on the national population: 01 License for wine distribution for 400,000 people;

b) The quantity of the Licenses for wine wholesaling is determined based on the provincial population: 01 License for wine wholesaling for 100,000 people;”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie168486.pdf> (accessed October 20, 2018).

²⁴³ Article 13 of Decree No. 94/2012/ NC-DP (Decree on Wine Production and Wine Trading), “The food safety and quality:

1. Wine is an article that must apply for a Declaration of Conformity.

2. The procedure for applying for the Declaration of Conformity is specified in the Law of Food safety, the Government's Decree No. 38/2012/ND-CP dated April 25 th 2012, detailing the implementation of a number of articles of the Law of Food safety and other relevant legal documents related.”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie168486.pdf> (accessed October 20, 2018).

²⁴⁴ Article 14 of Decree No. 94/2012/ NC-DP (Decree on Wine Production and Wine Trading), “Wine labels:

1. Only sell wine in Vietnam when they are labeled in accordance with law, except for the case prescribed in Article 12 of this Decree.

(continued on next page)

wine for sale in Vietnam must have stamps on their packages as prescribed by the Ministry of Finance.²⁴⁵ Wine producers and wine traders must provide the information about their wine at the request of competent agencies, including the composition, content, and harm of alcohol abuse.²⁴⁶ Wine retailers must not sell wine to people under the age of 18. Wine traders must put up valid copies of the License for wine trading, the categories, and prices of the wine being sold at their head offices, branches, representative offices, and business locations. Wine traders are also responsible for making reports and register their distribution system with the government authorities, and must periodically report their business performance in accordance with the instructions of competent State agencies that issued the License.²⁴⁷

(continued from footnote 244)

2. The wine being sold in Vietnam must be labeled as prescribed by laws on food labels.

3. The wine for export must be labeled in accordance with the requirements given by the importing countries, as long as such requirements do not change the nature of the goods, do not violate Vietnam's law and those countries' law", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie168486.pdf> (accessed October 20, 2018). However, the phrase "laws on food labels" does not refer to a specific act, but refer to an area of law governing food labels.

²⁴⁵ Article 15 of Decree No. 94/2012/ NC-DP (Decree on Wine Production and Wine Trading), "Wine stamps: 1. The wine produced for sale at home and the imported wine for sale in Vietnam must have stamps on their packages as prescribed by the Ministry of Finance...", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie168486.pdf> (accessed October 20, 2018).

²⁴⁶ Article 16 of Decree No. 94/2012/ NC-DP (Decree on Wine Production and Wine Trading), "Responsibility to provide information about wine:

1. the wine producers and wine traders must provide the information about their wine at the request of competent agencies.

2. The information about wine must specify the composition, content, and harm of alcohol abuse.

3. The advertising of wine must be conformable with current regulations on advertising.", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie168486.pdf> (accessed October 20, 2018).

²⁴⁷ Article 19 of Decree No. 94/2012/ NC-DP (Decree on Wine Production and Wine Trading), "Rights and obligations of wine traders:

7. Wine retailers must not sell wine to people under 18.

(continued on next page)

The following acts are deemed violations of regulations on wine production and wine trading:²⁴⁸

- “1. Producing and trading wine without the License issued by competent State agencies.
2. Producing, trading, and consuming smuggled wine, fake wine, wine of inferior quality as prescribed by law.
3. Producing wine exceeding the production stated in the License.
4. The machinery, equipment, technological lines for wine production are of illegal origins
5. Circulating and trading wine without labels or packages as prescribed; not registering for the Declaration of Conformity, not putting on stamps as prescribed by law.
6. Trading wine inconsistently with the subjects, location, and content in the issued License for wine trading.
7. Trading wine when the License for wine trading has expired.
8. Forging, falsifying, lending, renting, transferring, or trading the License for wine production or wine trading.
9. Trading wine at prohibited locations as prescribed by law.
10. Trading without contracts or inconsistently with the commitment in the contract.
11. Sell wine retail through vending machines.

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8. Wine traders must put up valid copies of the License for wine trading, issued by competent agencies, the categories, and prices of the wine being sold at their head offices, branches, representative offices, and business locations.
9. Wine traders must make written agreements or sale contracts on wine trading.
10. Wine traders are responsible for making reports and register the distribution system with functional agencies.
11. Reporting the business results in accordance with the instructions of competent State management agencies that issued the License for wine trading as prescribed by law.”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie168486.pdf> (accessed October 20, 2018).

²⁴⁸ Article 22 of Decree No. 94/2012/ NC-DP (Decree on Wine Production and Wine Trading), *available at* <http://extwprlegs1.fao.org/docs/pdf/vie168486.pdf> (accessed October 20, 2018).

12. Selling wine to people under 18, selling wine on the internet.
13. Wine producers and wine traders not making reports, or making reports that are uncomformable with the regulations of competent State agencies.
14. Advertising or doing sales promotion of wine against the law.
15. Sponsoring the cultural activities, artistic activities, sports, entertainments, health care, and other social activities together with advertising wine.
16. Using wine as rewards in competitions, except for the wine competition”

Decision No. 244/QD-TTg sets forth the following major measures for prevention and control of harms of alcoholic beverages:

(1) Controlling demand in use of alcoholic beverages, such as: strengthening the enforcement and the handling of violations of regulations on use of alcoholic beverages; strictly controlling advertisement, marketing, and promotion of alcoholic beverages; applying appropriate tax policy for alcoholic beverages aiming to decrease use and abuse of alcoholic beverages;

(2) Controlling supply of alcoholic beverages, such as: devising adequate national and local planning for production and trading of alcoholic beverages; controlling the handmade wine business; controlling the labeling of alcoholic beverages which are produced or imported for sale in Vietnam; taking measures to control and check the quality and food safety of alcoholic beverages sold in Vietnam; controlling activities involving production and trading of alcoholic beverages, etc.

(3) Reducing harms of abusing alcoholic beverages, such as: information and education measures; special preventive measures for high-risk groups, including children, pregnant women, women expecting to be pregnant or women nursing babies.²⁴⁹

²⁴⁹ Decision No. 244/QD-TTg dated February 12, 2014 of the Prime Minister on National Policy on preventing harms of abusing alcoholic beverages by 2020, *available at* <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Decision-No-244-QD-TTg-on-national-policy-of-preventing-harms-of-abusing-alcoholic-bevarages-by-2020-222357.aspx> (accessed October 20, 2018).

b) Control on Tobacco

The National Assembly passed the Law No. 09/2012/QH13 on June 8, 2012 on Prevention and Control of Tobacco Harms to provide measures for reducing the demand for tobacco, controlling tobacco supply sources, and conditions for preventing tobacco harms.

Principles and Policies on Prevention of Tobacco Harms

The Law lays down four basic principles of prevention of tobacco harms: (1) focusing on measures to reduce tobacco demand and gradually reducing tobacco supply sources; (2) concentrating on information and education measures in order to raise awareness of tobacco harms, thus reducing the proportion of tobacco users and the harms of tobacco use; (3) implementing inter-sector coordination, social mobilization, and international cooperation in the prevention of tobacco harms; and (4) protecting the right to live and work in a non-smoking environment and to be fully informed of tobacco harms.²⁵⁰

The State's policies on prevention of tobacco harms are also set forth in the Law, including: socializing resources for preventing tobacco harms; applying appropriate tax policies in order to reduce the proportion of tobacco users; planning tobacco trading in conformity with the objectives of socio-economic development and gradually reducing tobacco supply sources and tobacco demand; encouraging domestic and foreign agencies, organizations and individuals to provide smoking cessation and treatment services; doing research on tobacco harms and

²⁵⁰ Article 3 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "Principles for prevention and control of tobacco harms:

1. To carry out synchronously demand and supply reduction measures in order to step by step reducing smoking rates and harms caused by tobacco use
2. To emphasize on information, education and communication measures in order to raise awareness with the aim to reduce smoking rate and the harms caused by tobacco use.
3. To implement the inter-sectored collaboration, mobilizing the society and international cooperation in the prevention and control and tobacco harms.
4. To ensure the rights of people to live and work in a smoke-free environment and be informed sufficiently about harms of tobacco use.", *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

smoking cessation methods; doing research on smoking cessation medications; cooperating in and funding the prevention of tobacco harms and encourage tobacco users to quit voluntarily; encouraging and enabling organizations and individuals who grow tobacco trees, produce and process tobacco ingredients to change their trades or occupations.²⁵¹

All citizens have the right to live and work in an environment without cigarette smoke, to request smokers not to smoke at non-smoking places, to encourage other people not to use tobacco or quit smoking, to request competent agencies, organizations or persons to impose sanctions on people who smoke at prohibited places, and to report competent agencies or persons that fail to impose such sanctions.²⁵²

The Law prohibits the following acts:²⁵³

²⁵¹ Article 4 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), “State policies on the prevention and control of tobacco harms: 1. To socialize the implementation of activities on prevention and control of tobacco harms. 2. To apply a suitable tax policy in order to reduce the rate of tobacco use. 3. To develop strategic plan for tobacco business in consistence with the target of socio-economic development and reduce tobacco supply step by step, in accordance with the demand reduction. 4. To encourage domestic and international individuals and organizations to provide smoking cessation service, conduct research on tobacco harms and smoking cessation methods; to conduct research on and to produce smoking cessation support medicines; encourage collaboration and funding support for prevention and control of tobacco harms; to encourage smokers to voluntarily quit smoking. 5. To encourage and create favorable conditions for the organizations and individuals who grow, manufacture or produce tobacco materials to change their occupation. 6. To give awards to agencies, organizations and individuals that made significant contribution in prevention and control of tobacco harms.”, *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁵² Article 7 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), “Right and responsibilities of citizens: 1. To live and work in the smoke-free environment. 2. To have right to request smokers not to smoke in the areas where smoking is prohibited. 3. To do advocacy and communication of no smoking and give up smoking. 4. To request relevant authorities, organizations and individuals to deal with those who smoke in the prohibited areas. 5. To report or denounce authorized agencies or persons who failed to deal with smoking violations in the prohibited areas., *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁵³ Article 9 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

- “1. Manufacturing, trafficking, importing, storing and transportation of fake tobacco products and products that resemble tobacco packs or sticks; trafficking, storing and transportation of smuggled tobacco products.
2. Advertising and promotion of tobacco products; direct marketing to the users of tobacco in any forms.
3. Sponsorship by individual or organization doing business in tobacco, except the cases prescribed in Article 16 of this Law.
4. People less than 18 years of age use, buy, and sell tobacco products.
5. Hiring people younger than 18 to sell, buy tobacco products.
6. Selling and supplying the tobacco product to people less than 18 years of age.
7. Selling tobacco by automatic tobacco selling machines or to sell at prohibited site.
8. Using pictures of tobacco in the press, publications dedicated for children.
9. Encourage, persuade, and coerce other people to use tobacco.”

Measures to Reduce Tobacco Demand

The Law emphasizes information and education measures to prevent tobacco harms, and strictly regulates the act of smoking. Places where smoking is completely prohibited, both indoors and outdoors, include medical establishments; educational institutions; childcare facilities and recreation facilities for children; and facilities or areas with high risk of fire and explosion.²⁵⁴ Places

²⁵⁴ Article 11 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), “Public places where smoking is completely prohibited:

1. Areas where smoking is completely prohibited including in the indoor areas and outdoor areas within the boundary of the facility:
 - a) Health facilities;
 - b) Education facilities except areas defined in the Clause 2.b of this article
 - c) Child care facilities and entertainment area designated for children.
 - d) Areas with high risk of fire and explosion 6
2. Areas where smoking is banned in all indoor areas including:
 - a) Workplaces;
 - b) Universities and colleges, academic institutes; (*continued on next page*)

where smoking is completely prohibited indoors include workplaces; colleges, universities and academies; public places; means of public transportation where smoking is completely prohibited are automobiles, airplanes and trams.

Places where smoking is prohibited indoors but with separate areas for smokers are international areas at airports; bars, karaoke clubs, discotheques, hotels and tourist accommodation establishments; means of public transportation being ships and trains. In these circumstances, the smokers' area must have rooms with air ventilation systems separate from non-smoking areas, containers for tobacco filters and ashes and noticeable signboards, and fire prevention devices.²⁵⁵ Smokers have the obligation not to smoke at prohibited places or inside houses in the presence of children, pregnant women, sick persons or the elderly; to maintain the cleanliness and dispose of cigarette ashes at appropriate places when smoking at designated places.²⁵⁶

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c) Public places except those that are defined in the Clause 1 of this article and Clause 1 of Article 12 of this Law., *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁵⁵ Article 12 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "Areas where indoor smoking is prohibited but separate designated smoking areas are allowed:

1. Public places where indoor smoking is prohibited but designated smoking areas are allowed include:

- a) Airports segregation areas (waiting areas before boarding the plane)
- b) Bars, karaoke lounges, discos hotel and guesthouses.
- c) On the public means of vehicle that are ships and trains.

2. Public places stipulated in clause 1 of this Article shall be permitted to design a separated area for smokers, but shall satisfy the following conditions:

- a) To have separate rooms and ventilation system from the no-smoking area.
- b) To have tools to contain cigarette ends, ashes, and signs at suitable and easy-to-see positions.
- c) To be equipped with fire extinguisher devices.", *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁵⁶ Article 13 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "Responsibilities of smokers:

- 1. Not to smoke in the smoking-prohibited areas.

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Heads and managers of non-smoking places have the right and responsibility to compel violators to stop smoking in the prohibited areas; impose sanctions on administrative violations as prescribed by law; request the violators to leave their facilities; and refuse to receive or provide services for violators when they continue their violation after being reminded. Heads and managers of non-smoking places must put up signboards with non-smoking words or symbol at places where smoking is prohibited.²⁵⁷

Tobacco manufactured or imported in Vietnam for sale must be labeled in Vietnamese, with health warnings on tobacco packages printed in clear, visible, understandable text and graphics. The label must include stamp, numerical code or bar code, the date of manufacture and expiry date, the quantity of cigarettes or the weight; and must not use words and phrases that make readers and users believe that tobacco is of little harm, or incorrectly understand the harms of tobacco and smoking to human health. Health warnings printed on tobacco packages must particularly describe the harms of tobacco use to human health and other suitable

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2. Not to smoke in the indoor areas (at homes) when there are children, pregnant women and the elderly.
3. To keep common hygiene conditions; put ashes, cigarette ends into designated places when smoking at places where smoking is allowed.”, available at <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁵⁷ Article 14 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), “Rights and responsibilities of the heads of places where smoking is prohibited:

1. Rights of the head of the facilities where smoking is prohibited

- a) To request smokers who violate that ban to stop smoking in the areas where smoking is prohibited. To give fines for violations in accordance with the regulations on administrative fines;
- b) To request smokers who violate the ban to leave the facilities
- c) To refuse to receive or provide service to smokers who deliberately violated the ban on smoking.

2. Responsibilities of heads of the places where smoking is prohibited

- a) To implement responsibilities defined in Article 6 of this law.
- b) To organize the implementation, guide, monitor and urge other people to comply properly with the stipulations on smoking ban at the places under his or her management; to put signs with text or symbol of “No smoking” at smoking prohibited sites.”, available at <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

messages, must be changed once every two years, and must occupy at least 50 percent of the front and rear of a tobacco pack, carton or box.²⁵⁸

Measures for Controlling Tobacco Supply Sources

Tobacco trading is a conditional industry. Organizations and individuals trading, processing or importing tobacco ingredients; manufacturing, trading or importing tobacco must obtain licenses issued by competent state agencies. The Minister of Finance sets the minimum sale prices of cigarettes sold in Vietnam.²⁵⁹

The Ministry of Industry and Trade is in charge and cooperate with related ministries and sectors in formulating and submitting the national planning for tobacco trading to the Prime

²⁵⁸ Article 15 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "Labeling:

1. Tobacco products manufactured in or imported into Vietnam for consumption shall be labeled and printed with the health warnings.

2. The manufactured and imported tobacco products for consumption in Vietnam must be labeled in Vietnamese language, in conformity with the stipulations of the law on commodity labeling and are subject to the following requirements:

- a) Print the health warnings in text and pictures which are clear eligible and easy to understand.
- b) Apply stamps or print number code, bar code; print date of manufacturing, date of expires.
- c) Print clearly the number of cigarettes or the weight for other tobacco products;
- d) Prohibit the use of those terms suggesting that the tobacco product is less harmful or resulting in misunderstanding from the consumers on harms of tobacco and tobacco smoke to human health.

3. The contents of health warnings shall describe concretely the harms of tobacco use to the health and other appropriate messages, and periodically change at the interval of every two years.

4. The health warnings stipulated in Clause 1 shall occupy at least 50% surface of the principal areas front and back of tobacco packets, cartons and boxes.", *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁵⁹ Article 19 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "Tobacco business management:

1. Tobacco business is a limiting business. Organizations, individuals buying or selling or processing tobacco materials; manufacturing, buying or selling, importing tobacco products shall need to have licenses issued by authorized agencies.

2. The Minister of Finance regulates the minimum cigarette prices sold in Viet Nam.", *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

Minister for approval. Such planning must conform to the socio-economic development objectives, policies and law on prevention of tobacco harms in order to gradually reduce tobacco supply sources, and provide measures for step by step to change the occupation of tobacco growers and workers in tobacco factories.²⁶⁰

Investment in growing tobacco trees, tobacco ingredient processing and tobacco production must conform to the approved tobacco trading planning. Investment in the construction of new tobacco factories or expansion of existing tobacco factories for domestic consumption must not exceed the permitted total capacity of the entire tobacco industry. Foreign-invested tobacco production projects must be in the form of joint-ventures or cooperation undertakings with enterprises licensed to produce tobacco, and the State must hold a dominating share in the charter capital of these enterprises. Contracts to transfer industrial property rights regarding tobacco production can only be signed with enterprises licensed to produce tobacco, and only after being approved in writing by the Prime Minister. Contracts to produce tobacco for export or processing of tobacco for export are not included in the permitted production of tobacco for domestic consumption and can only be signed with enterprises licensed to produce tobacco, after being approved in writing by the Minister of Industry and Trade. The investment in the production or processing of tobacco for export that exceeds the permitted production must be approved by the Minister of Industry and Trade.²⁶¹

²⁶⁰ Article 20(1) of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), “Tobacco business strategic planning: 1. The tobacco business strategic planning shall be in line with the objectives of social and economic development, with policy and regulations on prevention and control of tobacco harms aiming to step by step reduce the supply of tobacco products and propose solutions for step by step changing the occupation for tobacco growers and tobacco manufacturing workers.”, *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁶¹ Article 21 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), “Control of investment in tobacco production:

1. Investment in tobacco growing area, materials processing and tobacco products manufacturing shall be in accordance with the respective strategic plans approved by relevant authorities.

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Measures to control the amount of domestically consumed tobacco include managing the amounts of tobacco permitted for manufacture and import, sticking stamps or printing numerical or bar codes on tobacco packages, controlling the capacity of machines and equipment exclusively used for the tobacco industry, controlling tobacco ingredients and cigarette papers, and controlling the origin, circulation and legitimacy of tobacco.²⁶²

Tobacco manufactured or imported for sale in Vietnam must comply with the national

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2. Investment in establishing new tobacco factory or expansion of the sizes or capacity of existing tobacco factories aiming for domestic consumption shall not exceed the total capacity of tobacco industry before the date when this Law comes into effect.

3. Foreign investments projects on tobacco products manufacturing shall be required to meet the following conditions:

- a, Joint-venture, or partnership with a company that already have license to manufacture tobacco products.
- b, State controls the majority of the registered capital of the joint-venture.
- c, Meet other requirements for tobacco products manufacturing as regulated by the government.

4. Contracts for brands licensing shall be done only with the companies that already have license to manufacturing of tobacco products and shall be approved by the Prime Minister.

5. Contracts for processing of tobacco products for export shall be done only with the companies that already have license to manufacturing of tobacco products and shall be approved by the Minister of Industry and Trade.

6. Investment on tobacco production for export exceeding the total capacity of the factory shall require approval of the Minister of Industry and Trade.”, *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁶² Article 22(1) of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), “Controlling the amount of domestic consumption of tobacco products:

1. Measures to control the amount of tobacco products consumed domestically include the following:

- a) Regulate the amount of products that can be produced and imported;
- b) Use stamps or number code or bar code for tobacco products.
- c) Controlling total capacity of machines and devices used for tobacco production.
- d) Controlling tobacco materials and tobacco rolling paper.
- e) Controlling origin, movement and legal status of the tobacco products.”, *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

technical regulations on tobacco, which are promulgated by the Minister of Health, and standards announced by manufacturers.²⁶³

Three years after the Law takes effect, the number of cigarettes in a pack must not be fewer than 20, except for cigars and cigarettes manufactured for export.²⁶⁴

To engage in tobacco sale, enterprises, wholesales and retail agents must obtain tobacco sale licenses. The persons in charge of the tobacco sale counters of wholesale or retail agents must put up notice boards saying "We do not sell tobacco to anyone under the age of 18". Tobacco agents and counters must not display more than one pack, one carton or one box for a brand name of tobacco. Agencies, organizations and individuals must not permit the sale of tobacco or sell tobacco at places where smoking is prohibited, and must not sell tobacco within 100 meters from a kindergarten, elementary school, middle school, high school, medical research institute, hospital, maternity ward or preventive medicine center.²⁶⁵

²⁶³ Article 23 (1) of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "National technical standards on tobacco products: 1. Tobacco products manufactured in, imported for consumption in Vietnam shall be in accordance with National technical standards of tobacco products and other specifications announced by the company.", *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁶⁴ Article 24 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "Quantity of cigarettes in pack or packet Within three (03) years after this Law comes into effect, the number of cigarettes in a (01) cigarette packet shall not be fewer than 20 sticks except for cigars and cigarettes produced for exports.", *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁶⁵ Article 25 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "Tobacco sales:

1. Tobacco selling must meet the following requirements:
 - a) Enterprises, wholesale and retailed agents must have tobacco selling licenses in accordance with government regulations;
 - b) Person in charge at the points of sale shall be responsible to display notice which say "no sale to children aged under 18". At point of sales prohibit the display of more than one pack, one carton or box of one cigarette brand.
2. Organizations, individuals shall not organize or allow selling of tobacco in the locations specified in the Article 11, Article 12, except Point a-Clause 1 of Article 12 of this Law and must not sell cigarettes outside the gates within 100 meters from the boundary of children daycare centers, kindergarten, elementary school, secondary

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The Law also prescribes measures for preventing smuggled and fake tobacco, such as: awareness-raising and education; strengthened inspection and sanctions against violations; confiscation and destruction of fake tobacco, machines and equipment used for manufacturing fake tobacco; creation of incentives for agencies, organizations and individuals that have detected and denounced acts of trading in smuggled and fake tobacco, and coordination with neighboring and related countries in preventing the trading of smuggled and fake tobacco.²⁶⁶

Conditions for Prevention of Tobacco Harms

The Law provides the establishment of a national fund for prevention of tobacco harms which is under the Ministry of Health. The fund is a state-run financial institution having the legal

(continued from footnote 265)

school, high school, medical institute, hospital, hospitals, maternity homes, preventive medicine center, and communal health stations.”, *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁶⁶ Article 26 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), “Measures to prevent and control of smuggled and fake tobacco products:

1. Communicate, educate to raise awareness among people so that they will not participate in buying, transporting and use of smuggled and fake tobacco products;
2. Organize taskforces and ensure the funding, equipment for the taskforces in prevent and control of smuggled and fake tobacco products;
3. Periodically and regularly organize inspection, checking and strictly handle violations in trading of smuggled and fake tobacco products;
4. Confiscate and destroy fake tobacco products; Seize and destroy machinery and devices used for production of fake tobacco products. The destroying of the seizures shall be by measures that are safe to the environment. The costs for the destroying shall be paid by the violators. In case of it is unable to identify individuals or organizations committed the violations the cost for destruction will be from the state budget.
5. The handling of smuggled tobacco products is in accordance with the Government regulations.
6. Provide economic and spiritual encouragements to motivate agencies, units, organizations and individuals who have detected and informed to the authority about violations of trading in smuggled and fake tobacco products;
7. Coordinate at provincial level or at national level with neighboring countries and related countries in prevention and control of trading of smuggled and fake tobacco products.”, *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

person status. The fund is managed by an inter-sector council. The Council's President is the Minister of Health, the vice President is a leader of the Ministry of Finance, and other members comprise the leaders of the Ministry of Industry and Trade, the Ministry of Education and Training, the Ministry of Information and Communications and other related agencies, organizations and individuals.²⁶⁷ The fund operates on a non-profit basis with the function to mobilize, provide and coordinate its financial resources for the prevention of tobacco harms nationwide. The fund will support various activities, such as communication on tobacco harms and the prevention of tobacco harms suitable to each target group; building and developing pilot models of tobacco smoke-free communities, agencies and organizations; organizing community-based campaigns and initiatives on prevention of tobacco harms; providing consultancy on organization of separate smoking areas in public places; supporting smoking cessation; building pilot models of community-based smoking cessation; conducting research, etc.²⁶⁸

²⁶⁷ Article 28 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "Establishment of the Fund of Prevention and Control of Tobacco Harms:

1. The Fund for Prevention and control of tobacco harms (there after called the Fund) is a National Fund under the Ministry of Health and subjected to state financial management by Ministry of Finance. The Fund is a state financial legal entity with legal person status, a seal and a bank account.

2. The Fund is managed by an Inter-sectored Management Board. The Inter-sectored Management Board including Chairperson, a Vice chair, and members. The Chairperson is Minister of Health, Vice chair is a leadership representative of Ministry of Finance, and members are leadership representatives from Ministry of Industry and Trade, Ministry of Education and Training, Ministry of Information and Communication and other relevant agencies.", *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁶⁸ Article 29 of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), "The purpose and mission of the Fund:

1. The Fund operates on a not-for-profit principal, with the function to mobilize, provides and coordinates the Fund's financial resources for the prevention and control of tobacco harms on nationwide scale.

2. The Fund is to support the following activities:

a) Communication on the harmful effects of tobacco and on prevention and control of tobacco harms suitable for each target audience group;

b) Develop pilot models of smoke-free community, agencies and organizations; expand and multiply effective models; (*continued on next page*)

The fund is established from the following sources: (1) compulsory contributions of tobacco manufacturers and importers, which are calculated in a percentage of the excise tax-liable prices according to the following roadmap: 1% from May 1, 2013; 1.5% from May 1, 2016; and 2% from May 1, 2019. These compulsory contributions must be declared and paid together with excise tax, and be declared, assessed and paid into the fund's account by tobacco manufacturers or importers; (2) donations and voluntary contributions of agencies, organizations and individuals at home and abroad; and (3) other lawful revenues.²⁶⁹

(continued from footnote 268)

- c) Organize community-based campaigns and initiatives on prevention and control of tobacco harms; Provide consultation for organization of designated smoking area in public places;
- d) Organize smoking cessation service;
- e) Develop, support implementation of pilot models of community-based smoking cessation service, expand and multiply effective models;
- f) Research to provide evidence for the prevention and control of tobacco harms;
- g) Develop and support activities, and train for capacity building of the network of collaborators working on prevention and control of tobacco harms;
- h) Develop contents and organize the integration of education on the harms of tobacco and on prevention and control of tobacco products in the educational programs suitable with each educational level;
- i) Implement the measures for alternative occupation (economic activities) for tobacco growers, tobacco raw material processing, and tobacco manufacturing workers.”, *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

²⁶⁹ Article 30(1) of Law No. 09/2012/QH13 (Law on Prevention and Control of Tobacco Harms), “Sources of funding and principals for the use the Fund:

1. The Fund is established from the following financial resources:

- a) A compulsory contribution from tobacco manufacturers and importers which is calculated by percentage (%) of the excise tax-based prices with a roadmap as following: 1.0% from the effective date of the Law on the 1st of May 2013; 1.5% from the 1st of May 2016 on ward; and 2.0% from the 1st of May 2019 onward. This compulsory contribution will be registered, calculated and paid to the Fund by the tobacco manufacturers or importers at the same time when they pay tobacco tax.
- b) Voluntary contribution from national and international organizations and individuals
- c) Other legal sources of fund.”, *available at* <http://vinacosh.gov.vn/en/tobacco-control-law/> (accessed October 20, 2018).

3.4.4 Laws on Food and Drugs

a) Laws on Food

Food safety is one of the biggest concerns for Vietnamese people nowadays. Law No. 55/2010/QH12 on Food Safety was passed by the National Assembly on June 17, 2010, replacing the Ordinance on Food Hygiene and Safety (2003), followed by a number of decrees and regulations promulgated by the Government and relevant ministries, but enforcement of these laws is still limited. Violations of food safety laws and regulations are pervasive. According to the Law on Food Safety, food production and trading are conditional business activities. Food producers and traders must be responsible for the safety of the food they produce or trade in.²⁷⁰

Conditions on Food Safety Assurance

In general, food must comply with relevant technical regulations and stay within the limits on pathogenic microorganisms, residues of plant protection drugs or veterinary drugs, heavy metals, contaminants and other substances in food that may cause harm to human health and life. Depending on each type of food, in addition to this general condition, food must comply with the regulations on use of food additives and processing aids in food production and trading, regulations on food packaging and labeling, and regulations on food preservation.²⁷¹ The Law

²⁷⁰ Article 3 of Law No. 55/2010/QH12 (Law on Food Safety), “Principles of food safety management: 1. To assure food safety is the responsibility of all food producers and traders. 2. Food production and trading are conditional activities; and food producers and traders shall bear responsibility for the safety of food they produce or trade in.”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie99786.pdf> (accessed October 20, 2018).

²⁷¹ Article 10 of Law No. 55/2010/QH12 (Law on Food Safety), “General conditions on food safety assurance: 1.To conform with relevant technical regulations, to meet limit requirements for pathogenic microorganisms, residues of plant protection drugs or veterinary drugs, heavy metals, contaminants and other substances in food that may cause harm to human health and life. 2. Depending on each type of food, in addition to the conditions specified in Clause I of this Article, food must comply with one or more of the following regulations: a/ Regulations on use of food additives and processing aids in food production and trading; b/ Regulations on food packaging and labeling;

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also provides specific conditions for fresh and raw food, processed food, micronutrient-fortified food, functional food (supplement), genetically modified food, and irradiated food.

For imported food, food additives, processing aids and imported food-packaging tools, food packages and containers, in addition to the general conditions, they must also have their declarations of compliance registered at a competent state agency before import and must obtain a “Notice of satisfaction of import requirements” issued by a designated inspection agency for each goods lot as prescribed by the relevant ministers.²⁷² Imported food and food-related articles are subject to state inspection of food safety, unless they are exempted from such inspection.²⁷³

Food Safety Assurance Conditions for Food Production and Trading

Food producers and traders must meet the following conditions:

- “(a) Having suitable venues with appropriate areas and safety distance from toxic and contaminating sources and other harmful factors;
- (b) Having sufficient technically qualified water;

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c/ Regulations on food preservation.”, available at <http://extwprlegs1.fao.org/docs/pdf/vie99786.pdf> (accessed October 20, 2018).

²⁷² Article 38(1) of Law No. 55/2010/QH12 (Law on Food Safety), “Safety assurance conditions for imported food:

1. Imported food, food additives, processing aids and imported food-packaging tools, food packages and containers must satisfy relevant conditions prescribed in Chapter III of this Law and the following conditions;

a/ Having their technical regulation conformity announcements registered at a competent state agency before import;

b/ Having obtained a notice of satisfaction of import requirements issued by a designated inspection agency for each goods lot as prescribed by line ministers.”, available at <http://extwprlegs1.fao.org/docs/pdf/vie99786.pdf> (accessed October 20, 2018).

²⁷³ Article 39(1) of Law No. 55/2010/QH12 (Law on Food Safety), “State inspection of food safety with regard to imported food: 1. Imported food, food additives and processing aids and imported food-packaging tools, food packages and containers are subject to state inspection of food safety, except for some kinds of food which are exempted from state inspection of food safety as prescribed by the Government.”, available at <http://extwprlegs1.fao.org/docs/pdf/vie99786.pdf> (accessed October 20, 2018).

- (c) Having adequate appropriate equipment to process materials and process, package, preserve and transport different types of food; having adequate washing and sterilization equipment and tools, disinfecting fluid, and equipment for preventing and controlling insects and harmful animals;
- (d) Having a waste treatment system which operates regularly under the law on environmental protection²⁷⁴;
- (e) Maintaining food safety assurance conditions and keeping records of source and origin of food materials and other documents on the entire food production and trading process;
- (f) Complying with the requirements on health, knowledge and practice of persons directly engaged in food production and trading.”²⁷⁵

The Law also provides conditions for food preservation and food transportation, and provides further conditions for production and trading in fresh and raw food, preliminary processors and processors of food, providers of street food and providers of catering services.

Certificates of Food Safety Eligibility

A food production or food trading establishment can be granted a certificate of food safety eligibility when it fully meets the conditions for food safety assurance suitable to each type of food production and trading and has registered for food production and trading as indicated in its business registration certificate.²⁷⁶ A certificate of food safety eligibility is valid for 3 years.

²⁷⁴ “Law on environmental protection” as mentioned does not refer to a specific act, but refer to an area of law governing environmental protection.

²⁷⁵ Article 19(1) of Law No. 55/2010/QH12 (Law on Food Safety), *available at* <http://extwprlegs1.fao.org/docs/pdf/vie99786.pdf> (accessed October 20, 2018).

²⁷⁶ Article 34(1) of Law No. 55/2010/QH12 (Law on Food Safety), “Establishments and conditions for the grant and withdrawal of certificates of food safety eligibility:

1. An establishment shall be granted a certificate of food safety eligibility when it fully meets the following conditions:

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The food producer or trader must submit an application for the re-grant of the certificate at least six months before the expiration date of the certificate.²⁷⁷

Prohibited Acts in Food Production and Trading²⁷⁸

Using for food processing materials other than those permitted for use in food.

1. Using food materials beyond their expiry dates or materials of unclear origin or unsafe for food production and processing.
2. Using food additives or food processing aids beyond their expiry dates or not included in the permitted list, or using permitted additives or food processing aids in excess of allowable dosages; using chemicals of unclear origins or banned chemicals in food production or trading.
3. Using animals which died of diseases, epidemics or unidentified causes or animal carcasses subject to destruction for food production or trading.
4. Producing or trading in food violating regulations on goods labeling; food uncomformable with relevant technical regulations; degenerated food; food containing toxic or hazardous substances or contaminated with toxins or

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a/ Having adequate conditions for assuring food safety suitable to each type of food production and trading as prescribed in Chapter IV of this Law;

b/ Having registered for food production and trading as indicated in its business registration certificate.", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie99786.pdf> (accessed October 20, 2018).

²⁷⁷ Article 37 of Law No. 55/2010/QH12 (Law on Food Safety), "Validity duration of certificates of food safety eligibility:

1. A certificate of food safety eligibility is valid for 3 years.
2. At least 6 months before the expiration date of a certificate of food safety eligibility, if the food producer or trader wishes to continue its/ his/her product ion or trading activities, it/he/she shall submit a dossier of application for the regrant of a certificate of food safety eligibility...", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie99786.pdf> (accessed October 20, 2018).

²⁷⁸ Article 5 of Law No. 55/2010/QH12 (Law on Food Safety), *available at* <http://extwprlegs1.fao.org/docs/pdf/vie99786.pdf> (accessed October 20, 2018).

contaminants in excess of allowable limits; food which is contaminated for the reason that their packages or containers are unsafe, broken, torn or deformed in the course of transportation; meat or meat products which have not yet gone through veterinary inspection or have gone through veterinary inspection but fail to meet requirements; food banned from production or trading for the purpose of epidemic prevention and combat; food for which the Declaration of Compliance has not yet been registered with competent state agencies in case such food subject to registration of declaration of compliance; and food which is of unclear origin or the expiry date of which has lapsed.

5. Using vehicles which can cause food contamination or vehicles which have transported toxic or hazardous substances but not yet been cleaned up for transporting food materials or foods.
6. Supplying untruthful or forging food testing results.
7. Covering up, falsifying or obliterating scenes or evidence of food safety incidents or committing other acts of intentionally obstructing the detection and remedy of food safety incidents.
8. Employing persons infected with contagious diseases in food production or trading.
9. Producing or trading in food at establishments without certificates of satisfaction of food safety conditions prescribed by law.
10. Advertising food untruthfully or confusingly to consumers.
11. Publishing or publicly notifying misleading information on food safety, thus causing public disparagement or damage to food production and trading.
12. Using illegally roadbeds, pavements, corridors or common yards, passageways and auxiliary spaces for street food processing, producing or trading.

Recall and Disposal of Unsafe Food

Unsafe food, such as food still marketed after its shelf life, food unconformable with relevant technical regulations, food which is new technological product not yet been permitted

for circulation, food degenerated during preservation, transportation or trading, food containing substances banned from use, will be recalled and disposed of by means of correction of product flaws or labeling errors, change of use purposes, re-export, or destruction.²⁷⁹

b) Laws on Drugs

Law No. 105/2016/QH13 passed by the National Assembly on April 6, 2016 on Pharmacy, is the highest legal authority governing issues relating to drugs in Vietnam, such as the State's policies on drug, drug trading, drug registration and circulation, drug use, drug recall drug storage, drug information and advertisement, clinical trial of drugs, drug quality standards, drug price management, etc.²⁸⁰ The Government and the Health Ministry have promulgated a number

²⁷⁹ Article 55 of Law No. 55/2010/QH12 (Law on Food Safety), "Recall and disposal of unsafe foods:

1. The following foods shall be recalled:

a/ Foods which are still marketed after their shelf life;

b/ Foods uncomformable with relevant technical regulations;

c/ Foods being new technological products not yet been permitted for circulation;

d/ Foods which are degenerated during preservation, transportation or trading;

e/ Foods which contain substances banned from use or in which appear contaminants in excess of allowable limits;

f/ Imported foods which are notified by a competent authority of the exporting country or another country or an international organization to contain contaminant harmful to human health and life.

2. Recall of unsafe foods takes the following forms:

a/ Voluntary recall by food producers or traders themselves;

b/ Compulsory recall by food producers and traders at the request of competent state agencies.

3. Unsafe foods shall be disposed of through:

a/ Correction of product flaws or labeling errors;

b/ Change of use purposes;

c/ Re-export;

d/ Destruction.", available at <http://extwprlegs1.fao.org/docs/pdf/vie99786.pdf> (accessed October 20, 2018).

²⁸⁰ Article 1 of Law No. 105/2016/QH13 (Law on Pharmacy), "Scope of regulation and subjects of application: 1. This Law prescribes state policies on pharmacy and development of pharmaceutical industry; pharmacy practice; pharmaceutical business; registration, circulation and recall of drugs and drug materials; medicinal materials and traditional drugs; medical prescription and use of drugs; drug information, (continued on next page)

of regulations providing implementation guidance for this Law. The Law on Pharmacy clearly states the State's policies on pharmacy.²⁸¹

Pharmaceutical Business

Under the Law on Pharmacy, pharmaceutical business covers various forms, such as drug trading, service of preserving, service of bioequivalence²⁸² trial of drugs and clinical trial of drugs.²⁸³ Pharmaceutical business is a conditional activity. Pharmaceutical business establishments must have certificates of satisfaction of pharmaceutical business conditions. To be granted this certificate, a drug-trading establishment must have the technical facilities and personnel with professional qualifications necessary for each form of pharmaceutical business and its pharmaceutical professional personnel must have been granted pharmacy practice

(continued from footnote 280)

pharmacovigilance and drug advertisement; clinical pharmacy; management of drugs at medical examination and treatment establishments; clinical trial and bioequivalence trial of drugs; management of the quality of drugs and drug materials and management of drug prices.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁸¹ Article 7 of Law No. 105/2016/QH13 (Law on Pharmacy), “State policies on pharmacy: 1. To ensure sufficient and prompt supply of quality drugs at reasonable prices to meet the people’s disease prevention and treatment needs, suit the structure of diseases and meet requirements of national defense and security, epidemic prevention and control and overcoming of consequences of natural disasters and catastrophes, and of rare drugs.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁸² Bioequivalence means the similarity of bioavailability between two drugs when compared under the same testing condition.

²⁸³ Article 32 of Law No. 105/2016/QH13 (Law on Pharmacy), “Pharmaceutical business activities and establishments: 1. Pharmaceutical business activities include:

- a/ Trading in drugs or drug materials;
- b/ Providing the service of preserving drugs or drug materials;
- c/ Providing the service of testing drugs or drug materials;
- d/ Providing the service of clinical trial of drugs;
- dd/ Providing the service of bioequivalence trial of drugs., *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

certificate suitable to the establishment's business form. The Health Ministry grants certificates of satisfaction of drug-trading conditions to establishments manufacturing drugs, providing drug preservation services or drug testing services.²⁸⁴

To be granted a pharmacy practice certificate, the applicant must possess professional diploma and certificate recognized in Vietnam and relevant to practicing position which are not limited to pharmaceutical degree but includes chemistry, biology, traditional pharmacy, and folk remedy. In addition, the applicant must have practiced for at a lawful pharmaceutical business establishment for no less than a period of time specified by law, which may vary depending on his/her education degree and form of professional practice.²⁸⁵

²⁸⁴ Article 33-35 of Law No. 105/2016/QH13 (Law on Pharmacy), *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20,2018).

²⁸⁵ Article 13 of Law No. 105/2016/QH13 (Law on Pharmacy), "Conditions for a person to be granted a pharmacy practice certificate:

1. Possessing a professional degree or certificate (below collectively referred to as professional degree) granted or recognized in Vietnam and relevant to the working position and employing pharmaceutical business establishment, including:

a/ University degree in pharmacy (below referred to as pharmacist degree);

b/ University degree in general medicine;

c/ University degree in traditional medicine or traditional pharmacy;

d/ University degree in biology;

dd/ University degree in chemistry;

e/ College degree in pharmacy;

g/ Professional secondary school degree in pharmacy;

h/ College or professional secondary school degree in medicine;

i/ Professional secondary school degree in traditional medicine or traditional pharmacy;

k/ Professional primary school degree or certificate in pharmacy;

l/ Traditional physician's certificate, traditional pharmacist's certificate or certificate of folk remedy or another degree or certificate of traditional medicine or pharmacy granted before the effective date of this Law.

2. Having a certain period of practice at a pharmaceutical business establishment or a pharmacy section of a medical examination and treatment establishment, a professional pharmacy training school, a pharmacy research institution, a drug and drug material testing establishment, a pharmacy management agency, or a
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Law on Pharmacy specifies that pharmaceutical industry shall be developed with priority and support from investment incentives under the investment law.²⁸⁶ However, they must comply with regulations on good practice in drug manufacture, distribution, preservation, testing, recalling and relevant professional regulations, and have other obligations under the Law on Pharmacy.²⁸⁷ The law prescribes that drug wholesalers and retailers shall post up wholesale and

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representative office of a foreign trader engaged in pharmacy in Vietnam (below collectively referred to as pharmacy establishment); or at a medical examination and treatment establishment suitable to the professional qualification of the practitioner. Such period of practice is prescribed as follows:

a/ For a person whose pharmacy practice certificate was revoked under Clause 9, Article 28 of this Law, he/she does not need such period of practice but shall participate in a professional pharmacy knowledge updating course;

b/ For a person who has a postgraduate specialized qualification relevant to his/her practice, his/her period of practice may be shortened as prescribed by the Government;

c/ For a person who possesses a professional degree specified at Point 1, Clause 1, Article 13 of this Law, his/her period of practice shall be prescribed by the Minister of Health.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁸⁶ Article 8 of Law No. 105/2016/QH13 (Law on Pharmacy.), "Prioritized fields in the development of pharmaceutical industry: 4. Investment incentives and supports for the prioritized fields in the development of pharmaceutical industry shall be provided in accordance with the investment law.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁸⁷ Article 43 of Law No. 105/2016/QH13 (Law on Pharmacy.), "Rights and responsibilities of an establishment manufacturing drugs or drug materials: 2. An establishment manufacturing drugs or drug materials has the following responsibilities:

a/ The responsibilities prescribed at Points a, b, c, d, dd, e, g, h, i, k, l, m and n, Clause 2, Article 42 of this Law;

b/ To manufacture drugs or drug materials according to the registered or announced manufacturing process and quality standards;

c/ To take responsibility for the origin and quality of its drugs or drug materials and to ex-workshop only drugs or drug materials satisfying the registered quality standards;

d/ To monitor the quality, safety and effects of its drugs or drug materials in circulation and recall its drugs or drug materials in accordance with this Law;

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retail prices of drugs at transaction places, including print, write or stick the prices on drug packages and display drug prices in public.²⁸⁸

Law on Pharmacy prescribes qualifications for a person responsible for professional pharmacy in various forms. For example, a person responsible for professional pharmacy activities at a drugstore must possess a university degree in pharmacy and have practiced for 2 years at an appropriate pharmacy establishment. A person responsible for professional pharmacy activities at a drug dispensary must possess a university, college or professional secondary school degree in pharmacy and have practiced for 18 months at an appropriate pharmacy establishment.²⁸⁹ An establishment retailing drugs must have a place and area for drug storage, preserving tools and equipment, satisfying the requirements of good practices of drug retailing.²⁹⁰

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dd/ To take responsibility for imported, purchased, sold and used quantities of drugs or drug materials and report thereon under regulations of the Minister of Health.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁸⁸ Article 107 of Law No. 105/2016/QH13 (Law on Pharmacy), “Measures to manage drug prices: 4. Posting up wholesale and retail prices in Vietnam dong of drugs at transaction places or drug-selling places of pharmaceutical business establishments; printing, writing or sticking retail prices on the primary or secondary packages of drugs; publicly displaying drug prices on notice boards, on paper or in other forms.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁸⁹ Article 18 of Law No. 105/2016/QH13 (Law on Pharmacy), “Conditions on persons responsible for professional pharmacy activities at drug retailing establishments:

1. A person responsible for professional pharmacy activities at a drugstore must possess a professional degree specified at Point a, Clause 1, Article 13 of this Law and have practiced for 2 years at an appropriate pharmacy establishment. He/she may concurrently take charge of clinical pharmacy activities at the drugstore.

2. A person responsible for professional pharmacy activities at a drug dispensary must possess a professional degree specified at Point a, e or g, Clause 1, Article 13 of this Law and have practiced for 18 months at an appropriate pharmacy establishment.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁹⁰ Article 33 of Law No. 105/2016/QH13 (Law on Pharmacy), “Conditions for grant of a certificate of
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Drug Registration and Circulation

Drugs must be registered with the Ministry of Health before they are put on market sale except (1) prescription drugs prepared at a drugstore by a person managing professional pharmacy activities at the drugstore, (2) imported drugs permitted for import under conditions specified by law and (3) traditional drugs used in traditional medical and treatment establishments and traditional drugs processed or prepared by a provincial- or higher-level hospital applying traditional medicine.²⁹¹

Drugs circulated in the market must fully satisfy the following conditions:²⁹²

- (1) Meet safety and efficacy requirements;
- (2) Are manufactured at an establishment that meets the conditions prescribed in this Law;

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eligibility for pharmaceutical business: 1. Conditions of physical and technical foundations and personnel are as follows: d/ An establishment retailing drugs must have a place and area for drug storage, preserving tools and equipment, professional and technical documents and employees satisfying the requirements of good practices of drug retailing.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁹¹ Article 54 of Law No. 105/2016/QH13 (Law on Pharmacy), "Drugs and drug materials subject to registration and registration requirements: 1. Drugs shall be registered before circulation in Vietnam, excluding: a/ Prescription drugs prepared at a drugstore as prescribed at Point b, Clause 1, Article 47, and drugs manufactured and prepared at a medical examination and treatment establishment as prescribed in Article 85 of this Law; b/ Imported drugs as prescribed in Clause 2, Article 60 of this Law; c/ Traditional drugs as prescribed in Clauses 1 and 2, Article 70 of this Law.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁹² Article 54 of Law No. 105/2016/QH13 (Law on Pharmacy), "Drugs and drug materials subject to registration and registration requirements: 4. A certificate of free sale in Vietnam may be granted for drugs and drug materials which: a/ Meet safety and efficacy requirements; b/ Are manufactured at an establishment that meets the conditions prescribed in this Law; c/ Are manufactured according to the process and meet the quality standards prescribed in Articles 102 and 103 of this Law.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

(3) Are manufactured according to the process and meet the quality standards prescribed in this Law.

In addition, a certificate of free sale of drugs and drug materials shall be granted for:²⁹³

- (1) Drugs or drug materials which have no certificate of free sale in Vietnam;
- (2) Drugs which already have certificates of free sale but then see changes in their pharmaceutical ingredients or medicinal materials; content, concentration or amount of active pharmaceutical ingredients or medicinal materials; form of preparation; route of administration; or change of their manufacturer, except change of secondary packaging establishment or manufacturing workshop or location;
- (3) Drug materials which already have certificates of free sale but then see change of their manufacturer, except change of secondary packaging establishment or manufacturing workshop or location.,

Supply of Drugs in Medical Examination and Treatment Establishments

The head of a medical examination and treatment establishment shall ensure sufficient supply of quality drugs to meet first aid and medical examination and treatment demands at his/her establishment; the head of a district- or higher-level medical examination and treatment establishment shall organize the sale of drugs at nighttime. The storage of drugs at a medical examination and treatment establishment must comply with regulations on good storage practices and other relevant regulations. The dispensation of drugs at a medical examination and treatment

²⁹³ Article 55 of Law No. 105/2016/QH13 (Law on Pharmacy), “Forms of registration of drugs and drug materials: 2. A certificate of free sale shall be granted for:

a/ Drugs or drug materials which have no certificate of free sale in Vietnam;

b/ Drugs which already have certificates of free sale but then see changes in their pharmaceutical ingredients or medicinal materials; content, concentration or amount of active pharmaceutical ingredients or medicinal materials; form of preparation; route of administration; or change of their manufacturer, except change of secondary packaging establishment or manufacturing workshop or location;

c/ Drug materials which already have certificates of free sale but then see change of their manufacturer, except change of secondary packaging establishment or manufacturing workshop or location., *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

establishment must comply with physician's instructions or prescriptions. The names and contents of drugs shall be written on drug containers, together with instructions for drug users. Radioactive drugs shall be used only at a medical examination and treatment establishment that has doctors specialized in nuclear medicine and is licensed by the Ministry of Science and Technology to carry out radiation activities in accordance with the law on atomic energy.²⁹⁴

Clinical Trials

New drugs must be clinically tried. Drugs subject to clinical trial must satisfy the following requirements: (1) It has been researched at the pre-clinical stage; (2) It has a stable form of preparation (tablets, mixtures or powder) (3) It satisfies the quality standards stated in the dossier of registration for clinical trial. The label of a drug put for clinical trial must have the phrase: "Drug used for clinical trial. Other uses are prohibited."²⁹⁵

²⁹⁴ Article 84 of Law No. 105/2016/QH13 (Law on Pharmacy), "Supply, storage, dispensation and use of drugs: 1. The head of a medical examination and treatment establishment shall ensure sufficient supply of quality drugs to meet first aid and medical examination and treatment demands at his/her establishment; the head of a district- or higher-level medical examination and treatment establishment shall organize the sale of drugs at nighttime. 2. The storage of drugs at a medical examination and treatment establishment must comply with regulations on good storage practices and other relevant regulations. 3. The dispensation of drugs at a medical examination and treatment establishment must comply with physician's instructions or prescriptions. The names and contents of drugs shall be written on drug containers, together with instructions for drug users. 4. Radioactive drugs shall be used only at a medical examination and treatment establishment that has doctors specialized in nuclear medicine and is licensed by the Ministry of Science and Technology to carry out radiation activities in accordance with the law on atomic energy.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

²⁹⁵ Article 88 of Law No. 105/2016/QH13 (Law on Pharmacy), "Requirements on a drug put for clinical trial: 1. A drug put for clinical trial must meet the following requirements: a/ It has been researched at the pre-clinical stage; b/ It has a stable form of preparation; c/ It satisfies the quality standards stated in the dossier of registration for clinical trial. 2. The label of a drug put for clinical trial must have the phrase: "Drug used for clinical trial. Other uses are prohibited.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (assessed October 20, 2018).

Prohibited Acts²⁹⁶

1. Conducting pharmaceutical business without a certificate of eligibility for pharmaceutical business or during the period of being suspended from doing the business or being deprived of the right to use such certificate.
2. Conducting pharmaceutical business outside the registered pharmaceutical business place.
3. Trading in drugs or drug materials which are in special control and drugs not permitted by a competent agency.
4. Conducting pharmaceutical business outside the professional scope stated in the certificate of eligibility for pharmaceutical business.
5. Trading in any of the following:
 - a/ Counterfeit drugs or drug materials;
 - b/ Drugs or drug materials that fail to satisfy quality standards; drugs or drug materials which are being recalled under notices of competent state agencies; drugs or drug materials which are unclear origin or have expired;
 - c/ Drugs or drug materials on the list of drugs and drug materials banned from import or manufacture;
 - d/ Drugs for clinical trial;
 - dd/ Drugs or drug materials used as samples for registration, testing, scientific research or display at exhibitions or fairs;
 - e/ Drugs or drug materials not yet permitted for circulation;

²⁹⁶ Article 6 of Law No. 105/2016/QH13 (Law on Pharmacy), *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11099> (accessed October 20, 2018).

- g/ Drugs under National Target Programs,²⁹⁷ donated drugs and other drugs not permitted for sale;
- h/ Retailing a prescription drug without prescriptions; retailing a vaccine;
- i/ Selling a drug at a price higher than its declared or posted price.
6. Forging or modifying dossiers, papers, documents or certificates of competent agencies or organizations and of other organizations and individuals in pharmacy activities.
7. Changing or modifying the shelf life of a drug, except the case of change of the shelf life of a drug prescribed in Clause 3, Article 61 of this Law.
8. Practicing pharmacy without a pharmacy practice certificate or during the period of being deprived of the right to use a pharmacy practice certificate, for persons in the working positions prescribed in Article 11 of this Law.
9. Renting, borrowing, leasing, lending or letting another person use a pharmacy practice certificate or a certificate of eligibility for pharmaceutical business for practicing pharmacy or conducting pharmaceutical business.
10. Advertising in the following cases:
- a/ Advertising a drug without a state management agency's certification of the advertising content or not in accordance with the certified content;
- b/ Using a certificate not yet recognized by the Ministry of Health, using material benefits or taking advantage of the name and status of an organization or individual or of a symbol, image, position, reputation, correspondence or letter of thank for advertising a drug;
- c/ Using clinical or preclinical research, testing or bioequivalence trial results not yet recognized by the Ministry of Health for advertising a drug.
11. Organizing drug sales promotions in contravention of law.
12. Taking advantage of drug prescription to seek personal benefits.

²⁹⁷ It is a group of vital drugs listed in National Target Program on Health and Population. The government allocates national budget to provide these drugs to the public for public health. These drugs are not allowed for sale nor gaining private profits. National Target Program will be updated every 5 years.

13. Manufacturing, preparing or selling traditional drugs combined with pharmaceutical ingredients without permission of a competent state management agency.
14. Dispensing or selling to users expired drugs, drugs which have been preserved not in accordance with instructions on their labels, drugs which are being recalled under notices of a competent state agency, or drugs of unclear origin.
15. Providing information, advertising, marketing, making prescriptions for, providing consultations on, labeling or providing use instructions for non-drug products, except medical equipment for the purpose of prevention, cure, diagnosis, treatment or mitigation of disease or modification of physiological functions of the human body.
16. Exporting medicinal materials on the list of precious, rare or endemic medicinal material species and varieties under control without permission of a competent state management agency.

3.4.5 Laws on Narcotics and Prevention and Suppression against Narcotics

Drug-related social evils and crimes are severe in Vietnam, especially at the borders, raising serious concerns for the Vietnamese Government and the entire society. The National Assembly passed Law No.23/2000/QH10 on December 9, 2000 on Prevention and Fight against Drugs (Narcotics) (amended by Law No. 16/2008/QH12 dated June 3, 2008) (hereinafter “Law on Prevention and Fight against Drugs”) to set forth the State’s policies and measures to prevent and combat against drugs. The Criminal Code of 2015 (Law No. 100/2015/QH13) contains a separate chapter on drug-related crimes. Moreover, many decrees and regulations implementing the Law on Prevention and Fight against Drugs have been promulgated.

a) The State’s Policies on Prevention and Suppression against Narcotics

The Law on Prevention and Fight against Drugs emphasizes that drug prevention and fight is the responsibility of all individuals, families, agencies, organizations and the entire society. The State encourages and protects those who participate in preventing and fighting against drug-related evils; organizes the fight against drug-related crimes and employs economic, legal,

cultural, social and technical measures to mobilize all the people to take part in the drug prevention and fight; and combines the prevention and fight against drugs with the prevention and fight against crimes of different types, HIV/AIDS and other social evils.²⁹⁸

“The following acts are strictly forbidden:²⁹⁹

1. Cultivating narcotic-bearing plants;
2. Illegally producing, storing, transporting, preserving, buying, selling, distributing, examining, exchanging, exporting, importing, transiting, researching into or appropriating narcotic substances, pre-substances, addictive medicines, or psychotropic medicines;
3. Illegally using or organizing the illegal use of drug; inciting, coercing, inducing, harboring and/or supporting the illegal use of narcotic substances;
4. Producing, storing, transporting, buying and selling means and tools for use in the illegal production and/or use of narcotic substances;
5. Legalizing money and/or property acquired through the commission of drug-related crimes;
6. Opposing or obstructing the drug detoxification;
7. Retaliating or obstructing responsible people or persons participating in drug prevention and fight;

²⁹⁸ Article 4 of Law No. 23/2000/QH10 (Law on Drug Prevention and Fight), “1. Drug prevention and fight is the responsibility of individuals, families, agencies, organizations and the entire society.

2. The State adopts policies to encourage and protect individuals, families, agencies and organizations participating in preventing and fighting drug-related evils; organize the fight against drug-related crimes and synchronously employ economic, legal, cultural, social and professional measures to propagate and mobilize people, public servants, officers and men of the people’s armed forces to take part in the drug prevention and fight; to combine drug prevention and fight with the prevention of and fight against crimes of different types, HIV/AIDS and other social vices.”, *available at* <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78281/83564/F77552356/VNM78281.pdf> (accessed October 20, 2018).

²⁹⁹ Article 3 of Law No. 23/2000/QH10 (Law on Drug Prevention and Fight), *available at* <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78281/83564/F77552356/VNM78281.pdf> (accessed October 20, 2018).

8. Abusing positions, powers and occupations to violate the laws on drug prevention and fight.
9. Other illegal drug-related acts.”

b) Responsibilities of Different Groups in the Prevention and Suppression against Narcotics

Individuals and families have the responsibility to educate family members and relatives about the harms caused by drugs and the laws on drug prevention and fight; strictly supervise and prevent family members from involving in drug-related evils; strictly observe the doctors' instructions on the use of addictive medicines and psychotropic medicines for medical treatment; oppose drug-related illegal acts committed by relatives and other persons; participate in or support activities related to drug detoxification; monitor and help persons who have given up drug addiction to integrate into the community; prevent and combat the relapse into addiction.³⁰⁰ Individuals, families, agencies and organizations have the responsibility to detect and promptly provide information on drug-related evils to police offices or other competent bodies and report the cultivation of narcotic-bearing plants and actively participate in the destruction of narcotic-bearing crops organized by local administration.³⁰¹ In regions where the narcotic-bearing plants

³⁰⁰ Article 6 of Law No. 23/2000/QH10 (Law on Drug Prevention and Fight), “Individuals and families shall have the responsibility to:

1. Educate family members and relatives about harms caused by drug and the observance of law provisions on drug prevention and fight; strictly manage and prevent family members from involving in drug-related evils;
2. Strictly observe the doctors' instructions on the use of addictive medicines and entripetalneurotropic medicines for treatment of ailments;
3. Oppose drug-related illegal acts committed by relatives and other persons;
4. Participate in or support activities related to drug detoxication at detoxication establishments and communities; monitor and help persons who have given up drug addiction to integrate into the community; prevent and combat the relapse into addiction.”, *available at* <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78281/83564/F77552356/VNM78281.pdf> (accessed October 20, 2018).

³⁰¹ Article 7 of Law No. 23/2000/QH10 (Law on Drug Prevention and Fight), “Individuals, families, agencies and organizations have the responsibility to detect and promptly supply information on drug-related evils to police offices or other competent bodies. The competent State bodies shall have to consider and settle in time
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must be eradicated, the relevant State bodies have the responsibility to implement the State's policies on developing agriculture and forestry to substitute the cultivation of narcotic-bearing plants and to plan appropriate agricultural, forestry, industrial and service structure so that people effectively shift their crops.³⁰²

Schools and other educational institutions have the responsibility to implement education programs on drug prevention and fight; to educate students on the laws on drug prevention and fight as well as the healthy way of life; and to strictly supervise and prevent students from involving in drug-related evils. Schools must also coordinate with families, agencies, organizations and local administration in supervising and educating students about drug prevention and fight, and coordinate with health offices and local administration in organizing tests when necessary in order to detect drug addicts among students.³⁰³

(continued from footnote 301)

the information and denunciations on drug-related evils.", *available at* <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78281/83564/F77552356/VNM78281.pdf> (accessed October 20, 2018).

³⁰² Article 8 of Law No. 23/2000/QH10 (Law on Drug Prevention and Fight), "1. Individuals, families, agencies and organizations have the responsibility to detect and promptly report to the competent State bodies the cultivation of narcotic-bearing plants; actively participate in the destruction of narcotic-bearing crops, organized by local administration. 2. In regions where the narcotic-bearing plants must be got rid of, the State bodies shall, within the scope of their respective tasks and powers, have the responsibility to organize the implementation of the State's undertaking and policies on the development of agricultural and forestry production to substitute the cultivation of narcotic-bearing plants; plan appropriate agricultural, forestry, industrial and service structure so that people shift their production with efficiency.", *available at* <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78281/83564/F77552356/VNM78281.pdf> (accessed October 20, 2018).

³⁰³ Article 10 of Law No. 23/2000/QH10 (Law on Drug Prevention and Fight), "The schools and other educational institutions have the responsibility to:

1. Organize the implementation of the education program on drug prevention and fight; to educate pupils, students and trainees in the legislation on drug prevention and fight as well as the healthy way of life; strictly manage and prevent pupils, students and trainees from involving in drug-related evils;
2. Coordinate with families, agencies, organizations and local administration in managing and educating pupils, students and trainees about drug prevention and fight; *(continued on next page)*

The People's Police Force, Border Defense Force, Coast Guard Force, and Customs have specialized divisions on prevention and fight against drug-related crimes.³⁰⁴

c) Drug-Related Crimes

Chapter XVIII of the Penal Code contains nine articles, penalizing nine drug-related crimes, details below.

1. Growing opium poppy and other kinds of plant bearing narcotic substance (Article 247)³⁰⁵
2. Illegally producing narcotics (Article 248)³⁰⁶
3. Illegally stockpiling, transporting, trading in or appropriating narcotics (Article 249- Article 252)³⁰⁷

(continued from footnote 303)

3. Coordinate with health bodies and local administration in organizing tests when necessary in order to detect drug addicts among pupils, students and trainees.", *available at* <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78281/83564/F77552356/VNM78281.pdf> (accessed October 20, 2018).

³⁰⁴ Article 13 (1) of Law No. 23/2000/QH10 (Law on Drug Prevention and Fight), "1. The drug prevention and fight agencies of the people's police force may carry out the following activities: a) Assuming the prime responsibility and coordinating with the concerned agencies to carry out activities to prevent and fight drug-related crimes in the border and inland regions;", *available at* <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/78281/83564/F77552356/VNM78281.pdf> (accessed October 20, 2018).

³⁰⁵ Article 247 of Law No. 100/2015/QH13 (Criminal Code), "Growing opium poppy plants, coca plants, cannabis plants, or other plants containing narcotic substances: 1. Any person who grows opium poppy plants, coca plants, cannabis plants, or other plants containing narcotic substances in any of the following cases shall face a penalty of 06 - 36 months' imprisonment:" *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

³⁰⁶ Article 248 of Law No. 100/2015/QH13 (Criminal Code), "Illegal manufacturing of narcotic substances: 1. Any person who manufactures narcotic substances in any shape of form shall face a penalty of 02 - 07 years' imprisonment.", *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

³⁰⁷ Article 249 of Law No. 100/2015/QH13 (Criminal Code), "Illegal storage of narcotic substances:
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4. Stockpiling, transporting, trading in or appropriating pre-substances for use in the illegal production of narcotics (Article 253)³⁰⁸
5. Manufacturing, stockpiling, transporting and/or trading in means and/or tools used in the illegal production or use of narcotics (Article 254)³⁰⁹
6. Organizing the illegal use of narcotics (Article 255)³¹⁰

(continued from footnote 307)

1. Any person who stores narcotic substances for purposes other than trading, transporting, or manufacturing narcotic substances in any of the following cases shall face a penalty of 01 - 05 years' imprisonment:", Article 250 of Law No. 100/2015/QH13 (Criminal Code), "Illegal transport of narcotic substances:

1. Any person who transports narcotic substances for purposes other than trading, transporting, or manufacturing narcotic substances in any of the following cases shall face a penalty of 02 - 07 years' imprisonment:", Article 251 of Law No. 100/2015/QH13 (Criminal Code), "Illegal deal in narcotic substances:

1. Any person who illegally deals in narcotic substances shall face a penalty of 02 - 07 years' imprisonment.", Article 252 of Law No. 100/2015/QH13 (Criminal Code), "Appropriation of narcotic substances:

1. Any person who appropriates narcotic substances in any shape or form in any of the following cases shall face a penalty of 01 - 05 years' imprisonment:", *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

³⁰⁸ Article 253 of Law No. 100/2015/QH13 (Criminal Code), "Storage, transport, trading, or appropriation of precursors for illegal manufacturing of narcotic substances:

1. Any person who stores, transports, deals in, or appropriates precursors for illegal manufacturing of narcotic substances in any of the following cases shall face a penalty of 01 - 06 years' imprisonment:", *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

³⁰⁹ Article 254 of Law No. 100/2015/QH13 (Criminal Code), "Manufacturing, storage, transport, trading of instruments and equipment serving illegal manufacturing or use of narcotic substances: 1. Any person who manufactures, stores, transports, or deals in instruments and equipment serving illegal manufacturing or use of narcotic substances in any of the following cases shall face a penalty of 01 - 05 years' imprisonment:", *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

³¹⁰ Article 255 of Law No. 100/2015/QH13 (Criminal Code), "Facilitation of illegal use of narcotic substances: 1. Any person who facilitates the use of narcotic substances in any shape of form shall face a penalty of 02 - 07 years' imprisonment.", *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

7. Harboring the illegal use of narcotics (Article 256)³¹¹
8. Forcing other persons into illegal use of narcotics (Article 257)³¹²
9. Inducing other persons into illegal use of narcotics (Article 258)³¹³
10. Breaching regulations on management and use of addictive drugs or other narcotic substances (Article 259)³¹⁴

The penalties for drug-related crimes are very strict. Crimes prescribed in Articles 248, Article 250 and Article 251 might be subject to capital punishment in serious cases and crimes

³¹¹ Article 256 of Law No. 100/2015/QH13 (Criminal Code), "Concealment of illegal use of narcotic substances:

1. Any person who leases out, lends premises or otherwise conceals the illegal use of narcotic substances, except for the cases in Article 255 hereof, shall face a penalty of 02 - 07 years' imprisonment.", *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

³¹² Article 257 of Law No. 100/2015/QH13 (Criminal Code), "Forcing others to use narcotic substances:

1. Any person who uses violence or threatens to use violence or mental intimidation to force another person to illegally use narcotic substances against that person's will shall face a penalty of 02 - 07 years' imprisonment.", *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

³¹³ Article 258 of Law No. 100/2015/QH13 (Criminal Code), "Persuading or inciting others to use narcotic substances:

1. Any person who persuades or incites or uses other tricks to persuade another person to illegally use narcotic substances shall face a penalty of 01 - 05 years' imprisonment.", *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

³¹⁴ Article 259 of Law No. 100/2015/QH13 (Criminal Code), "Offences against regulations on management, use of narcotic substances, precursors, narcotic drugs, and psychotropic drugs:

1. A person who is responsible for manufacturing, transport, preservation, storage, trading, distribution, use, processing, exchange, export, import, transit through Vietnam's territory, prescription, sale, analysis, research of narcotic substances, precursors, narcotic drugs, or psychotropic drugs but commits any of the following acts despite the fact that he/she was disciplined or previously incurred a civil penalty any of the aforementioned offences or has a previous conviction for a drug-related crime which has not been expunged shall be liable to a fine of from VND 10,000,000 to VND 100,000,000 or face a penalty of 01 - 05 years' imprisonment:", *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed October 20, 2018).

prescribed in Articles 249, Article 252, Article 253, Article 255, Article 257 and Article 258 might be subject to a life sentence in serious cases.³¹⁵

3.5 Laws Concerning Science, Technology and Communication Development

3.5.1 Laws Concerning Science and Technology

a) Overview

The National Assembly passed the first legislation on science and technology in 2000 (Law on Science and Technology No. 21/2000/QH10). After 10 years of implementation, the Law revealed many shortcomings and was unable to meet the requirements of socio-economic development and international integration.³¹⁶ The shortcomings are summarized below.

First, the law is merely a framework law with very general provisions; many provisions are like “declarations” rather than normative rules; therefore, the Law had to wait for guidelines and regulations issued by relevant agencies in order to be implemented. Some provisions could not be applied in practice because no guidelines had been issued as of 2012; for example, provision on developing a master plan for science and technology organizations system, provision on specific requirements for establishment of each type of R&D organization or science and technology service organization; provision on credit preferences for science and technology activities; provision on preferential treatment for science and technology staff and measures to attract talented overseas Vietnamese and foreigners to engaged in science and technology development in Vietnam, etc.

³¹⁵ Under the Criminal Code of 2015, illegal use of narcotics is not a crime because Article 199 of Penal Code 1999 (Law No.15/1999/QH10) (*available at* <http://un-act.org/publication/view/viet-nam-penal-code-1999/>) (accessed October 20, 2018) that criminalize illegal use of narcotic has been annulled by Article 1(36) of Law Amending and Supplementing a Number of Articles of the Penal Code (Law No. 37/2009/QH12)., *available at* https://www.unodc.org/res/cld/document/penal-code-amendmentact_html/2014_update_on_Penal_Code.pdf) (accessed October 20, 2018).

³¹⁶ According to the Report of the Ministry of Science and Technology of Vietnam dated June 25, 2012 assessing the implementation of the Law on Science and Technology (2000).

Second, some provisions are not feasible and incompatible with international standards. For example, the Law only focused on public science and technology organizations as well as on government-funded science and technology activities, which did not meet the demand of a market economy and international integration; the mechanism for identifying and determining science and technology tasks was mostly “top-down” rather than “bottom-up”; the Law did not specify the responsibility to apply the results of government-funded R&D projects in practice; provisions on establishment and registration of science and technology organizations were too loose, leading to the mushrooming establishment of those organizations without effective operation, and state authorities were unable to manage them; science and technology organizations had limited autonomy; lack of provision on mandatory assessment of science and technology activities; lack of effective mechanism to address the overlap of science and technology projects funded by the government at different levels; and mechanism for managing science and technology staff was not flexible and did not provide incentive for creativity.

Third, the Law did not stipulate a mandatory investment for science and technology for enterprises; therefore, many enterprises did not spend their income before tax for R&D and did not innovate to meet the requirements of a more competitive global economy.

Therefore, on June 18, 2013, the new Law on Science and Technology was adopted. This Law, together with the Law on Technology Transfer (2017)³¹⁷, Law on High Technology (2008)³¹⁸, other relevant laws, and their implementing regulations, forms a comprehensive legal framework for the development of science and technology in Vietnam.

³¹⁷ Law on Technology Transfer No. 07/2017/QH14 (in Vietnamese: Luật Chuyển giao công nghệ số 07/2017/QH14), *available at* <https://www.most.gov.vn/en/Pages/Detaildocument.aspx?VID=45> (accessed December 1, 2018).

³¹⁸ Law on High Technology No. 21/2008/QH12 (in Vietnamese: Luật Công nghệ cao số 21/2008/QH12), *available at* <https://thuvienphapluat.vn/archive/Luat/Law-No-21-2008-QH12-of-November-13-2008-on-high-technologies-vb88508t10.aspx> (accessed December 1, 2018).

Law on Science and Technology (2013)³¹⁹ governs organizations and individuals involved in scientific and technological activities, the implementation of scientific and technological activities, measures to ensure science and technology development, and the State's management of science and technology.³²⁰

The Law specifies the State's policies to ensure that science and technology development constitutes a top national policy. Accordingly, the State prioritizes national resources and implements preferential mechanisms and measures for science and technology development. The State also creates conditions for the development of science and technology market and encourages enterprises to invest in science and technology activities.³²¹

³¹⁹ Law on Science and Technology No. 29/2013/QH13 (in Vietnamese: Luật Khoa học và công nghệ số 29/2013/QH13), available at <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn085en.pdf> (accessed December 1, 2018).

³²⁰ Article 1 of Law on Science and Technology No. 29/2013/QH13, "Scope of regulation: This Law provides organizations and individuals engaged in scientific and technological activities; organization of performance of scientific and technological activities; measures to assure the development of science and technology; and the state management of science and technology.", available at <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³²¹ Article 6 of Law on Science and Technology No. 29/2013/QH13, "The State's policies on science and technology development: The State implements the following policies to ensure that science and technology development is a primary national policy:

1. Prioritizing and concentrating all national resources on science and technology development; applying synchronously incentive mechanisms and measures to bring into play the key and motivating role of science and technology in socio-economic development, national defense and security assurance and improvement of people's living standards;
2. Synchronously developing social sciences and humanities, natural sciences, technical sciences and technologies; combining science and technology development with socio-economic development and national defense and security assurance; creating prerequisites for the formation and development of a knowledge-based economy.
3. Intensifying the research and application of advanced and modern scientific and technological achievements, researching, mastering and creating new technologies in order to raise the technological level and competitiveness of products. (*continued on next page*)

b) Science and Technology Organizations

Science and technology organizations include scientific research institutions, scientific research and technological development institutions in forms of academies, institutes, centers, laboratories, research stations, observation stations, experiment stations and other forms specified by the Minister of Science and Technology; higher education institutions; and science and technology service organizations.³²² It is worth noting that science and technology organizations are not government or state agencies. They are merely institutions conducting science and technology activities and they can be public or private. With respect to functions, science and technology organizations are divided into basic research organizations, application

(continued from footnote 321)

4. Concentrating investment in building physical-technical foundations, attaching importance to prioritized and key fields of science and technology; applying special preferential mechanisms and policies for development, training, attraction and effective use of human resources in science and technology.
5. Facilitating the development of the science and technology market.
6. Encouraging and creating favorable conditions for enterprises to invest in scientific and technological activities, technology renewal and technological level raising.
7. Encouraging and creating conditions for science and technology societies, socio-political organizations, social organizations and socio-professional organizations to provide consultancy, criticisms and social assessment and engage in scientific and technological activities.
8. Proactively and actively engaging in international integration in science and technology; heightening the country's profile in science and technology in the region and the world.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³²² Article 9(1) of Law on Science and Technology No. 29/2013/QH13, "Forms of science and technology organizations are specified as follows:

- a) Scientific research organizations and scientific research and technological development organizations organized in the form of academies, institutes, centers, laboratories, research stations, observatories, testing stations and other forms specified by the Minister of Science and Technology;
- b) Tertiary education institutions organized in accordance with the Law on Higher Education;
- c) Scientific and technological service organizations organized in the form of centers, offices, testing chambers and other forms specified by the Minister of Science and Technology.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

research organizations, and science and technology services organizations.³²³ With respect to ownership, science and technology organizations are divided into public, private, and foreign-invested science and technology organizations.

To establish a science and technology organization, the following conditions must be fully met:³²⁴

- (1) the organization's charter, objectives and directions conform to current laws; and
- (2) the organization's science and technology human resources and facilities are able to meet the requirements according to the organization's charter and objectives.

For foreign-invested organizations, there are three additional conditions:³²⁵

³²³ Article 9(2) of Law on Science and Technology No. 29/2013/QH13, "Science and technology organizations are classified as follows:

- a) Into the types specified in Clause 1, Article 12 of this Law, by establishing competence;
- b) Into basic research organizations, applied research organizations and scientific and technological service organizations, by function;
- c) Into public science and technology organizations, non-public science and technology organizations and foreign-invested science and technology organizations, by ownership form.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³²⁴ Article 11(1) of Law on Science and Technology No. 29/2013/QH13, "A science and technology organization may be established when the following conditions are fully satisfied:

- a) Having an organization and operation charter and operation objectives and orientations in accordance with law;
- b) Having science and technology personnel and physical-technical foundations meeting requirements of the achievement of the set objectives and orientations and the implementation of the organization and operation charter.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³²⁵ Article 11(3) of Law on Science and Technology No. 29/2013/QH13, "The establishment of a foreign-invested science and technology organization must comply with the provision of Clause 1 of this Article and satisfy the following requirements:

- a) Its operation objectives, contents and fields conform to Vietnam's laws and satisfy requirements of scientific and technological and socio-economic development of the country;
- b) Its establishment is permitted by the Minister of Science and Technology;

(continued on next page)

(1) the organization's purpose and field of operation conforms to Vietnamese law and the need of socio-economic, science and technology development of Vietnam;

(2) the establishment of the organization is approved by the Minister of Science and Technology; and

(3) the organization is permitted by the Chairman of the People's Committee at the provincial level to set up its headquarter in his province or city. A science and technology organization must register at a competent government agency in charge of science and technology and must be granted a certificate of registration for science and technology operation.³²⁶

Science and technology organizations have the rights to exercise its autonomy and take responsibility in conducting their registered science and technology activities; participate in bidding or are directly assign research projects; conclude science and technology contracts; train personnel and foster talents for science and technology; set up subordinate research and development institutions, science and technology service organizations and enterprises; set up representative offices and branches in Vietnam and abroad; to enter into cooperation or joint venture with, and receive aids from, organizations and/or individuals; contribute capital in cash, assets or value of intellectual property rights in order to conduct science and technology activities as well as production and business activities according to law; have their intellectual property rights protected; transfer or assign science and technology results in accordance with the law; to publish science and technology results; to provide advisory opinions or make proposals to

(continued from footnote 325)

c) It is permitted by the provincial-level People's Committee to open its working office in the locality.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³²⁶ Article 11(4) of Law on Science and Technology No. 29/2013/QH13, "Science and technology organizations shall register their operation with competent state management agencies in charge of science and technology and obtain scientific and technological operation registration certificates.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

competent agencies on the government's policies, laws, socio-economic development plan, science and technology development plan.³²⁷

Foreign science and technology organizations can set up representative offices and branches in Vietnam to carry out science, technology and related activities.³²⁸ The Minister of

³²⁷ Article 13 of Law on Science and Technology No. 29/2013/QH13, "Rights of science and technology organizations:

1. To enjoy autonomy and take self-responsibility in scientific and technological activities in the fields for which they have received registration certificates. The State shall assign payrolls to public science and technology organizations.
2. To register as candidates for selection for or be directly assigned with scientific and technological tasks; to enter into science and technology contracts; to train human resources and foster talents for science and technology.
3. To establish science and technology organizations, businesses or attached science and technology businesses, representative offices and branches at home and abroad for conducting scientific and technological activities in accordance with this Law and other relevant laws.
4. To enter into cooperation or joint ventures with or receive financial assistance from, other organizations and individuals; to contribute money, assets or value of intellectual property rights in order to conduct scientific and technological, production and business activities in accordance with law.
5. To have their intellectual property rights protected; to transfer or assign results of scientific and technological activities in accordance with the laws on intellectual property and technology transfer.
6. To publish results of scientific and technological activities in accordance with the Press Law, the Publication Law and other laws.
7. To give advice or proposals on elaboration of the State's policies, laws, socio-economic development plans and science and technology development plans to competent agencies.
8. To join in international integration in science and technology.
9. To be partially or wholly transformed into science and technology businesses in accordance with law.", available at <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³²⁸ Article 15 of Law on Science and Technology No. 29/2013/QH13, "Vietnam-based representative offices and branches of foreign science and technology organizations:

1. Foreign science and technology organizations may establish their representative offices and branches in Vietnam to conduct scientific and technological activities and activities directly related to scientific and technological activities in accordance with this Law and other relevant laws. (*continued on next page*)

Science and Technology has the authority to grant licenses for such representative offices and branches. The license is valid for at most five years.

c) Preferential Policies for Overseas Vietnamese and Foreign Experts

In order to lure overseas Vietnamese³²⁹ and foreign specialists to participate in science and technology activities in Vietnam, the Law offers a lot of preferences to them, such as wage,

(continued from footnote 328)

2. The establishment of a Vietnam-based representative office or branch of a foreign science and technology organization must satisfy the following conditions:

- a) The science and technology organization is lawfully established by an international organization or registered in a country or territory;
- b) Satisfying the conditions prescribed in Clause 3, Article 11 of this Law;
- c) Operating in the fields of science and technology for which Vietnam has demand; d/ Undertaking to strictly comply with Vietnamese law and treaties to which Vietnam is a contracting party.

3. The Minister of Science and Technology shall grant the establishment licenses of Vietnam-based representative offices or branches of foreign science and technology organizations, Such a license may be valid for 5 years at most but must not exceed the remaining validity duration of the operation registration certificate or paper of equal validity of such organization in case its national law stipulates the validity duration of operation registration certificates of science and technology organizations.

4. Vietnam-based representative offices and branches of foreign science and technology organizations may conduct scientific and technological activities stated in their establishment licenses and have the rights and obligations provided in this Law and other relevant laws.

5. The Government shall specify conditions, order and procedures for establishment of Vietnam-based representative offices and branches of foreign science and technology organizations.”, *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³²⁹ Pursuant to Article 3.3 and 3.4 of the Law on Vietnamese Nationality No. 24/2008/QH12, which is a legislation (Act) that was enacted by the National Assembly on November 13, 2008, came into effect on January 1, 2009, and is entitled to the second highest legal effect only after the Constitution, “Overseas Vietnamese” are Vietnamese citizens and persons of Vietnamese origin who permanently reside in foreign countries. “Persons of Vietnamese origin residing abroad” are Vietnamese people who used to have Vietnamese nationality which had been determined at the time of their birth on the consanguinity principle, and their children and grandchildren are permanently residing in foreign countries.” Overseas Vietnamese may still hold Vietnamese nationality or not. In addition, pursuant to Article 13.2 of the Law on Vietnamese Nationality of 2008

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housing, entry, exit and residence.³³⁰ The Government issued Decree No. 87/2014/ND-CP dated September 22, 2014, detailing preferential policies for these experts. Specifically, foreign and overseas Vietnamese scientists and technologists can be granted multiple-entry visas or

(continued from footnote 329)

(amended in 2014), overseas Vietnamese who have not yet lost Vietnamese nationality as prescribed by Vietnamese law before the effective date of this Law may retain their Vietnamese nationality. Overseas Vietnamese who have not yet lost Vietnamese nationality and have no documents to prove their Vietnamese nationality as stipulated in Article 11 of this Law shall register with overseas Vietnamese representative missions to be determined as having Vietnamese nationality and be granted Vietnamese passport. In general cases, overseas Vietnamese are exempt from entry visas, pursuant to Decree No. 82/2015/ND-CP of the Government dated September 24, 2015 on visas exemption for overseas Vietnamese and foreigners who are spouses and children of overseas Vietnamese.

³³⁰ Article 24 of Law on Science and Technology No. 29/2013/QH13, "Attraction of science and technology workers who are overseas Vietnamese and foreign experts

1. Science and technology workers who are overseas Vietnamese and foreign experts are encouraged to participate in scientific and technological activities in Vietnam.
2. While working in Vietnam, science and technology workers who are overseas Vietnamese have the rights and obligations provided in Articles 20 and 21 of this Law, and enjoy the following incentives:
 - a) To be appointed to or hired to hold leading posts of science and technology organizations; to be assigned to perform scientific and technological tasks at all levels, be considered for recognition or appointment to scientific research titles or technological titles as prescribed in Article 19 of this Law;
 - b) To enjoy expert salary as provided by the Government and other incentives under contracts;
 - c) To enjoy exit, entry, residence, housing and other incentives provided by law.
3. Foreign experts are encouraged to participate in scientific and technological activities in Vietnam and may enjoy the following incentives:
 - a) To be hired to hold leading posts of science and technology organizations; to be assigned to perform scientific and technological tasks;
 - b) To enjoy exit, entry, residence, housing and other incentives provided by law;
 - c) To enjoy expert salary as provided by the Government and other incentives under contracts.
4. Science and technology workers who are overseas Vietnamese and foreign experts with great contributions to the cause of science and technology development in Vietnam will be honored, commended and given Vietnamese science and technology awards by the Vietnamese State.
5. The Government shall specify this Article.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

temporary residence cards of a longer term. Visas and residence cards are also be granted to scientists' family members, including parents, spouses and under-18 children. In addition, foreign and overseas Vietnamese experts holding medals or honorable titles granted by the State of Vietnam are considered for grant of permanent residence cards. During their stay in Vietnam, they can receive support to find appropriate accommodations, jobs and research opportunities in academic institutions. Foreign and overseas Vietnamese experts are able to work for science and technology agencies and supervise the innovation process. They can also enjoy simplified procedures for obtaining work permits.

d) Tax and Credit Policies for Science and Technology Development

The State of Vietnam implements favorable tax policies for science and technology activities. The following cases may enjoy tax incentives:³³¹

- Incomes from the performance of scientific research and technological development contracts;

³³¹ Article 64 of Law on Science and Technology No. 29/2013/QH13, "Tax policy toward scientific and technological activities. The following cases are eligible for the preferential tax policy in accordance with the tax laws:

1. Incomes from the performance of scientific research and technological development contracts;
2. Incomes from products turned out from new technologies applied for the first time in Vietnam or products in the stage of trial production;
3. Hi-tech businesses, hi-tech application agricultural businesses and a number of activities in hi-tech fields;
4. Scientific and technological services;
5. Machinery, equipment, spare parts and supplies which cannot be manufactured at home and need to be imported for direct use for scientific research and technological development;
6. Funding support of organizations and individuals for scientific research; financial aid received for use for scientific research;
7. Transfer of technologies in the fields prioritized for technology transfer to organizations and individuals in areas with difficult or exceptionally difficult socio-economic conditions;
8. Other cases prescribed in the tax laws.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

- Incomes from products being in the period of trial production and products made by new technologies applied for the first time in Vietnam;
- High-tech enterprises, agricultural enterprises applying high technology and some activities in the field of high technology;
- Science and technology services;
- Machinery, equipment, spare parts and supplies which cannot be produced in the country imported for direct use in scientific research and technological development;
- Financial assistance from organizations and individuals for scientific research activities and used for scientific research activities; and
- Technology transfer in prioritized fields to organizations and individuals in disadvantaged areas.

The Law also provides credit policy for science and technology activities.³³² Specifically, organizations and individuals obtaining medium- or long-term loans from the National Foundation

³³² Article 65 of Law No. on Science and Technology 29/2013/QH13, “Credit policy toward scientific and technological activities:

1. When borrowing medium- and long-term loans from the National Science and Technology Development Fund and other funds of the State for scientific and technological activities, science and technology organizations and workers may enjoy preferential loan interest rates.
2. Organizations and individuals borrowing loans for investment in scientific and technological activities may enjoy credit incentives under the charters of lending funds.
3. Organizations and individuals borrowing loans from commercial banks for investment in scientific and technological activities, especially experimental development and trial production, may be considered by the Development Bank of Vietnam for post-investment interest rate support or investment credit guarantee, with a certain rate of outstanding credit loans for scientific and technological activities;
4. Scientific and technological programs, themes and projects that directly serve key socio-economic programs of the State and development of national scientific and technological potential, especially projects on experimentation development or trial production requiring large capital, may be prioritized for being considered for use of official development assistance in the following forms:
 - a) Non-refundable aid or preferential loans for scientific research and technological development;

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for Science and Technology Development or other government foundations to conduct science and technology activities can enjoy preferential interest rates. Organizations and individuals obtaining loans to invest in science and technology activities can enjoy preferential credit policy according to the lending foundation's policies. Science and technology programs, subjects or projects demanding large capital amounts are given priority in consideration for the use of the official development assistance (ODA).

e) Ownership and Copyright to Science and Technology Results

Organizations and/or individuals providing funding or facilities to conduct science and technology projects are owners of the scientific research and technological development results, unless otherwise agreed upon in the science and technology contracts by the parties.³³³

(continued from footnote 332)

b) Loans for investment projects on building of scientific and technological potential or retrievable loans for projects on application of scientific research and technological development results.", available at <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³³³ Article 41 of Law No. on Science and Technology 29/2013/QH13, "Right to own or use scientific research and technological development results:

1. Organizations or individuals investing money and physical-technical foundations in the performance of scientific and technological tasks are owners of scientific research and technological development results, unless otherwise agreed by parties in scientific research and technological development contracts.

2. Representatives of the state owner of results of scientific research and technological development funded with the state budget are as follows:

a) The Minister of Science and Technology acts as the representative of the owner of national scientific and technological task performance results;

b) Ministers, heads of ministerial-level agencies, government-attached agencies, other central state agencies or chairpersons of provincial-level People's Committees act as representatives of the owner of performance results of ministerial- or provincial-level or grassroots scientific and technological tasks they have approved;

c) Heads of agencies or organizations not mentioned at Points a and b of this Clause act as representatives of the owner of performance results of scientific and technological tasks they have approved.

3. Representatives of the state owner mentioned in Clause 2 of this Article may consider assigning the whole or part of the right to own or use results of scientific research and technological development funded with the state budget under the Government's regulations to organizations in charge of performing scientific and technological tasks. *(continued on next page)*

Organizations and/or individuals directly carrying out science and technology works are the authors of such works.³³⁴

For research and development (R&D) projects funded by the state budget, the State is the owner of the R&D results. The State's ownership is exercised through the representatives prescribed by law, including the Minister of Science and Technology (for results of national projects), Ministers of other ministries or Chairmen of the People's Committees at the provincial level (for results of projects approved by them), and the heads of other agencies or institutions (for results of projects approved by them). The above representatives of the State ownership have the power to assign in whole or in part ownership or the right to use results of the government-funded projects to the institutions which directly conduct the projects.

(continued from footnote 333)

4. The exercise of the right to own or use results of scientific research and technological development funded with the state budget mentioned in Clause 3 of this Article is as follows:

a) In case an organization in charge of performing a scientific and technological task is assigned with the whole or part of the ownership, it shall exercise this right in accordance with the laws on intellectual property and technology transfer;

b) In case an organization in charge of performing a scientific and technological task is assigned with the use right, it shall exercise this right in accordance with law.

5. In case an organization in charge of performing a scientific and technological task cannot use scientific research and technological development results mentioned at Point b, Clause 4 of this Article, representatives of the state owner mentioned in Clause 2 of this Article may decide to assign the right to use such results to another organization capable of using scientific research and technological development results.

6. The Government shall specify cases, order and procedures of assignment of the whole or part of the right to own or use scientific research and technological development results provided in this Article.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³³⁴ Article 42 of Law on Science and Technology No. 29/2013/QH13, "Copyright to scientific research and technological development results: Persons who directly perform scientific research and technological development tasks are authors of results of such scientific research and technological development. Authors of scientific research and technological development results enjoy the rights provided in this Law and other relevant laws.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

At least 30 percent of the profits generated from the use, license, assignment, and capital contribution of R&D results from projects funded by the state budget will be distributed to the authors; the remainder is distributed among the owner, the leading institution that conducts the project, and the broker as stipulated by the Government.³³⁵

f) Investment in Science and Technology

The State's Investment

The State of Vietnam gives priority to science and technology. The State of Vietnam ensures that spending for science and technology accounts for at least 2% of total state budget expenditure annually, and such spending will be increased in correlation with the rising demand for science and technology development of the country.³³⁶ This budget will be used to fund prioritized and important science research and technology development projects for the benefit of the society, to develop national science and technology capacity, to invest in the facilities for science and technology organizations, to ensure the necessary budget to maintain operation of

³³⁵ Article 43 of Law on Science and Technology No. 29/2013/QH13, "Division of profits upon use, licensing, transfer or capital contribution as capital of results of scientific research and technological development funded with the state budget: At least 30% of the profit earned from the use, licensing, transfer or contribution as capital of results of scientific research and technological development funded with the state budget will be divided to the author. The remainder will be divided among the owner, managing agency and broker under regulations of the Government.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³³⁶ Article 49 of Law on Science and Technology No. 29/2013/QH13, "State budget for science and technology:

1. The State earmarks 2% or more of the total annual state budget expenditures for science and technology and gradually increase this rate to meet requirements of science and technology development.
2. The budget for science and technology must be recorded as a separate expenditure in the annual state budget index of each ministry, sector or locality.
3. The allocation of the state budget for science and technology in a year is based on practical needs and results of use of the allocated budget.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

public science and technology organizations, to develop human resources for science and technology, to provide funding for different funds for science and technology development, etc.³³⁷

Investment of Enterprises, Organizations and Individuals

Enterprises are encouraged to reserve part of their capital for investment in science and technology development in order to improve technologies and raise the products' competitiveness and quality. The enterprises' investment in science and technology development is accounted in their production and operation costs.³³⁸ Enterprises which apply the results of

³³⁷ Article 50 of Law on Science and Technology No. 29/2013/QH13, "Purposes of state budget expenditures for science and technology:

1. Performing priority and key scientific and technological tasks and scientific and technological tasks at all levels for common interests of the society; attaching importance to basic research tasks in science and technology.
2. Maintaining and developing the national scientific and technological capacity, investing in and supporting the building of physical and technical foundations for science and technology organizations; assuring regular basic research activities of public science and technology organizations.
3. Developing human resources for science and technology.
4. Financing the State's science and technology funds as provided in Article 59 of this Law.
5. Supporting the technological research, application and renewal in prioritized and key fields.
6. Stepping up the science and technology application in localities.
7. Purchasing scientific research and technological development results, supporting the import of source technologies and high technologies, designs and hiring domestic and foreign experts in prioritized fields.
8. Communicating and popularizing scientific and technological knowledge, information and statistics; supporting the registration for protection of intellectual property rights, and publicizing scientific research and technological development results and science and technology awards.
9. Supporting other scientific and technological activities.", *available at* <https://www.most.gov.vn/Images/File/VanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³³⁸ Article 56 of Law on Science and Technology No. 29/2013/QH13, "Investment by businesses in science and technology:

1. Businesses shall invest in technology renewal and improvement, and raising of productivity, quality and competitiveness of products and goods.
2. Investment in science and technology development by businesses is accounted as actual expense related to their production or business operation. (*continued on next page*)

science research and technology development for innovation and improvement of productivity, quality and competitiveness are entitled to preferential loans, sponsorship, and loan guarantees from the State's funds in science and technology.³³⁹ Enterprises which apply high technology can enjoy the highest level of preferential policies.

The State also encourages the development of science and technology enterprises, which are defined as enterprises that conduct their business in science and technology areas in order to create products or goods from the results of science research and technology development.³⁴⁰ To be qualified as science and technology enterprises, these enterprises must be established and registered under the Law on Enterprises, have the capacity to carry out science and technology tasks, and receive certain proportion of revenue from production or trading of

(continued from footnote 338)

3. Businesses that invest or associate with others in investing in scientific and technological research in prioritized or key fields determined by the State, technology renewal and improvement, and raising of product and goods productivity, quality and competitiveness, may be considered for support or loans by science and technology funds and enjoy other incentives provided by this Law.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³³⁹ Article 57 of Law on Science and Technology No. 29/2013/QH13, "Incentives for businesses to apply scientific research and technological development results:

1. Businesses that apply scientific research and technological development results in order to renew and improve technology, raise product and goods productivity, quality and competitiveness may be provided with financial support, preferential loans, loan interest rate support or loan guarantee by the State's science and technology funds.

2. Businesses that apply high technologies may enjoy the highest incentives as provided by the law on high technologies. Businesses that apply technologies being outcomes of domestic scientific and technological tasks may enjoy bank loan interest rate support.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

³⁴⁰ Article 58(1) of Law on Science and Technology No. 29/2013/QH13, "Science and technology businesses are those engaged in production, business or provision of scientific and technological services to create products or goods from results of scientific research and technological development.", *available at* <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

products or goods based on the result of science research and technology development. In addition to preferences stated in the preceding paragraph, such enterprises are entitled to other preferential policies. For example, they can be transferred ownership or the right to use the results of science research and technology development which are owned by the State. They are also entitled to corporate income tax incentives, exemption of fees to register land use right or house ownership, and priority in leases of land and infrastructures in the industrial zones, export processing zones, economic zones and hi-tech zones, etc.³⁴¹

3.5.2 Laws Concerning Communication Development

a) Overview

The laws governing telecommunication in Vietnam have been continuously improved during the last thirty years towards liberalization of the telecom market. Decree 121-HDBT dated August 15, 1987 of the Council of Ministers promulgating the Regulation on Postal and Telecommunication (hereinafter “**Decree 121**”) stated that the State held monopoly in organizing and administering the national postal and telecommunication network. The State assigned the Postal sector to manage and exploit this network in a socialist way in order to serve the need for

³⁴¹ Article 58(3) of Law on Science and Technology No. 29/2013/QH13, “In addition to the incentives provided in Article 57 of this Law, science and technology businesses may also:

- a) Be considered for assignment of the right to own or use scientific research and technological development results under the state ownership;
- b) Enjoy enterprise income tax incentives, registration fee exemption upon registration of land use rights and house ownership in accordance with law;
- c) Be given priority in renting land and infrastructure in industrial parks, export processing zones, economic zones and hi-tech zones;
- d) Enjoy the preferential policy on investment credit of the Development Bank of Vietnam, the national fund for technology renewal and other funds for implementation of production or business investment projects;
- (dd) Be given priority in using equipment and facilities for scientific research and technological development in national key laboratories, technology incubators, enterprise incubators and scientific and technological research institutions of the State.”, available at <https://www.most.gov.vn/Images/FileVanBan/LawonScienceandTechnology2013.pdf> (accessed December 1, 2018).

communication of the Communist Party, the State, armed forces, economic and social organizations and the people. There was no separation between the State management function with the telecommunication business function.

Decree 121 created the first legal framework for telecommunications and postal activities in Vietnam. With the rapid development of the industry, especially during the late 1990s, Decree 121 soon became obsolete. On November 12, 1997, the Government issued Decree 109/1997/ND-CP on postal and telecommunications activities (hereinafter “**Decree 109**”) to replace Decree 121. The key concept of the Decree 109 is to provide that postal and telecommunication are under the state’s monopoly (only state-owned enterprises can do business in this sector), and to separate the State management function with the telecommunication business function. A number of sub-regulations followed the issuance of the Decree 109. Most of these regulations aimed to protect the State’s monopoly through tight control of the market. In 2001, Vietnam entered into a Bilateral Trade Agreement (BTA) with the United States, in which Vietnam agreed to gradually open the telecommunications sector to U.S. companies. Vietnam became a member of the WTO in 2007. In its WTO commitments, Vietnam agreed to open telecommunications services to foreign investors. As such, there was a need for a more comprehensive legal framework to manage a fully liberalized market.

The first Ordinance on Post and Telecommunications³⁴² was approved by the Standing Committee of the National Assembly in 2002. This Ordinance governs post and telecommunication activities and radio frequencies; rights and obligations of organizations and individuals engaged in post and telecommunication activities. This Ordinance allowed non-state-owned enterprises to engage in telecommunication business. The Ordinance provided for two

³⁴² Ordinance No. 43/2002/PL-UBTVQH10 dated May 5, 2002 of the Standing Committee of the National Assembly on Post and Telecommunication (in Vietnamese: Pháp lệnh Bưu chính, viễn thông số 43/2002/PL-UBTVQH10 ngày 05/5/2002 của Ủy ban Thường vụ Quốc hội), available at <https://luatminhkhue.vn/en/law/ordinance-no-43-2002-pl-ubtvqh10-of-may-05th--2002--on-post-and-telecommunication.aspx> (accessed December 1, 2018). The ordinance is issued by the Standing Committee of the National Assembly and has lower legal effect than a legislative Act.

types of telecommunication enterprises: network infrastructure providers (which must be state-owned enterprises) and telecommunication service providers (which can be any type of enterprises established in accordance with telecommunication regulations).

The Ordinance was then replaced by the Law on Telecommunications No. 41/2009/QH12 (hereinafter “Law on Telecommunications”)³⁴³, implemented by Decree 25/2011/ND-CP dated April 6, 2011 of the Government, came into effect on July 1, 2010. The Law governs telecommunications activities, including telecommunications investment and business; public-utility telecommunications; telecommunications management; construction of telecommunications works, rights and obligations of organizations and individuals engaged in telecommunications activities. The Law shows the Government’s open policy as to the telecom market after Vietnam’s WTO accession in 2007. Along with the Law on Telecommunications, other laws and regulations such as the Law on Information Technology (2006)³⁴⁴ and the Law on Electronic Transactions (2005)³⁴⁵ all mark steady progress in the development of laws governing information technology and telecommunications.

³⁴³ Law on Telecommunications No. 41/2009/QH12 (Luật Viễn thông số 41/2009/QH12), available at <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

³⁴⁴ Law on Information Technology No. 67/2006/QH11 (Luật Công nghệ thông tin số 67/2006/QH11). This Law provides for information technology application and development activities, measures to ensure information technology application and development, and rights and obligations of agencies, organizations and individuals engaged in information technology application and development activities.

³⁴⁵ Law on Electronic Transactions No. 51/2005/QH11 (Luật Giao dịch điện tử số 51/2005/QH11). The Law contains eight chapters with 54 articles that prescribe data-based messages, e-signature, certification of e-signature, communication and implementation of e-contracts, e-transaction by state agencies, security, safety, protection and confidentiality in e-transactions, settlement of disputes and remedies where violations in e-transactions occur.

According to the Law on Telecommunications, the Government is empowered to manage the telecommunications activities of the State. The Ministry of Information and Communications (MIC) is the State body in charge of telecommunications.³⁴⁶

³⁴⁶ Article 10 of Law on Telecommunications No. 41/2009/QH12, “Specialized management agency in charge of telecommunications. The specialized management agency in charge of telecommunications is an agency under the Ministry of Information and Communications, which shall assist the Ministry in performing the task of state management of telecommunications according to the assignment and decentralization by a competent state agency.”, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018). Article 9 of Law on Telecommunications No. 41/2009/QH12, “Responsibilities for state management of telecommunications:

1. The Government performs the unified state management of telecommunications.
2. The Ministry of Information and Communications shall be answerable to the Government for unified state management of telecommunications, and has the following tasks and powers:
 - a) To promulgate or propose to competent state agencies for promulgation legal documents, technical standards and regulations, econ-technical norms on telecommunications; national telecommunications development strategy and plan;
 - b) To organize the implementation of legal documents on telecommunications, the national telecommunications development strategy and plan:
 - c) To manage and regulate the telecommunications market; to manage the provision of telecommunications services and operations;
 - d) To actively coordinate with the Ministry of Industry and Trade in managing competition in activities of building the telecommunications infrastructure and providing telecommunications services under the law on competition;
 - e) To inspect, examine and settle disputes, complaints and denunciations and handle law violations in telecommunications activities:
 - (f) To train, retrain and develop human resources: to conduct scientific and technological research and application in telecommunications activities;
 - g) To perform international cooperation in telecommunications.
3. Ministries and ministerial-level agencies shall, within the ambit of their tasks and powers, coordinate with the Ministry of Information and Communications in performing the state management of telecommunications.
4. People's Committees at all levels shall, within the ambit of their tasks and powers, perform the state management of telecommunications in their localities.”, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

b) Telecommunications Business and Investment

Telecommunications business includes telecommunications services and trading in telecommunications commodities.³⁴⁷

To provide telecommunications services, a telecommunications service provider must follow the rules on connection, management of telecommunications resources, telecommunications standards and norms, and related regulations.³⁴⁸ Other related regulations include Decree No.

³⁴⁷ Article 13 of Law on Telecommunications No. 41/2009/QH12, “Forms of telecommunications business:

1. Telecommunications business means provision of telecommunications services and trading in telecommunications commodities. The provision of telecommunications services means investment in the public telecommunications infrastructure and provision of telecommunications services for the profit purpose. The trading in telecommunications commodities means investment, manufacture, sale and purchase, or lease of telecommunications software, supplies and equipment for the profit purpose.

2. The provision of telecommunications services shall comply with this Law and other relevant laws. The trading in telecommunications commodities shall comply with Articles 51 and 52 of this Law and other relevant laws.”, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

³⁴⁸ Article 25 of Law on Telecommunications No. 41/2009/QH12, “Provision of telecommunications services:

1. Institutional providers of telecommunications services must have licenses for provision of telecommunications services, except the cases specified in Clauses 2 and 3. Article 40 of this Law.

2. The provision of telecommunications application services shall comply with the provisions of this Law on connection and management of telecommunications resources. standards and technical regulations and other relevant laws.

3. Telecommunications services shall be directly provided or resold under telecommunications service use contracts between telecommunications businesses or telecommunications service agents and telecommunications service users.

4. Telecommunications businesses shall register mode! telecommunications service use contracts.

5. The provision of telecommunications services across the border to telecommunications service users in the Vietnamese territory shall comply with Vietnamese laws and treaties to which the Socialist Republic of Vietnam is a contracting party.

6. Vietnamese telecommunications businesses shall provide offshore telecommunications services under Vietnamese laws, treaties to which the Socialist Republic of Vietnam is a contracting party and laws of countries to which services are provided.

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25/2011/ND-CP dated April 6, 2011 of the Government implementing the Law on Telecommunications; Decree No. 174/2013/ND-CP dated November 13, 2013 of the Government providing penalties for administrative violations of regulations on post and telecommunications, information technology and radio frequency; Decree No. 81/2016/ND-CP dated July 1, 2016 of the Government amending several articles of Decree No. 25/2011/ND-CP; Decree No. 49/2017/ND-CP dated April 24, 2017 of the Government amending Article 15 of Decree No. 25/2011/ND-CP and Article 30 of Decree No. 174/2013/ND-CP. These Decrees set forth limitation in ownership of a telecom business, procedure for registration and approval of a foreign investment project in telecommunication, settlement of telecom disputes, procedure for granting telecom licenses.

Telecommunications services can be provided directly or can be resold on the basis of contracts executed between telecommunications enterprises/agencies and users. Contracts must be registered with the competent authorities. If a telecommunications provider fails to comply with the terms of the contract, it must reimburse all or a part of the service fees it has collected.

The State holds dominant shares in telecommunications service providers with network infrastructure which play an important role in operating the national telecommunications infrastructure and which have direct influence on socio-economic development, national security and defense.³⁴⁹

(continued from footnote 348)

7. The Ministry of Information and Communications shall specify the provision of telecommunications services.”, available at <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

³⁴⁹ Article 17 of Law on Telecommunications No. 41/2009/QH12, “Communications services:

1. The State holds dominant shares in telecommunications service providers with network infrastructure which are particularly important to operation of the entire national telecommunications infrastructure and exert direct effects on socio-economic development and defense and security maintenance. The Prime Minister promulgates the list of service providers with network infrastructure in which the State holds controlling shares.

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To prevent restraint of competition and unfair competition, an organization or individual owning more than 20% of charter capital or shares in a telecommunication enterprise is not allowed to hold more than 20% of charter capital or shares of other telecommunication enterprises doing the business in the same market belonging to the List of telecommunication services promulgated by the Ministry of Information and Communications.³⁵⁰

Foreign investors are allowed to invest and trade telecommunication services in the form of direct investment or indirect investment. In case of direct investment to provide telecommunication services without network infrastructure, foreign investors are allowed to enter into joint venture or business cooperation contracts with enterprises established in Vietnam. Where the investment is to provide telecommunication services with network infrastructure, foreign investors are allowed to enter into joint venture or business cooperation contracts with telecommunication enterprises that have been licensed to establish a telecommunication network in Vietnam.³⁵¹

(continued from footnote 349)

2. The Government shall specify the maximum equity or share level which an organization or individual is allowed to hold in two or more other telecommunications businesses which all conduct business in the same telecommunications service market in order to assure fair competition.”, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

³⁵⁰ Article 3 of Decree 25/2011/ND-CP dated April 6, 2011 Implementing the Law on Telecommunications, “Ownership in the trading of telecommunication services:

1. An organization or individual owning more than 20% of charter capital or shares in a telecommunication enterprise shall not be allowed to possess more than 20% of charter capital or shares of other telecommunication enterprises doing the business in the same market belonging to the List of telecommunication services promulgated by the Ministry of Information and Communications.

2. Telecommunication enterprises that provide telecommunication services on the List specified in Clause 1 of this Article shall report to the specialized management agencies on telecommunications in accordance with the Ministry of Information and Communication upon changes in the list of organizations or individuals owning more than 20% of charter capital or shares of the enterprise.”, *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10579 (accessed December 1, 2018).

³⁵¹ Article 4 of Decree 25/2011/ND-CP dated April 6, 2011 implementing the Law on Telecommunications, “Forms, conditions and ratios of contributed capital of foreign investors:

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c) Telecommunication Licenses

There are two categories of licenses: telecoms service business licenses, and telecoms operations licenses. A telecoms service business license can be (1) a license to set up a public telecoms network with a term of 15 years or less, issued to a telecoms enterprise that provides facilities-based services; or (2) a license to provide telecoms services with a term of 10 years or less, issued to a telecoms service provider that does not own any infrastructure. A telecoms operations license is (1) a license to lay telecoms cables beneath Vietnamese waters, with a term of 25 years or less, issued to an organization that installs telecoms cables under the sea or through Vietnam's internal waterways, territorial waters, above the continental shelf, or through Vietnam's exclusive economic zones; or (2) a license to set up a private telecoms network with a term of 10 years or less, issued to an organization that establishes a private network; or (3) a license to test

(continued from footnote 351)

1. Foreign investors are allowed to invest and trade telecommunication services in the form of direct investment, indirect investment in accordance with the Telecommunication Law and the law on investment.
2. In case of direct investment to provide telecommunication services without network infrastructure, foreign investors are allowed to jointly venture or cooperate the business on the basis of contracts with enterprises established in Vietnam. Where the investment is to provide telecommunication services with network infrastructure, foreign investors are allowed to jointly venture or cooperate the trading on the basis of contracts with telecommunication enterprises have been licensed to establish a telecommunication network in Vietnam.
3. In addition to the conditions prescribed by laws on investment, foreign investment projects in the field of telecommunication services trading must satisfy the following conditions:
 - a) In accordance with the planning of the national telecommunication development, the planning of telecommunications resource and the planning of passive telecommunication technical infrastructure in the area of investment;
 - b) To meet the conditions for legal capital and committed amount for investment specified in Articles 19, 20 and 21 of this Decree.
4. The proportion of contributed capital by foreign parties must be consistent with the provisions of the laws of Vietnam, international treaties to which the Socialist Republic of Vietnam is a member.", *available at* http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10579 (accessed December 1, 2018).

existing networks and telecoms services with a term of one year or less, issued to an organization that tests telecoms networks and services.³⁵²

A telecoms license is not required for certain telecom business activities, such as trading of telecoms goods; provision of telecoms services by telecoms service agents; lease of transmission lines to provide telecoms application services; and service of private telecoms networks, except otherwise provided by the Law on Telecommunications.³⁵³

³⁵² Article 34 of Law on Telecommunications No. 41/2009/QH12, “Telecommunications licenses:

1. Telecommunications licenses include licenses for commercial provision of telecommunications services and licenses for telecommunications operations.
2. Licenses for provision of commercial telecommunications services include:
 - a) License for establishment of telecommunications networks which is valid for 15 years or less and granted to service providers with network infrastructure:
 - b) License for provision of telecommunications services which is valid for 10 years or less and granted to service providers without network infrastructure.
3. Licenses for telecommunications operations include:
 - a) License for installation of undersea telecommunications cable lines which is valid for 25 years or less and granted to organizations that install undersea telecommunications cable lines ashore or across the internal waters, territorial seas, continental shelf or exclusive economic zones of Vietnam:
 - b) License for establishment of exclusive-use telecommunications networks which is valid for 10 years and granted to organizations that establish exclusive-use telecommunications networks:
 - c) License for testing of telecommunications networks and services which is valid for 1 year and granted organizations that test telecommunications networks and services.
4. The Government shall specify the competence, conditions and procedures for grant, modification, supplementation, extension and revocation of telecommunications licenses.”, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

³⁵³ Article 40 of Law on Telecommunications No. 41/2009/QH12, “Exemption from telecommunications licenses: Organizations and individuals engaged in telecommunications activities are not required to obtain telecommunications licenses in the following cases:

1. They trade in telecommunications commodities;
2. They provide telecommunications services as telecommunications service agents;
3. They rent transmission lines for provision of telecommunications application services:

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The Minister of Information and Communication has the authority to grant the following licenses:

- (a) License to establish a public-utility telecommunication network that uses wireless electric frequency band;
- (b) License to provide telecommunication services over the public-utility telecommunication network that uses wireless electric frequency band;
- (c) License to test telecommunication network that uses wireless electric frequency band;
- (d) License to establish telecommunication network used for diplomatic missions, foreign consulates and representative offices of international organizations in Vietnam that enjoy the consular diplomatic privileges and immunities; and
- (e) License to install telecommunication cables at sea.

In other cases, the Vietnam Telecommunication Authority, which is under the Ministry of Information and Communication, has the authority to grant licenses.

Thresholds for each license application are tabled below:

	License Type	Thresholds
1	licenses for provision of telecommunications services	<p>A business must fully satisfy the following conditions:</p> <ul style="list-style-type: none"> (a) Having a business registration certificate or certificate of investment in provision of telecommunications services; (b) Having sufficient financial capability, organizational structure and manpower suitable to size of projects; (c) Working out technical plans and feasible business plans in line with the national telecommunications development strategy and plan, and in compliance with regulations on the telecommunications resources, connection, charge rates, technical standards and

(continued from footnote 353)

4. They operate exclusive-use telecommunication networks, except the cases specified at Points a, b. c and d. Clause 5. Article 24 of this Law." available at <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat-law-on-telecommunications> (accessed December 1, 2018).

		<p>regulations, and quality of telecommunications networks and services; and</p> <p>(d) Taking measures to assure the safety of telecommunications infrastructure and information security.</p>
2	license for establishment of a public telecommunications network	A business must fully satisfy all of the above conditions and must have stipulated legal capital and made a committed investment capital according to the Government's regulations.
3	license for installation of undersea telecommunications cable lines	<p>A Vietnamese or foreign organization must satisfy the following conditions: (a) Committing to complying with Vietnamese laws;</p> <p>(b) Committing to refraining from causing pollution of the marine environment;</p> <p>(c) Committing to refraining from performing activities other than survey, installation, maintenance and repair of telecommunications cable lines;</p> <p>(d) Providing adequate, accurate and timely information related to cable lines to the specialized management agency in charge of telecommunications;</p> <p>(e) Submit to the inspection, supervision and control by competent state agencies upon conducting survey, installation, maintenance or repair of cable lines in Vietnamese seas and bear all expenses for inspection, control or instruction activities.</p>
4	license for establishment of an exclusive-use telecommunications network	<p>An organization must satisfy the following conditions:</p> <p>(a) Committing to establishing an exclusive-use telecommunications network only for the purpose of providing services for the network members and not for the purpose of commercial provision of telecommunications services;</p> <p>(b) Working out technical and professional operation plans in line with the national telecommunications development plan and in</p>

		<p>compliance with regulations on the telecommunications resources, connection, and technical standards and regulations;</p> <p>(c) Devising measures to assure the safety of telecommunications infrastructure and information security.</p>
5	license for testing of telecommunications networks and services	<p>(a) Services requested to be tested are telecommunications services not indicated in the granted telecommunications license or telecommunications services using the telecommunications resources other than that already allocated;</p> <p>(b) Testing scope and scale is limited to evaluating the technology and market before official commencement of business operation;</p> <p>(c) Testing plan is in compliance with regulations on telecommunications connection, charge rates, technical standards and regulations.</p>

d) Fees on telecommunications operation rights (See Enclosed Appendix A for Schedule of Fees and Charges for Insurance of License for Telecommunications Operations)

A telecoms enterprise must pay the State a fee to establish a network and to provide telecommunications services. The Vietnam Telecommunications Authority under the Ministry of Information and Communications is responsible for collecting telecommunications charges and fees (pursuant to Article 2 Circular No. 273/2016/TT-BTC dated November 14, 2016 of the Ministry of Finance on fees and charges for issuance of license for telecommunications services and license for telecommunications operations and collection, exemption, transfer, management and use thereof, and Article 2.28 Decision No. 1458/QĐ-BTTTT dated September 1, 2017 of the Minister of Information and Communication on the functions, tasks, powers and structure of the Vietnam Telecommunications Authority). The fee is determined based on the scope and size of the telecommunications network and telecommunications service turnover; volume and value of allocated telecommunications resources; level of use of space, ground surface, underground space, river bed and sea bed for establishing the telecommunications network or building

telecommunications works and public telecommunications service points.³⁵⁴ The fee for the right to telecommunications operation can be paid annually by the percentage of turnover, annually in a fixed amount, or paid in a lump-sum payment in a fixed amount for the whole validity duration of the license.

e) Price Control

In its accession to the WTO, Vietnam committed to apply price controls in a WTO-consistent fashion. The Law on Telecommunications³⁵⁵ stipulates the following principles for determining telecommunications prices:³⁵⁶ (1) to respect the rights of telecoms enterprises to

³⁵⁴ Article 41 of Law on Telecommunications No. 41/2009/QH12, "Charge for the right to telecommunications operation:

1. Charge for the right to telecommunications operation is a sum of money payable by an organization to the State to be entitled to establish a telecommunications network or provide telecommunications services. This charge shall be determined on the basis of scope and size of (he telecommunications network and telecommunications service turnover; volume and value of allocated telecommunications resources: level of use of space, ground surface, underground space, river bed and sea bed for establishing the telecommunications network or building telecommunications works and public telecommunications service points.

2. Organizations shall pay the charge for the right to telecommunications operation by any of the following modes:

a) Annual payment of the charge pro rata according to turnover:

b) Annual payment of the charge in a fixed amount:

c) Lump-sum payment of the charge in a fixed amount for the whole validity duration of the license.

3. The Ministry of Finance shall assume the prime responsibility for. and coordinate with the Ministry of Information and Communications in. promulgating or proposing to competent state agencies for promulgation charge rates, collection, remittance, management and use of the charge for the right to telecommunications operation.", *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat-law-on-telecommunications> (accessed December 1, 2018).

³⁵⁵ Law on Telecommunications No. 41/2009/QH12, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat-law-on-telecommunications> (accessed December 1, 2018).

³⁵⁶ Article 54 of Law on Telecommunications No. 41/2009/QH12, "Principles for determination of telecommunications charge rates:

1. Respect for the right of telecommunications businesses to self-determination of and the competition in charge rates.

2. Assurance of harmony between legitimate rights and interests of telecommunications service users, telecommunications businesses and the State. (*continued on next page*)

determine the price and to compete in terms of price; (2) to ensure the legitimate rights and benefits of service users, telecoms enterprises and the State; (3) to ensure fair competition and to perform telecoms activities for public purposes; and (4) to ensure equality and non-discrimination in the determination and management of telecoms charges, except in cases designed to encourage new enterprises to enter the market. A telecommunications enterprise may determine the prices of services that it provides except the prices of services that must be determined by the State.

Telecommunications charges will be calculated on the basis of applicable policies and objectives of telecoms development; regulations on price management and international treaties to which Vietnam is a signatory; market price, market demand and supply, and an appropriate correlation with telecoms charges of regional and international countries; and no cross compensation among telecoms services.³⁵⁷

(continued from footnote 356)

3. Assurance of an environment for fair competition and performance of public-utility telecommunications activities.

4. Equality and non-discrimination in management and stipulation of telecommunications charge rates, except in case of necessity to encourage new businesses to participate in the market.”, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

³⁵⁷ Article 55 of Law on Telecommunications No. 41/2009/QH12, “Grounds for determination of telecommunications charge rates:

Telecommunications charge rates shall be determined on the following grounds:

1. Telecommunications development policies and objectives in each period: the law on prices and treaties to which the Socialist Republic of Vietnam is a contracting party;
2. Costs of telecommunications services, market demand and supply and telecommunications charge rates applied in regional countries and the world;
3. Non-clearance between telecommunications services.”, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

f) Interconnection

The Law on Telecommunications provides general principles for interconnection between networks.³⁵⁸ The basic principle is that all telecommunications enterprises are entitled to connect with each other's networks and services in order to take advantage of existing infrastructure, which means a telecommunications enterprise must allow other telecommunications enterprises to connect to its network or services. Interconnection is based on negotiations intended to assure equality, rights and benefits of the parties as well as the rights and benefits of telecommunications service users and related persons. A private network may connect to a public network based on a written contract between a telecommunications enterprise and the owner of the private network, but a private network cannot directly connect to another private network without written consent of the competent government agency in charge of telecommunications.³⁵⁹

³⁵⁸ Article 42 of Law on Telecommunications No. 41/2009/QH12, "Principles for telecommunications connection:

1. Telecommunications businesses may connect their telecommunications networks to telecommunications networks or services of other telecommunications businesses and shall let other telecommunications businesses be connected to their telecommunications networks and services.

2. The connection of telecommunications networks and services shall be conducted on the following principles:

a) Connection is based on negotiations to ensure equality, rationality and guarantee for rights and interests of involved parties;

b) Efficient use of telecommunications resources and infrastructure;

c) Satisfaction of technical requirements of the telecommunications connection and safety and uniformity of telecommunications networks;

d) Assurance of legitimate rights and interests of telecommunications service users and relevant organizations and individuals.", *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

³⁵⁹ Article 44 of Law on Telecommunications No. 41/2009/QH12, "Connection of exclusive-use telecommunications networks:

1. Exclusive-use telecommunications networks may connect to public telecommunications networks if satisfying technical standards and regulations of these public telecommunications networks and complying with regulations on connection of exclusive-use telecommunications networks to public ones.

(continued on next page)

g) Telecoms Resources

Telecoms resources are managed by the State in accordance with strategies and plans to develop a national telecoms system designed to optimize the establishment of networks and the provision of telecoms services.³⁶⁰ Telecoms resources are allocated on the basis of equality and transparency. Priority in the allocation of telecommunications numbers storage and Internet

(continued from footnote 359)

The connection between exclusive-use and public telecommunications networks shall be conducted under written connection contracts between telecommunications businesses and organizations having exclusive-use telecommunications networks.

3. Exclusive-use telecommunications networks may not be directly interconnected, unless they obtain a written approval of the specialized management agency in charge of telecommunications.

4. The Ministry of Information and Communications shall specify the connection of exclusive-use telecommunications networks to public ones.”, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

³⁶⁰ Article 46 of Law on Telecommunications No. 41/2009/QH12, “Management of the telecommunications resources:

1. The management of the telecommunications resources covers planning on and distribution, allocation, registration, fixing and use of the telecommunications resources, transfer or withdrawal of the right to use the telecommunications resources, and return of the telecommunications resources.

2. The management of radio frequencies and satellite orbit in telecommunications activities shall comply with the Law on Radio Frequencies and this Law.

3. The management of the telecommunications resources shall adhere to the following principles:

a) Being in line with the national telecommunications development strategy and plan:

b) Optimizing the establishment of telecommunications networks and the provision of telecommunications services;

c) Guaranteeing the fairness, publicity and transparency of the allocation and distribution of the telecommunications resources:

d) Ensuring the efficient, economical and proper use of the telecommunications resources:

e) Guaranteeing legitimate rights and interests of organizations and individuals allocated the telecommunications resources and telecommunications service users.

4. The Ministry of Information and Communications shall specify the management of telecommunications number storages and Internet resources.”, *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

resources is reserved for telecoms enterprises that are able to provide services quickly and that are able to provide services to remote regions, border areas and islands, and for purposes of public telecoms activities.³⁶¹

³⁶¹ Article 48 of Law on Telecommunications No. 41/2009/QH12, "Distribution, use and return of telecommunications number storages and Internet resources:

1. The distribution, fixing, allocation, registration (below collectively referred to as distribution) and use of telecommunications number storages and Internet resources shall adhere to the following principles

- a) Being in line with the planning on telecommunications number storages and Internet resources;
- b) Ensuring the fairness, publicity and transparency of the distribution of telecommunications number storages and Internet resources;
- c) Ensuring the efficient, economic and proper use of the distributed telecommunications number storages and Internet resources;
- d) Prioritizing the distribution of telecommunications number storages and Internet resources to organizations capable of providing fast telecommunications services in reality: providing telecommunications services to deep-lying, remote and border areas, islands and areas with exceptionally difficult socio-economic conditions: or serving public-utility telecommunications activities;
- e) Prioritizing the distribution of telecommunications number storages and Internet resources to organizations capable of applying new and advanced technologies and satisfying requirements of the technology and service convergence.

2. The distribution of telecommunications number storages and Internet resources may be conducted by any of the following modes:

- a) Auction of the right to use or selection through examination of subjects, which have use needs exceeding distributed telecommunications number storages and Internet resources, eligible for use of telecommunications number storages and Internet resources of high commercial value;
- b) Direct distribution under the planning on the principle that organizations and individuals that have registered first will be considered for distribution first or obtain the use right first, except for the case specified at Point a of this Clause;
- c) Other modes of distribution specified by law.

3. Organizations and individuals distributed telecommunications number storages and Internet resources shall:

- a) Use, lease or sub-allocate telecommunications number storages and Internet resources distributed to them for proper purposes, within the prescribed scope and to right subjects under distribution decisions and regulations on management of telecommunications number storages and regulations on management and use of the Internet resources;

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3.6 Laws Concerning Enhancement of Potentiality of Bureaucratic System

3.6.1 Laws Concerning Bureaucratic System

a) Organizational Structure of the Bureaucratic System

Central Administration

The Government, which exercises executive power, is the highest state administrative body of the Socialist Republic of Vietnam and the executive body of the National Assembly.³⁶²

(continued from footnote 361)

b) Report to the Ministry of Information and Communications, on a periodical basis or at the latter's request, on plans on use and actual use of telecommunications number storages and Internet resources distributed to them;

c) Pay the auction charge in case of distribution of telecommunications number storages and Internet resources through auction:

d) Pay the charge for use and the fee for distribution of telecommunications number storages and Internet resources.

4. Organizations and individuals that no longer need to use telecommunications number storages and Internet resources shall return them to the agency managing telecommunications number storages and Internet resources.

5. The Prime Minister shall specify the distribution of telecommunications number storages and Internet resources through auction or transfer: and the responsibility to pay compensations upon recovery of telecommunications number storages and Internet resources.

6. The Ministry of Information and Communications shall specify the selection through examination or auction of telecommunications number storages and Internet resources and the list of telecommunications number storages and Internet resources subject to auction in each period.

7. The Ministry of Finance shall assume the prime responsibility for. and coordinate with the Ministry of Information and Communications in. specifying rates, collection, remittance, management and use of the charge for use and the fee for distribution of telecommunications number storages and Internet resources.", *available at* <https://sites.google.com/a/ecolaw.vn/luat-tieng-anh/1-bo-luat-luat/-law-on-telecommunications> (accessed December 1, 2018).

³⁶² Article 94 of the 2013 Constitution "The Government is the highest administrative body of the Socialist Republic of Vietnam, exercises the executive power and is the executive body of the National Assembly. The Government is accountable to the National Assembly and shall report to the National Assembly, its Standing Committee and the State President.", *available at* http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf (accessed December 1, 2018).

The Government is accountable to the National Assembly and reports on its work to the National Assembly, the Standing Committee of the National Assembly and the President. The Government is composed of the Prime Minister, Deputy Prime Ministers, Ministers, and Heads of ministerial-level agencies. The Government works on a collegial basis and makes its decisions by a vote of the majority.³⁶³

The Prime Minister is elected by the National Assembly among its deputies.³⁶⁴ Ministers and Heads of ministerial-level agencies are members of the Government. They lead the work of

³⁶³ Article 95 of the 2013 Constitution, “1. The Government shall be composed of the Prime Minister, the Deputy Prime Ministers, the Ministers and heads of ministerial-level agencies. The structure and numbers of members of the Government are decided by the National Assembly. The Government shall operate as a collegium and take its decisions by a vote of the majority.

2. The Prime Minister as the head of the Government is accountable to the National Assembly for the activities of the Government and its assigned duties and shall report to the National Assembly, the National Assembly’s Standing Committee and the State President on the activities of the Government and the Prime Minister

3. The Deputy Prime Ministers shall assist the Prime Minister in the performance of his duties, as required by him, and are accountable to the Prime Minister. In the absence of the Prime Minister, one of his Deputies shall be delegated by him to direct the work of the Government.

4. The Ministers and Heads of ministerial-level agencies shall be personally accountable to the Prime Minister, the Government and the National Assembly for their respective fields and branches, and shall be, together with other members of the Government, collectively accountable for the activities of the Government.”, *available at* http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf (accessed December 1, 2018).

³⁶⁴ Article 98 of the 2013 Constitution, “The Prime Minister is elected by the National Assembly among its members. The Prime Minister has the following duties and powers:

1. To direct the work of the Government; to direct the construction of policies and the organisation of implementation of the laws;
2. To direct and to be accountable for the activities of the national administration from the central to local level and to ensure the unity and thoroughness of the national administration;
3. To submit to the National Assembly for approval recommendations on appointment, suspension or dismissal of Deputy Prime Ministers, Ministers and heads of ministerial-level agencies; to appoint, suspend or dismiss

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their ministries or ministerial-level agencies, perform the state management of the sectors and fields under their charge, organize and monitor nationwide the implementation of laws concerning their sectors and fields.³⁶⁵

Currently, the Government of Vietnam consists of 22 ministries and ministerial-level agencies: Ministry of National Defense, Ministry of Public Security, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Finance, Ministry of Transport, Ministry of Construction, Ministry of Education and Training, Ministry of Agriculture and Rural Development, Ministry of Industry and Trade, Ministry of Planning and Investment, Ministry of Health, Ministry of Science and

(continued from footnote 364)

Vice Ministers and officials of equal rank of ministries and ministerial-level agencies; to approve the election, suspension, secondment and dismissal of Chairmen and Deputy Chairmen of the People's Committees of provinces and cities under direct central rule;

4. To suspend or annul decisions, directives and circulars of Cabinet Ministers and other Government members, decisions and directives of the People's Councils and Chairmen of the People's Committees of provinces and cities under direct central rule that contravene the Constitution, the law and other formal written documents of superior State bodies; to suspend the execution of resolutions of the People's Councils of provinces and cities under direct central rule that contravene the Constitution, the law and formal written orders of superior State bodies and at the same time, to propose to the Standing Committee of the National Assembly to annul them;

5. To decide and direct the negotiation of and to direct the conclusion and joining of international treaties within the duties and authorities of the Government; to organise the implementation of international treaties in which the Socialist Republic of Vietnam is a member;

6. To submit regular reports to the people through the mass media on major issues to be settled by the Government and the Prime Minister.", *available at* http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf (accessed December 1, 2018).

³⁶⁵ Article 99 of the 2013 Constitution, "1. Ministers and heads of ministerial-level agencies are members of the Government, preside over ministries and bodies of ministerial-level agencies, direct the work of ministries and ministerial-level agencies; shall be responsible for State administration in the fields and branches under their respective authority to organise and monitor the implementation of the laws in their respective fields and branches throughout the country.

exercise a regime of reporting to the People on issues under their respective management.", *available at* http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf (accessed December 1, 2018).

Technology, Ministry of Natural Resources and Environment, Ministry of Information and Communications, Ministry of Home Affairs, Government Inspectorate, State Bank of Vietnam, Committee on Ethnic Minority Affairs, Government Office, Ministry of Labor, War Invalids and Social Affairs, and Ministry of Culture, Sports and Tourism.³⁶⁶

Local Administrations

Local administrations are composed of the People's Councils and People's Committees.³⁶⁷

Local administrations organize and ensure the implementation of the Constitution and law in their localities, decide on local issues, and are subject to the examination and supervision by state agencies at higher levels.³⁶⁸

People's Councils and People's Committees are established at three administrative levels: provincial level (provinces and centrally-run cities), district level (rural districts, urban districts, and provincial-level towns and cities); and communal level (communes, wards and townships).

The People's Council is the local state power body representing the local people. It is elected by the local people and is responsible to the local people and state agencies at higher

³⁶⁶ See Ministries and Ministry-Levels Agencies, *available at* <http://chinhphu.vn/portal/page/portal/English/ministries> (accessed December 1, 2018).

³⁶⁷ Article 111 of the 2013 Constitution, "1. Local governments are organised in administrative units of the Socialist Republic of Vietnam. 2. Local governments consist of the People's Council and the People's Committee which shall be organised consistent with the features of rural areas, cities, islands and special administrative economic units provided by the law.", *available at* http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf (accessed December 1, 2018).

³⁶⁸ Article 112 of the 2013 Constitution, "1. Local governments organise and ensure the implementation of the Constitution and the laws at local level; deal with local issues provided for by the law and are subject to the examination and supervision of superior state bodies. 2. The duties and authorities of local governments shall be determined on the basis of differentiation of powers between central state bodies and local state bodies and between different ranks of local governments. 3. When necessary, local governments are delegated to exercise some duties of superior state bodies with the conditions deemed necessary to exercise those duties.", *available at* http://www.constitutionnet.org/sites/default/files/translation_of_vietnams_new_constitution_enuk_2.pdf (accessed December 1, 2018).

levels. The People's Council decides on local issues and supervises the observance of the Constitution and law in its locality and the implementation of its own resolutions.³⁶⁹

The People's Committee, which is elected by the People's Council of the same level, is the executive body of the respective People's Council and is the local state administrative body. It is accountable to the People's Council and state administrative agencies at higher levels. The People's Committee organizes the implementation of the Constitution and law in its locality and implementation of the resolutions of the People's Council, and performs the tasks assigned to it by state agencies at higher levels.³⁷⁰

b) Government Officials (Cadres) and Civil Servants

The Law on Cadres and Civil Servants (2010)³⁷¹ provides for three kinds of public servants: cadres, civil servants, and cadres and civil servants at communal level.³⁷²

³⁶⁹ Article 113 of the 2013 Constitution, "1. The People's Council is the local body of State power; it represents the will, aspirations and mastery of the local People; it is elected by the local People and is accountable to them and to the superior State bodies. 2. The People's Council shall decide on local issues provided by the law; supervise conformity to the Constitution and the laws at local level and the implementation of the resolutions of the People's Council.", *available at* http://www.constitutionnet.org/sites/default/files/translation_of_vietnams_new_constitution_enuk_2.pdf (accessed December 1, 2018).

³⁷⁰ Article 114 of the 2013 Constitution "1. The People's Committee elected by the People's Council is the latter's executive body, the body of local State administration and is accountable to the People's Council and superior state bodies. 2. It is the responsibility of the People's Committee to implement the Constitution and the laws at local level, to organise the implementation of the resolutions of the People's Council and to exercise duties assigned by the superior state bodies.", *available at* http://www.constitutionnet.org/sites/default/files/translation_of_vietnams_new_constitution_enuk_2.pdf (accessed December 1, 2018).

³⁷¹ Law on Cadres and Civil Servants No. 22/2008/QH12, which is a legislation (Act) that was enacted by the National Assembly on November 13, 2008, came into effect on January 1, 2010, and is entitled to the second highest legal effect only after the Constitution, *available at* http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82230&p_country=VNM&p_count=548 (accessed December 1, 2018).

³⁷² Article 4 of Law on Cadres and Civil Servants No. 22/2008/QH12, "Cadres, civil servants:
1. Cadres are Vietnamese citizens who are elected, approved and appointed to hold posts or titles for a given term of office in agencies of the Communist Party of Vietnam, the State, socio-political organizations at the
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Cadres are Vietnamese citizens who are elected, approved and appointed to hold posts or titles for a given term of office in agencies of the Communist Party of Vietnam, the State, socio-political organizations at the central level, provincial level, and district level, and are included in the payrolls and salaried from the state budget.

Civil servants are Vietnamese citizens who are recruited and appointed to ranks, posts or titles in agencies of the Communist Party of Vietnam, the State, socio-political organizations at the central, provincial and district levels; in People's Army agencies and units, other than officers, professional military personnel and defense workers; in People's Police offices and units other than officers and professional non-commissioned officers; and in the leading and managerial bodies of public non-business units (such as public schools, hospitals, research institutes), and are included in the payrolls and salaried from the state budget. For civil servants in the leading

(continued from footnote 372)

central level, in provinces and centrally run cities (below collectively referred to as provincial level), in districts, towns and provincial cities (below collectively referred to as district level), included in the payrolls and salaried from the state budget.

2. Civil servants are Vietnamese citizens who are recruited and appointed to ranks, posts or titles in agencies of the Communist Party of Vietnam, the State, socio-political organizations at the central, provincial and district levels; in People's Army agencies and units, other than officers, professional military personnel and defense workers; in People's Police offices and units other than officers and professional non-commissioned officers, and in the leading and managerial apparatuses of public non-business units of the Communist Party of Vietnam, the State and socio-political organizations (below collectively referred to as public non-business units), included in the payrolls and salaried from the state budget; for civil servants in the leading and managerial apparatuses of public non-business units, they are salaried from the salary funds of these units according to law.

3. Cadres of communes, wards and townships (below collectively referred to as commune level) are Vietnamese citizens who are elected to hold posts for a given term of office in People's Council standing bodies and People's Committees, as Party secretaries and deputy secretaries, and as heads of socio-political organizations. Commune-level civil servants are Vietnamese citizens who are recruited to hold specialized titles in commune-level People's Committees, included in the payrolls and salaried from the state budget.", *available at* http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82230&p_country=VNM&p_count=548 (accessed December 1, 2018).

and managerial bodies of public non-business units, they are salaried from the salary funds of these units according to law.

Cadres at communal level are Vietnamese citizens who are elected to hold posts for a given term of office in People's Council standing bodies and People's Committees, as Party secretaries and deputy secretaries, and as heads of socio-political organizations. Commune-level civil servants are Vietnamese citizens who are recruited to hold specialized titles in commune-level People's Committees and included in the payrolls and salaried from the state budget.

Based on their appointed ranks, civil servants are classified into: Class A including those appointed to the senior-specialist or equivalent rank; Class B including those appointed to the principal-specialist or equivalent rank; Class C including those appointed to the Specialist or equivalent rank; and Class D including those appointed to the technician or equivalent rank or staff rank. Based on working positions, civil servants are classified into: civil servants holding leading or managerial posts and civil servants not holding leading or managerial posts.³⁷³

Civil servants are recruited through examinations. Persons who meet all conditions for recruitment and commit to voluntarily work for at least 5 years in mountainous, border, island, remote, or ethnic minority or special socio-economic difficulty-hit areas may be recruited through application selection.³⁷⁴

³⁷³ Article 34 of Law on Cadres and Civil Servants No. 22/2008/QH12, "Categorization of civil servants:

1. Based on their appointed ranks, civil servants are classified into:

- a/ Class A including those appointed to the senior-specialist or equivalent rank;
- b/ Class B including those appointed to the principal-specialist or equivalent rank;
- c/ Class C including those appointed to the Specialist or equivalent rank;
- d/ Class D including those appointed to the technician or equivalent rank or employee rank.

2. Based on working positions, civil servants are classified into:

- a/ Civil servants holding leading or managerial posts;
- b/ Civil servants not holding leading or managerial posts.", *available at* http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82230&p_country=VNM&p_count=548 (accessed December 1, 2018).

³⁷⁴ Article 37 of Law on Cadres and Civil Servants No. 22/2008/QH12, "Methods of civil servant recruitment: (*continued on next page*)

3.6.2 Laws Concerning Good Governance

The Anti-Corruption Law was first enacted in 2005 to replace the Anti-Corruption Ordinance of 1998. The 2005 Anti-Corruption Law was later amended in 2007 and 2012. All of them are annulled by Anti-Corruption Law No. 36/2018/QH14, which is effective from July 1, 2019. It is the core legislation dealing with good governance.

a) General Provisions

The Anti-Corruption Law defines corruption as an office holder's abuse of his/her official capacity for personal gain.³⁷⁵ While "office holders" denotes a person that is designated, elected or employed under a contract or another form of employment, receiving or not receiving salaries, assigned certain duties and authority to perform such duties, including officials and public employees; commissioned officers, career military personnel, national defense workers and public employees of the People's Army units; commissioned officers, non-commissioned officers and workers of the People's Police units; representatives of state investment in enterprises; holders of managerial positions in organizations; other persons assigned certain duties and authority to perform such duties.³⁷⁶

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1. Civil servants shall be recruited through examinations, except for cases specified in Clause 2 of this Article. The form and contents of examination to recruit civil servants must be suitable to each sector and occupation, ensuring that persons with appropriate qualities, qualifications and capabilities are selected.
2. Persons who meet all conditions specified in Clause 1, Article 36 of this Law and commit to voluntarily work for at least 5 years in mountainous, border, island, remote, deep-lying or ethnic minority or special socio-economic difficulty-hit areas may be recruited through selection.
3. The Government shall specify the recruitment of civil servants through examination or selection.", *available at* http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82230&p_country=VNM&p_count=548 (accessed December 1, 2018).

³⁷⁵ Article 3 of Law on Anti-corruption No. 36/2018/QH14, "Definition: 1. "corruption" means an office holder's abuse of his/her official capacity for personal gain.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁷⁶ Article 3 of Law on Anti-corruption No. 36/2018/QH14, "Definition: 2. "office holder" means a person
(continued on next page)

Corrupt acts include embezzlement; taking bribes; abuse of one's position or power for illegal appropriation of assets; abuse of official capacity during performance of tasks or official duties for personal gain; acting beyond authority in performance of one's duties for personal gain; abuse of official capacity to influence another person for personal gain; impersonation for personal gain; bribing or brokering bribery for taking advantage of one's influence over a state organization or for personal gain; illegal use of public assets for personal gain by abuse of official capacity; harassment for personal gain; failure to perform or correctly perform one's duties for personal gain and abuse of official capacity to screen violations of law for person gain; illegally intervening or obstructing supervision, inspection, audit, investigation, prosecution, adjudication or judgment enforcement for personal gain.³⁷⁷

(continued from footnote 376)

that is designated, elected or employed under a contract or another form of employment, receiving or not receiving salaries, assigned certain duties and authority to perform such duties. Office holders include: a) Officials and public employees; b) Commissioned officers, career military personnel, national defense workers and public employees of the People's Army units; commissioned officers, non-commissioned officers and workers of the People's Police units; c) Representatives of state investment in enterprises; d) Holders of managerial positions in organizations; dd) Other persons assigned certain duties and authority to perform such duties., *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁷⁷ Article 2 of Law on Anti-corruption No. 36/2018/QH14, "Act of corruption: 1. Acts of corruption committed by office holders in state organizations include: a) Embezzlement; b) Taking bribes; c) Abuse of one's position or power for illegal appropriation of assets; d) Abuse of official capacity during performance of tasks or official duties (hereinafter referred to as "duties") for personal gain; dd) Acting beyond authority in performance of one's duties for personal gain; e) Abuse of official capacity to influence another person for personal gain g) Impersonation for personal gain; h) Bribing or brokering bribery for taking advantage of one's influence over a state organization or for personal gain; i) Illegal use of public assets for personal gain by abuse of official capacity; k) Harassment for personal gain; l) Failure to perform or correctly perform one's duties for personal gain; m) Abuse of official capacity to screen violations of law for person gain; illegally intervening or obstructing supervision, inspection, audit, investigation, prosecution, adjudication or judgment enforcement for personal gain.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

The Law sets forth the following responsibility of state organization for anti-corruption:

1) implement measures for prevention of corruption; discover, take appropriate actions against and inform competent authorities about any act of corruption that occurs within their organization; implement other anti-corruption laws; 2) protect the lawful rights and interests of the individuals who report, provide information or file complaints against corrupt; 3) promptly receive and process information about acts of corruption; 4) provide information and comply with requests of competent authorities during the process of discovery and taking actions against corruption.

In addition, non-state-organization also has the responsibility to: 1) implement measures for prevention of corruption; discover and report any act of corruption that occurs within their organization to competent authorities, and cooperate with competent authorities in taking actions in accordance with its rules and regulations; 2) promptly provide information about acts of corruption committed by office holders and cooperate with competent authorities in prevention and taking actions against such acts of corruption.³⁷⁸

³⁷⁸ Article 4 of Law on Anti-corruption No. 36/2018/QH14, “Responsibility of state and non-state organizations for anti-corruption:

1. Every state organization has the responsibility to: a) Implement measures for prevention of corruption; discover, take appropriate actions against and inform competent authorities about any act of corruption that occurs within their organization; implement other anti-corruption laws; b) Protect the lawful rights and interests of the individuals who report, provide information or file complaints against corrupt activities (hereinafter referred to as “informers”); c) Promptly receive and process information about acts of corruption; d) Provide information and comply with requests of competent authorities during the process of discovery and taking actions against corruption.

2. Every non-state organization has the responsibility to: a) Implement measures for prevention of corruption; discover and report any act of corruption that occurs within their organization to competent authorities, and cooperate with competent authorities in taking actions in accordance with its rules and regulations; b) Promptly provide information about acts of corruption committed by office holders and cooperate with competent authorities in prevention and taking actions against such acts of corruption., *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

b) Measures for Prevention of Corruption

Measure 1: Ensuring Information Disclosure and Transparency in State Organization

Every state organization shall disclose information about its organization structure and operation, except for state secrets, business secrets and other information prescribed by law. The information disclosed shall be accurate, clear, adequate and timely, comply with law procedures established by competent authorities.³⁷⁹

Methods of information publishing include: making announcements at meetings of the organization; posting information at the premises of the organization; sending written notices to relevant organizations; publishing printed matters; making announcements through mass media; posting information on websites; holding press conferences and providing information on demand.³⁸⁰

The head of a state organization is responsible for disclosing information about the organization and for instructing and inspecting organizations and individuals under his/her management disclosing information and take or propose actions against violations as prescribed

³⁷⁹ Article 9 of Law on Anti-corruption No. 36/2018/QH14, "Principles: 1. Every state organization shall disclose information about its organization structure and operation, except for state secrets, business secrets and other information prescribed by law.

2. The information disclosed shall be accurate, clear, adequate and timely, comply with law procedures established by competent authorities.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁸⁰ Article 11 of Law on Anti-corruption No. 26/2018/QH14, "Methods of information publishing:

1. Information can be published in one of the following manners: a) Making announcements at meetings of the organization; b) Posting information at the premises of the organization; c) Sending written notices to relevant organizations; d) Publishing printed matters; dd) Making announcements through mass media; e) Posting information on websites; g) Holding press conferences; h) Providing information on demand.

2. In the cases where the form of information publishing is not specified by the law, the head of the state organization shall apply one or some of the methods specified in Points b, c, d, dd, e and g Clause 1 of this Article. The head may decide on an additional method mentioned in Point a and Point h Clause 1 of this Article.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

by law.³⁸¹ State organizations shall hold press conferences, make public announcements and provide information for the press on a periodic or ad hoc basis regarding their organizational structure and operation, anti-corruption works and actions against corruption cases and regarding pressing issues relevant to their organization and operation.³⁸²

State authorities, political organizations, socio-political organizations and press agencies, within the scope of their duties and entitlements, are entitled to request state organizations to provide information about their organizational structure and operation as prescribed by law. Within 10 days from the day on which the request is received, the requested organization shall provide the information, unless it has been published through mass media, published as printed matters or publicly posted. Otherwise, a written explanation has to be sent to the requesting organization. Citizens are entitled to request state authorities to provide information in accordance with regulations of law on accessibility of information.³⁸³

³⁸¹ Article 12 of Law on Anti-corruption No. 26/2018/QH14, “Responsibility for information disclosure and transparency:

1. The head of a state organization is responsible for disclosing information about the organization in accordance with this Law and relevant laws.
2. The head of a state organization is responsible for instructing and inspecting organizations and individuals under his/her management disclosing information and take or propose actions against violations as prescribed by law.”, available at <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁸² Articles 13 of Law on Anti-corruption No. 26/2018/QH14, “Press conferences, public announcements and provision of information for the press:

1. State organizations shall hold press conferences, make public announcements and provide information for the press on a periodic or ad hoc basis regarding their organizational structure and operation, anti-corruption works and actions against corruption cases in accordance with journalism laws.
2. State organizations shall hold press conferences, make public announcements and provide information for the press on an ad hoc basis regarding pressing issues relevant to their organization and operation, unless otherwise prescribed by journalism laws.”, available at <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁸³ Article 14 of Law on Anti-corruption No. 26/2018/QH14, “Right to request information:

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The Government shall submit annual reports on nationwide anti-corruption works for the National Assembly. The People's Committees shall submit reports on local anti-corruption works to the People's Councils of the same administrative area. Such reports must be published on websites of regulatory authorities or mass media.³⁸⁴

Measure 2: Establishing and Implementing of Norms, Standards and Benefits of State Organizations

State agencies are responsible for establishing, promulgating and applying its own norms, standards and benefits; publishing its established norms, standards and benefits; apply and publish the result of application of its norms, standards and benefits.³⁸⁵ The person that

(continued from footnote 383)

1. State authorities, political organizations, socio-political organizations and press agencies, within the scope of their duties and entitlements, are entitled to request state organizations to provide information about their organizational structure and operation as prescribed by law. Within 10 days from the day on which the request is received, the requested organization shall provide the information, unless it has been published through mass media, published as printed matters or publicly posted. Otherwise, a written explanation has to be sent to the requesting organization.

2. Citizens are entitled to request state authorities to provide information in accordance with regulations of law on accessibility of information.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁸⁴ Articles 16 of Law on Anti-corruption No. 26/2018/QH14, "Reporting and publishing of reports on anti-corruption works:

1. The Government shall submit annual reports on nationwide anti-corruption works for the National Assembly; The People's Committees shall submit reports on local anti-corruption works to the People's Councils of the same administrative area....

5. Every anti-corruption report shall be published on websites of regulatory authorities or mass media.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁸⁵ Article 18 of Law on Anti-corruption No. 26/2018/QH14, "Establishment, promulgation and application of norms, standards and benefits:

1. Every state agency, within the scope of their duties and entitlements, has the responsibility to:

a) Establish, promulgate and apply its own norms, standards and benefits;

b) Publish its established norms, standards and benefits;

c) Apply and publish the result of application of its norms, standards and benefits. *(continued on next page)*

permits excessive spending shall pay compensation for the value of the excessive amount and any damage caused. The person that exceeds the spending limit with the permission of the aforementioned person shall have the joint responsibility to pay compensation. The person that exceeds the spending limit without permission shall pay compensation for the value of the excessive amount and any damage caused³⁸⁶

Measure 3: Enforcing Code of Conducts for Office Holders in State Organizations

Measure 3(1) Things That Office Holders are Prohibited from

Office holders are prohibited from: harassment during task performance; establishing, participating in administration of sole proprietorships, limited liability companies, joint-stock companies, partnerships and cooperatives, unless otherwise prescribed by law; providing information about state secrets, business secrets or other secrets about their tasks or any task

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2. Political organizations, socio-political organizations, public service agencies, other organizations and units using state funds, pursuant to Clause 1 of this Article, shall provide instructions on application or cooperate with competent authorities in establishing, promulgating and publishing their norms, standards and benefits, apply them and publish the application result.

3. No state organization may establish norms, standards and benefits against the law.”, *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁸⁶ Article 19 of Law on Anti-corruption No. 26/2018/QH14, “Inspection and actions against regulations of law on norms, standards and benefits:

1. State organizations, within the scope of their duties and entitlements, shall inspect the application of established norms, standards and benefits and promptly take actions against violators.

2. Violators of established norms, standards and benefits shall be dealt with in accordance with Article 94 of this Law and pay compensation as follows:

a) The person that permits excessive spending shall pay compensation for the value of the excessive amount and any damage caused; the person that exceeds the spending limit with the permission of the aforementioned person shall have the joint responsibility to pay compensation;

b) The person that exceeds the spending limit without permission shall pay compensation for the value of the excessive amount and any damage caused.”, *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

in which they participate for other domestic and foreign organizations and individuals; establishing, holding managerial or executive positions in sole proprietorships, limited liability companies, joint-stock companies, partnerships and cooperatives in the field that was under their management according to regulations of the Government; and illegally using information of their organizations.³⁸⁷

Members of Board of Directors or the Board of members, the presidents, general directors, deputy general directors, directors, deputy directors, chief accountants and holders of other managerial positions of state-owned enterprises must not sign contracts with enterprises owned by their spouses, parents, children or siblings; must not allow enterprises owned by their spouses, parents, children or siblings to bid for contracts of their enterprises; must not allow their spouses, parents, children or siblings to hold positions of personnel management, accounting, treasurer or warehouse-keeper in their enterprises or participate in transactions, trade of goods or services or conclusion of contracts with their enterprises.³⁸⁸

³⁸⁷ Article 20 of Law on Anti-corruption No. 26/2018/QH14, “Code of conduct for office holders: 2. Office holders in state organizations are prohibited from: a) Harassment during task performance; b) Establishing, participating in administration of sole proprietorships, limited liability companies, joint-stock companies, partnerships and cooperatives, unless otherwise prescribed by law; c) Providing information about state secrets, business secrets or other secrets about their tasks or any task in which they participate for other domestic and foreign organizations and individuals; d) Establishing, holding managerial or executive positions in sole proprietorships, limited liability companies, joint-stock companies, partnerships and cooperatives in the field that was under their management according to regulations of the Government; dd) Illegally using information of their organizations; e) Other actions that office holders must not do according to the Law on officials and public employees, the Law on Enterprises and relevant laws.”, *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁸⁸ Article 20 of Law on Anti-corruption No. 26/2018/QH14: “Code of conduct for office holders: 5. Members of Board of Directors or the Board of members, the presidents, general directors, deputy general directors, directors, deputy directors, chief accountants and holders of other managerial positions of state-owned enterprises must not sign contracts with enterprises owned by their spouses, parents, children or
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Measure 3(2) Giving and Receiving Gifts

State organizations and office holders must not use public funds or public assets as gifts, unless they are given for charitable purposes, diplomatic purposes and other cases in which it is necessary as prescribed by law. In addition, they must not directly or indirectly receive gifts in any shape or form from another organization or individual that is relevant to the tasks they are performing or under their management.³⁸⁹

Measure 4: Reassignment of Office Holders

State organizations shall periodically reassign their non-managerial officials and public employees in their organizations in order to prevent corruption. The reassignment shall be objective, reasonable and suitable for the reassigned persons' capacity without affecting normal operation of the organizations and shall be carried out under plans and disclosed within the organizations. It is prohibited to abuse reassignment for personal gain or for the purpose of victimizing officials and public employees.³⁹⁰

(continued from footnote 388)

siblings; must not allow enterprises owned by their spouses, parents, children or siblings to bid for contracts of their enterprises; must not allow their spouses, parents, children or siblings to hold positions of personnel management, accounting, treasurer or warehouse-keeper in their enterprises or participate in transactions, trade of goods or services or conclusion of contracts with their enterprises., *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁸⁹ Article 22 of Law on Anti-corruption No. 26/2018/QH14: "Giving and receiving gifts: 1. State organizations and office holders must not use public funds or public assets as gifts, unless they are given for charitable purposes, diplomatic purposes and other cases in which it is necessary as prescribed by law. 2. State organizations and office holders must not directly or indirectly receive gifts in any shape or form from another organization or individual that is relevant to the tasks they are performing or under their management.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁹⁰ Article 24 of Law on Anti-corruption No. 26/2018/QH14, "Reassignment rules: 1. State organizations shall periodically reassign their non-managerial officials and public employees in their organizations in order to prevent corruption. Reassignment of managerial officials shall comply with regulations on official reassignment.
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Measure 5: Intensifying Administrative Reform and Modernizing Management Technology and Mode of Payments to Prevent Corruption

Every state organization, within the scope of their duties and entitlements, has the responsibility to: (i) publish and provide instructions on following administrative procedures; simplify and reduce procedures for working in person with other organizations and individuals; (ii) intensify inspection and supervision of task performance, management and use of public funds and public assets; (iii) develop and improve quality of officials and public employees; provide detailed description of every position in the organization.³⁹¹

Every state organization shall increase investment in equipment, improving capacity, creativity and application of science and technology to their organization and operation. Ministries shall enhance application of IT system and national database to management of their fields as prescribed by law.³⁹² State organizations shall ensure that the following transactions are non-cash

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2. The reassignment shall be objective, reasonable and suitable for the reassigned persons' capacity without affecting normal operation of the organizations. 3. Reassignment shall be carried out under plans and disclosed within the organizations. 4. It is prohibited to abuse reassignment for personal gain or for the purpose of victimizing officials and public employees.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁹¹ Article 27 of Law on Anti-corruption No. 26/2018/QH14, "Administrative reform: Every state organization, within the scope of their duties and entitlements, has the responsibility to:

1. Publish and provide instructions on following administrative procedures; simplify and reduce procedures for working in person with other organizations and individuals;
2. Intensify inspection and supervision of task performance, management and use of public funds and public assets;
3. Develop and improve quality of officials and public employees; provide detailed description of every position in the organization;
4. Perform other administrative reform tasks.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁹² Article 28 of Law on Anti-corruption No. 26/2018/QH14, "Application of science and technology to management:

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payment: (i) high-value revenues and expenditures where non-cash payment is possible according to regulations of the Government; (ii) payment of salaries, bonuses and other regular expenditures. In addition, the Government shall apply financial and technological measures to reduce use of cash in transactions.³⁹³

Measure 6: Ensuring Transparency in Government Officials by Asset and Income Declaration

The following persons have to make asset and income declaration: (i) officials; (ii) commissioned officers of police and military forces, career military personnel; (iii) holders of positions of deputy managers and above in public service agencies, state-owned enterprises, appointed representatives of state capital in enterprises; (iv) nominees for the National Assembly delegates and the People's Councils delegates.³⁹⁴

(continued from footnote 392)

1. Every state organization shall increase investment in equipment, improving capacity, creativity and application of science and technology to their organization and operation.
2. Ministries shall enhance application of IT system and national database to management of their fields as prescribed by law.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁹³ Article 29 of Law on Anti-corruption No. 26/2018/QH14, "Non-cash payment:

1. State organizations shall ensure that the following transactions are non-cash payment: a) High-value revenues and expenditures where non-cash payment is possible according to regulations of the Government; b) Payment of salaries, bonuses and other regular expenditures.
2. The Government shall apply financial and technological measures to reduce use of cash in transactions.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁹⁴ Article 34 of Law on Anti-corruption No. 26/2018/QH14, "Individuals required to declare assets and income:

1. Officials.
2. Commissioned officers of police and military forces, career military personnel.
3. Holders of positions of deputy managers and above in public service agencies, state-owned enterprises, appointed representatives of state capital in enterprises.
4. Nominees for the National Assembly delegates and the People's Councils delegates.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

Asset and income which must be declared are: land use rights, houses, construction works and other property attached thereto; precious metals, gemstones, cash, financial instruments and other real property each of which is assessed at VND 50.000.000 or above; overseas property and accounts; and total income between 2 declarations (income generated during the period from the last declaration to the current declaration).³⁹⁵

Asset and income declaration must be carried out annually by December 31.³⁹⁶ Assets and income declarations shall be disclosed at the declarants' workplace. The declaration of a person who is expected to hold a managerial or executive position in a state organization shall be disclosed during the confidence voting. Declarations of nominees for the National Assembly delegates and the People's Councils delegates shall be made publicly available in accordance with voting laws.³⁹⁷

³⁹⁵ Article 35 of Law on Anti-corruption No. 26/2018/QH14, "Assets and income subject to declaration: 1. The following assets and income shall be declared: a) Land use rights, houses, construction works and other property attached thereto; b) Precious metals, gemstones, cash, financial instruments and other real property each of which is assessed at VND 50.000.000 or above; c) Overseas property and accounts; d) Total income between 2 declarations.", available at <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁹⁶ Article 36 of Law on Anti-corruption No. 26/2018/QH14, "Method and time for declaration of assets and income: 3. Annual declaration shall be made by: a) Holders of positions of directors of provincial departments and above. Declaration must be done annually by December 31; b) Persons other than those mentioned in Point a of this Clause in charge of official management, management of public funds, public property or public investment, or have influence over the operation of other entities as prescribed by the Government. Declaration must be done annually by December 31;", available at <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁹⁷ Article 39 of Law on Anti-corruption No. 26/2018/QH14, "Disclosure of assets and income declarations:

1. Assets and income declarations shall be disclosed at the declarants' workplace.
2. The declaration of a person who is expected to hold a managerial or executive position in a state organization shall be disclosed during the confidence voting.

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An individual required to declare assets and income who fails to make a truthful declaration of his/her assets and income or fails to provide truthful explanation for the increase in his/her assets and income shall face one of the disciplinary actions including warning, demotion, dismissal; such a person who is expected to hold a managerial position will be rejected; disciplinary actions may be exempted if the violator voluntarily resigns from the position. The decision on disciplinary action shall be published at the violator's workplace.³⁹⁸

Measure 7: Imposing Responsibilities on Heads of State Organizations for Anti-Corruption Activities

When there are sufficient grounds that an office holder is involved in corrupt activities and the fact that such office holder keeps holding his/her position is likely to obstruct investigation,

(continued from footnote 397)

3. Declarations of nominees for the National Assembly delegates and the People's Councils delegates shall be made publicly available in accordance with voting laws.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

³⁹⁸ Article 51 of Law on Anti-corruption No. 26/2018/QH14, "Actions against untruthful declaration of assets and income, untruthful explanation for origins of increase in assets and income:

1. Any candidate for the position of delegate of the National Assembly or the People's Council that fails to make a truthful declaration of his/her assets and income or fails to provide truthful explanation for the increase in his/her assets and income shall be removed from the list of candidates.

2. Any person who is expected to be designated, re-designated or nominated for a position but fails to make a truthful declaration of his/her assets and income or fails to provide truthful explanation for the increase in his/her assets and income shall no longer be designated, redesignated or nominated.

3. An individual required to declare assets and income other than those mentioned in Clause 1 and Clause 2 of this Article who fails to make a truthful declaration of his/her assets and income or fails to provide truthful explanation for the increase in his/her assets and income shall face one of the disciplinary actions including warning, demotion, dismissal; such a person who is expected to hold a managerial position will be rejected; disciplinary actions may be exempted if the violator voluntarily resigns from the position.

4. The decision on disciplinary action shall be published at the violator's workplace.", *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

the head of the state organization shall request a competent person to or on his/her own initiative suspend or reassign that office holder.³⁹⁹

The head of a state organization shall bear the direct responsibility for corrupt activities of the persons under his/her management.⁴⁰⁰ Absolution or alleviation of responsibility shall be granted if necessary measures have been implemented for prevention of corrupt activities or relief of consequences thereof, or the corrupt activities are discovered, reported and dealt with in a timely manner as prescribed by law⁴⁰¹

³⁹⁹ Article 71 of Law on Anti-corruption No. 26/2018/QH14, “Responsibility of heads of state organizations for suspension and reassignment of personnel thereof:

1. When there are sufficient grounds that an office holder is involved in corrupt activities and the fact that such office holder keeps holding his/her position is likely to obstruct investigation, the head of the state organization shall request a competent person to or on his/her own initiative suspend or reassign that office holder.
2. The head of a state organization or the person in charge of office holder management shall consider suspending or reassigning office holders that are suspected of corrupt activities at the request of the inspecting or auditing authority, investigation agency, the People’s Procuracy or People’s Court.
3. If the competent organization or person concludes that the office holder is not involved in corrupt activities, the head of a state organization or the person in charge of office holder management shall invalidate the decision on suspension or reassignment of such office holder, announce such invalidation, restore the position, the lawful rights and interests of the office holder.
4. The government shall elaborate procedures for and duration of suspension or reassignment; payment of wages, benefits, the lawful rights and interests, compensation and restoration of the lawful rights and interests of officer holders that are found not involved in corrupt activities.”, *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

⁴⁰⁰ Article 72 of Law on Anti-corruption No. 26/2018/QH14, “Responsibility of the heads and deputies of state organizations for corrupt activities that occur within their organizations:

1. The head of a state organization shall bear the direct responsibility for corrupt activities of the persons under his/her management.
2. The deputies of a state organization shall bear the prime responsibility for corrupt activities in their fields and units; the head shall bear joint responsibility.”, *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

⁴⁰¹ Article 73 of Law on Anti-corruption No. 26/2018/QH14, “Penalties incurred by the heads and
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(c) Discovery of Corruption

Corruption is discovered through different channels: supervision by elected agencies such as the National Assembly, Standing Committee of the National Assembly, Ethnicity Council, Committees of the National Assembly; inspection or audit agencies such as Government Inspectorate, ministerial inspectorates, provincial inspectorates and State Audit Office of Vietnam⁴⁰²

Officials, public employees, employees, officers and servicemen in the armed forces shall report corrupt activities in their organizations or units to the head of the organization or unit. If the head is also involved in the corrupt activities, report to the head of the superior organization. Within 15 days from the receipt of the information about corrupt activities, the recipient shall handle the case or transfer it to a competent organization or person for handling and notify the informer. In complicated cases, the aforementioned time limit may be extended

(continued from footnote 401)

deputies of state organizations in which corrupt activities occur: 3. Absolution, alleviation and aggravation of legal responsibility of the head and deputies: a) Absolution of responsibility will be granted if the corrupt activities cannot be discovered or necessary measures have been implemented for prevention of corrupt activities; b) Absolution or alleviation of responsibility shall be granted if necessary measures have been implemented for prevention of corrupt activities or relief of consequences thereof, or the corrupt activities are discovered, reported and dealt with in a timely manner as prescribed by law; c) Exemption or reduction of penalties shall be granted if the responsible person resigns from office before the corrupt activities are discovered by a competent authority, unless they are subject to criminal prosecution; d) Responsibility shall be aggravated if necessary measures are not implemented for prevention of corrupt activities or relief of consequences thereof, or the corrupt activities are not discovered, reported and dealt as prescribed by law.”, available at <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

⁴⁰² Articles 59-64 of Law on Anti-corruption No. 26/2018/QH14, available at <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

but not extending 30 days. The recipient may decide or request a competent person to implement necessary measures for stopping the corrupt activities and protect the informer.⁴⁰³

3.7 Laws Concerning Social Welfare and Protection of Good Quality of Life

3.7.1 Laws Concerning Social Welfare of Children, Elderly and Disabled Persons

a) Laws on Social Welfare of Children

Overview

Vietnam was among the first countries to ratify the Convention on the Rights of the Child (February 28, 1990). To implement the Convention, the National Assembly passed the Law on Child Protection, Care and Education in 1991⁴⁰⁴, and this Law was replaced by the Law on Child Protection, Care and Education in 2004.⁴⁰⁵ In 2016, a new law – Law on Children – was enacted

⁴⁰³ Article 66 of Law on Anti-corruption No. 26/2018/QH14, “Reporting corruption and processing of information about corruption:

1. Officials, public employees, employees, officers and servicemen in the armed forces shall report corrupt activities in their organizations or units to the head of the organization or unit; if the head is also involved in the corrupt activities, report to the head of the superior organization.

2. Within 15 days from the receipt of the information about corrupt activities, the recipient shall handle the case or transfer it to a competent organization or person for handling and notify the informer. In complicated cases, the aforementioned time limit may be extended but not extending 30 days. The recipient may decide or request a competent person to implement necessary measures for stopping the corrupt activities and protect the informer.”, *available at* <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Anti-Corruption%202018.pdf> (accessed November 1, 2019).

⁴⁰⁴ Law on Child Protection, Care and Education of 1991, which is a legislation (Act) that was enacted by the National Assembly on August 12, 1991 and is entitled to the second highest legal effect only after the Constitution (in Vietnamese: Luật Bảo vệ, chăm sóc và giáo dục trẻ em năm 1991). This Law provides for basic rights and responsibilities of children and child protection, care and education.

⁴⁰⁵ Law on Child Protection, Care and Education No. 25/2004/QH11 (in Vietnamese: Luật Bảo vệ, chăm sóc và giáo dục trẻ em số 25/2004/QH11), *available at* http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84243 (accessed December 1, 2018). This Law prescribes the fundamental rights and duties of children; responsibilities of the family, State and society in child protection, care and education.

("Law on Children").⁴⁰⁶ The 2016 Law on Children, together with other relevant laws and regulations, constitute the legal framework for social welfare of children in Vietnam. Other relevant laws and regulations include Decree No. 56/2017/ND-CP dated May 9, 2017 of the Government⁴⁰⁷, Law on Marriage and Family No. 52/2014/QH13, Law on Adoption No. 52/2010/QH13, Labor Code No. 10/2012/QH13, Law on Disabled Persons No. 51/2010/QH13, Law on Education No. 38/2005/QH11, etc. These laws contain relevant provisions on protection of children in family relations, adoption, employment, education, and special provisions on protection of disabled children and child workers.

Under Vietnamese law, children are defined as Vietnamese citizens under 16 years old.⁴⁰⁸ The Law on Children recognizes five core principles in ensuring the exercise of children's rights and responsibilities: (1) Facilitate children in exercising their rights and responsibilities in adequate manner; (2) Do not discriminate against children; (3) Ensuring children's best interests while making decisions concerning children; (4) Respect, listen, consider and respond to children's proposals and expectations; (5) Take into consideration opinions of children and those of relevant agencies and organizations while making policies and laws affecting children;

⁴⁰⁶ Law on Children No. 102/2016/QH13, which is a legislation (Act) enacted by the National Assembly on April 5, 2016, came into effect from June 1, 2017, and is entitled to the second highest legal effect only after the Constitution, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125796/F-1725767197/VNM103522%20Eng.pdf> (accessed December 1, 2018).

⁴⁰⁷ Decree No. 56/2017/ND-CP dated May 9, 2017 of the Government. The Decree details a number of articles of the Law on Children. This Decree specifies groups of disadvantaged children and assistance policies, assistance and intervention for abused children or children at risk of violence, exploitation or abandonment and disadvantaged children, responsibility to protect children in the internet environment, alternative care for children; responsibilities of agencies, organizations, educational institutions, families and individuals for involving children in children's matters.

⁴⁰⁸ Article 1 of Law on Children No. 102/2016/QH13, "Children A child is a human being below the age of 16.", *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125796/F-1725767197/VNM103522%20Eng.pdf> (accessed December 1, 2018)

combine goals or objectives regarding children in national, sector and local socio-economic development plans.⁴⁰⁹

Rights and Responsibilities of Children

The Law on Children of 2016 sets forth 23 rights for Vietnamese children from Article 12 to Article 34, including: Right to life; Right to birth registration and nationality; Right to healthcare; Right to be cared for and nurtured; Right to education, study and development of talent; Right to engage in play and recreational activities; Right to preserve and promote characters; Right to freedom of belief or religion; Right to property; Right to privacy; Right to live with parent(s); Right to be reunited and stay in contact with parent(s); Right to receive surrogate care and to be adopted; Right to be protected from sexual abuse; Right to be protected from labor exploitation; Right to be protected against violence, neglect or abandonment; Right to be protected from trafficking, kidnapping, swap and appropriation; Right to protection from narcotic substances; Right to be protected in the course of proceedings and taking of actions against administrative violations; Right to be protected while suffering from natural disasters and calamities, environmental pollution or armed conflict; Right to social security; Right to access to information and social activities; Right to state opinions and attend meeting.

The Law on Children of 2016 also stipulates responsibilities of children, including Children's responsibilities towards their families, their schools, social support establishments and other educational establishments, community and society, hometown and nation; and responsibilities towards themselves.

⁴⁰⁹ Article 5 of Law on Children No. 102/2016/QH13, "Rules for ensuring the exercise of children's rights and responsibilities: 1. Facilitate children in exercising their rights and responsibilities in adequate manner. 2. Do not discriminate against children. 3. Ensuring children's best interests while making decisions relating children. 4. Respect, listen, consider and respond to children's proposals and expectations. 5. Consider ideas of children and those of relevant agencies and organizations while establishing policies and laws affecting children; combine goals or objectives regarding children in national, sector and local socioeconomic development plans.", *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125796/F-1725767197/VNM103522%20Eng.pdf> (accessed December 1, 2018).

Education and Care of Children

The Government implements support and assistance policies and promulgates standards and regulations on the care of children according to the age level and those for disadvantaged children. The Government encourages agencies, organizations, families and individuals to support and take care of children and disadvantaged children. Organizations and individuals that provide care services to children are enjoyed support policies on land, taxes and credits.

Child Protection

The child protection is implemented according to the following three levels: a) Prevention; b) Support; and c) Intervention.⁴¹⁰ The prevention level includes many child protective measures which are applicable to community, families and children for the purpose of raising awareness and improving knowledge of child protection, creating a safe and healthy living environment for

⁴¹⁰ Article 47 of Law on Children No. 102/2016/QH13, “Requirements on child protection:

1. The child protection is implemented in according to the following three levels:

a) Prevention;

b) Support;

c) Intervention.

2. The implementation of the child protection must ensure the systematization, continuity, close and effective cooperation between competent authorities and sector managing agencies in the construction and implementation of policies and laws and the provision of child protective services.

3. Agencies, organizations, educational establishments, families and individuals assume child protection duties. The child protection must comply with the laws, processes and standards promulgated by competent state authorities.

4. The child protection at children’s families and families that perform the surrogate care is prioritized. The sending of children to social support establishments is only a temporary method when the care of children at their families or families performing the surrogate care is unsuccessful or for the best interests of children.

5. Parents, caregivers and children must provide information and state their opinions with competent authorities and individuals in making decisions on child protection intervention or support.

6. It should attach a special importance to the prevention of the risk of harm to children; make timely intervention for minimizing bad consequences; actively assist disadvantaged children with functional rehabilitation and social inclusion.”, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125796/F-1725767197/VNM103522%20Eng.pdf> (accessed December 1, 2018).

children and minimizing the risk of cases where children who may be abused or face disadvantaged conditions. The support level includes child protective measures which are applicable to children in danger of violence, exploitation or abandonment or disadvantaged children for the purpose of discovering, reducing or abolishing risks of harm to children in a timely manner. The intervention level includes child protective measures that are applicable to abused children and their families for preventing acts that result in harm to children and assisting disadvantaged children with functional rehabilitation and social inclusion.⁴¹¹

Disadvantaged Children

Law on Children of 2016 (Law on Children No. 102/2016/QH13) and Decree Detailing a Number of Article of the Law on Children No. 56/2017/NC-CP have stipulated legal provisions regarding protection, care and education of disadvantaged children. Article 4(10) and article 10 of Law on Children provide legal definition of “disadvantaged children” which include orphans, abandoned children, children who have no one to rely on, children with disabilities, HIV/AIDS-infected children, juvenile delinquents, narcotic-addicted children, children who dropped out of

⁴¹¹ Article 48 of Law on Children No. 102/2016/QH13, “Prevention level:

1. The prevention level includes many child protective measures which are applicable to community, families and children for the purpose of raising awareness and improving knowledge of child protection, creating a safe and healthy living environment for children and minimizing the risk of cases where children who may be abused or face disadvantaged conditions.
2. Child protective measures at prevention level consist of:
 - a) Propagate and disseminate the danger and consequences of factors and acts harming and abusing children; responsibility for discovering and reporting cases where children are abused or in danger of violence, exploitation or abandonment to community, families and children;
 - b) Provide information and equip parents, teachers, caregivers and people working in child protective service providers with knowledge of child protection duties and skills for preventing and discovering factors and acts harming or abusing children;
 - c) Equip with knowledge and parenting skills for ensuring children’s safety;
 - d) Educate and give advice on knowledge and self- protection skills to children; dd) Establish a safe and suitable living environment for children.”, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125796/F-1725767197/VNM103522%20Eng.pdf> (accessed December 1, 2018).

school for livelihood before completing lower secondary education, children suffering serious physical and mental harms due to violence, exploited children, sexually abused children, trafficked children, children of poor or near-poor households who suffer a dangerous disease or a disease requiring long-term treatment and migrant and refugee children whose parents have not yet been identified or who are unaccompanied.⁴¹² The law also stipulates that responsible individuals or organizations shall regard basic condition of the child's family in order to find proper

⁴¹² Article 4 of Law on Children No. 102/2016/QH13, "10. Disadvantaged children refer to those who are unable to exercise their rights to life, protection, nurture and education, and need a special assistance and intervention of the Government, families and society so that they can live safely and fall in line with their families and the community." Article 10 of Law on Children No. 102/2016/QH13, "Disadvantaged children:

1. Disadvantaged children are classified into the following categories:

- a/ Orphans;
- b/ Abandoned children;
- c/ Children who have no one to rely on;
- d/ Children with disabilities;
- dd/ HIV/AIDS-infected children;
- e/ Juvenile delinquents;
- g/ Narcotic-addicted children;
- h/ Children who dropped out of school for livelihood before completing lower secondary education;
- i/ Children suffering serious physical and mental harms due to violence;
- k/ Exploited children;
- l/ Sexually abused children;
- m/ Trafficked children;
- n/ Children of poor or near-poor households who suffer a dangerous disease or a disease requiring long-term treatment;
- o/ Migrant and refugee children whose parents have not yet been identified or who are unaccompanied.

2. The Government shall detail categories of disadvantaged children and appropriate support policies for every category of disadvantaged children.", *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125796/F-1725767197/VNM103522%20Eng.pdf> (accessed December 1, 2018).

measures for juvenile delinquents and children crime victim and return them to society.⁴¹³

Likewise, Decree Detailing a Number of Article of the Law on Children No. 56/2017/ND-CP prescribes details and stipulate more concrete definition of each types of disadvantages children⁴¹⁴ and stipulates integrative assistance measures for these disadvantaged children, for example, medical expense support from the government for disadvantaged children, monthly allowances for individuals and families who provide alternatives care to disadvantaged children, including support for basic needs such as food and housing⁴¹⁵, stipulating that disadvantaged

⁴¹³ Article 72 of Law on Children No. 102/2016/QH13, “Responsibilities of individuals in charge of child protection affairs at communal level in the course of proceeding, taking of actions against administrative violations, rehabilitation/ recovery and social inclusion:

1. Give advice and provide information and guidance to children, their parents and caregivers on the access to child protection, legal assistance, social support, health, education support services and other supporting sources.
2. Find and provide information about children's background and family to authorized procedural persons and competent individuals for taking actions against administrative violations in order that they can impose legitimate measures for handling illegal acts, the edification measure and make other suitable decisions.
3. Participate in the proceeding and the handling of administrative violations in connection with children as regulated by the laws or as requested by authorized procedural persons or competent individuals for taking actions against administrative violations; attend the meeting of the advisory board for the application of the edification at the commune, ward or town for handling administrative violations, and the consideration made at the Court for sending children to reform schools for education.
4. Follow and assist the imposition of the edification at the commune, ward or town, measures substituting administrative penalties, or social inclusion on children who violate the law; propose suitable measures for protecting children who committed illegal acts as regulated in Clause 1 Article 71 of this Law.
5. Participate in the establishment of support and intervention plans and follow the implementation thereof; contact and assist children with rehabilitation/recovery and social inclusion services.”, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125796/F-1725767197/VNM103522%20Eng.pdf> (accessed December 1, 2018).

⁴¹⁴ Section 1 of Decree Detailing a Number of Article of the Law on Children No. 56/2017/ND-CP, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11109> (accessed December 1, 2018).

⁴¹⁵ Article 19 of Decree Detailing a Number of Article of the Law on Children No. 56/2017/ND-CP, “Social relief policies: *(continued on next page)*

children shall receive exemption or discount for education fee and other expenses,⁴¹⁶ and establishing national telephone hot-lined center for child protection to provide consultation and receives emergency call in case of child abuse, etc.⁴¹⁷

(continued from footnote 415)

1. The State shall provide monthly allowances for individuals and families that give alternative care; and support the payment of expenses for funerals and provide other allowances and supports for disadvantaged children in accordance with the law on social relief policies.

2. The State shall support meal, accommodation and travel expenses under the law on social relief policies for abused children and disadvantaged children currently under emergency protection prescribed in Clause 1, Article 31 of this Decree.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11109> (accessed December 1, 2018).

⁴¹⁶ Article 20 of Decree Detailing a Number of Article of the Law on Children No. 56/2017/ND-CP, “Education, training and vocational education support policies:

Disadvantaged children are entitled to school fee exemption or reduction and support of learning expenses in accordance with the laws on education, training and vocational education.” *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11109> (accessed December 1, 2018).

⁴¹⁷ Article 22 of Decree Detailing a Number of Article of the Law on Children No. 56/2017/ND-CP, “Tasks of the National Telephone Exchange for Child Protection:

1. To provide child protection services via telephone numbers managed by the Ministry of Labor, War Invalids and Social Affairs.

2. To receive via telephone information, reports and denunciations.

3. To contact related or competent persons, agencies and organizations; to seek information on risks and acts of child abuse in the mass media and Internet environment for initially verifying information, reports and denunciations.

4. To send and provide information, reports and denunciations relating to or refer children at risk of abuse, abused children, disadvantaged children, parents and child caregivers to agencies, organizations and persons with child protection competence and function.

5. To coordinate with agencies, organizations, individuals, child protection service providers, and persons with child protection competence and function nationwide in receiving, exchanging and verifying information, reports and denunciations on abused children or children at risk of violence, exploitation or abandonment.

6. To assist commune-level child protection officers in making and implementing assistance and intervention plans for each abused child or child at risk of violence, exploitation or abandonment; to monitor and assess the making and implementation of these plans. *(continued on next page)*

b) Laws on Social Welfare of the Elderly

Law on the Elderly, effective on July 1, 2010, was enacted to replace the Ordinance on the Elderly (2003). The 2010 Law on the Elderly provides for the rights and obligations of the elderly; the responsibilities of families, the State and the society in taking care of and bringing into full play the role of the elderly; and the Vietnam Elderly Association. The Law institutionalizes Vietnam's policy on caring for older persons in a more systematic, complete and comprehensive manner to ensure their participation in the society and call for the attention of social organizations and individuals in caring for the older persons.⁴¹⁸ Provisions addressing the rights and interests of the elderly are also contained in other laws such as Civil Code, Labor Code,⁴¹⁹ Criminal Code,⁴²⁰ Law on Legal Aid,⁴²¹ etc.

(continued from footnote 417)

7. To provide psychological and legal counseling for children and parents, family members and caregivers of children.

8. To store, analyze and synthesize information for provision of information, reports and denunciations at the request of competent agencies, organizations and persons, for cases of child abuse, and of child protection service providers; to send regular or extraordinary reports to state management agencies in charge of children and other agencies with child protection competence and responsibility.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11109> (accessed December 1, 2018).

⁴¹⁸ Law on the Elderly No. 39/2009/QH12 (in Vietnamese: Luật Người cao tuổi số 39/2009/QH12), *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴¹⁹ Labor Code No. 10/2012/QH13 stipulates legal definition of elderly employee and obligate employers to take care health of elderly employee. It also prohibits elderly employee from doing specific hazardous and dangerous work., *available at* <http://ljp.vn/web/images/stories/labour-documents/luat%20lao%20dong%20English.pdf>, (accessed December 1, 2018).

⁴²⁰ Article 157 of Criminal Code No. 100/2015/QH13 stipulates severer punishment for illegal arrest, detention or imprisonment committed against elderly which is 2-7 years imprisonment, while punishment for normal offense is 6-36 months imprisonment., *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> (accessed December 1, 2018).

⁴²¹ Law on Legal Aid No. 11/2017/QH14 (in Vietnamese: Luật Trợ giúp pháp lý số 11/2017/QH14),
(continued on next page)

The Government of Vietnam, specifically the Prime Minister of Vietnam, has also issued the National Action Plan on older persons for the 2012-2020 period with an aim at enhancing the quality of care and promoting their roles in the society. This Action Plan assigns a number of agencies and organizations to carry out the Action Plan, including the Ministry of Labor, Ministry of Planning and Investment, Ministry of Finance, Ministry of Home Affairs, Ministry of Construction, Ministry of Agriculture and Rural Development, Ministry of Culture, Sports and Tourism, Ministry of Transport, Ministry of Information and Communication, Ministry of Health, People's Committees at provincial level, Vietnam Elderly Association and other relevant organizations.

The elderly, as defined in the Law on the Elderly, are Vietnamese citizens aged 60 or above.⁴²² Under the Law, the elderly have the following rights:⁴²³ to be guaranteed with basic

(continued from footnote 421)

available at <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11098> (accessed December 1, 2018).

This Law provides for legally-aided persons, which includes elderly; legal aid-providing organizations; legal aid-providing persons; legal aid services and responsibilities of agencies, organizations and individuals in legal aid services.

⁴²² Article 2 of Law on the Elderly No. 39/2009/QH12, "The elderly defined in this Law are Vietnamese citizens aged full 60 or over.", available at http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴²³ Article 3 of Law on the Elderly No. 39/2009/QH12, "Rights and obligations of the elderly:

1. The elderly have the following rights: a) To be guaranteed with basic food, clothing, lodging, movement and healthcare needs; b) To decide to live with their children, grandchildren or to live separately at their own will; c) To be given priority in the use of services under this Law and other relevant laws; d) To be provided with conditions to participate in cultural, educational, physical training, sports, entertainment, tourist and recreation activities; e) To be provided with conditions to work in suitability to their health and professions and other conditions in order to bring into full play their role; f) To be exempt from contributions to social activities, except voluntary contributions; g) To be given priority in the receipt of relief in cash or in kind, healthcare and lodgings with a view to overcoming initial difficulties when they meet with difficulties due to consequences of natural disasters or other force majeure circumstances; h) To join in the Vietnam Elderly Association under the Association's charter; i) Other rights defined by law.

2. The elderly have the following obligations: a) To set bright examples in moral quality and lifestyles: to educate

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needs for food, clothing, lodging, movement and healthcare; to decide to live with their children, grandchildren or to live separately at their own will; to be given priority in the use of services; to participate in cultural, educational, physical training, sports, entertainment, tourist and recreation activities; to work; to be exempt from contributions to social activities, except voluntary contributions; to be given priority in receiving aids in cash or in kind, healthcare and lodgings when they face difficulties due to natural disasters or other force majeure circumstances; and to join the Vietnam Elderly Association.

Persons having the obligations and rights to take care of the elderly are their children and grandchildren and other persons obliged to take care of or provide financial supports under the law on marriage and family.⁴²⁴ They must arrange the elderly's lodgings suitable to their health

(continued from footnote 423)

young generations to preserve and promote the fine traditions of the nation; to be exemplary in observing and mobilizing families and communities to observe the Party's policies and line and the State's laws; b) To pass their precious experiences to younger generations; c) Other obligations defined by law.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

- ⁴²⁴ Article 10 of Law on the Elderly No. 39/2009/QH12, "Obligations and rights to take care of the elderly:
1. Taking care of the elderly means caring for their spiritual and material lives, aiming to satisfy their basic food, clothing, lodging, travel and healthcare needs as well as entertainment, recreation, information, communication and learning needs.
 2. Persons having the obligations and rights to take care of the elderly are their children and grandchildren and other persons obliged to take care of or provide financial supports under the law on marriage and family.
 3. Persons having the obligations and rights to take care of the elderly shall, depending on their specific circumstances, arrange the elderly's lodgings suitable to their health and psychological conditions; provide financial assistance; pay hospitalization and healthcare costs and encourage the elderly when they fall sick; organize funerals when they die.
 4. Persons having the obligations and rights to take care of the elderly shall cooperate with one another in looking after them.
 5. Organizations and individuals other than those defined in Clause 2 of this Article are encouraged to participate in take caring of the elderly.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

and psychological conditions; provide financial assistance; pay healthcare costs; and organize funerals when the elderly die. If these persons cannot take care of the elderly by themselves, they may entrust individuals or organizations providing care-taking services to look after the elderly, but with the elderly's consent.⁴²⁵

Persons aged 80 or older are given priority for medical examination before other persons, except emergency patients, under-6 children and heavily disabled people, and elderly inpatients are arranged proper hospital beds.⁴²⁶ The construction or renovation of condominiums and public facilities must take into account the elderly's needs. When participating in public transport, the

⁴²⁵ Article 11 of Law on the Elderly No. 39/2009/QH12 "Entrusted care for the elderly:

1. Persons having the obligations and rights to take care of the elderly but having no conditions to directly look after the elderly may entrust individuals or organizations providing services of taking care of the elderly to look after the elderly, but with the elderly's consent. Entrustment to look after the elderly shall be effected under service contracts between persons having the obligations and rights to take care of the elderly and service providers.
2. Service providers entrusted to look after the elderly shall fulfill their commitments under service contracts signed with entrusters.
3. The elderly may request persons with care-taking obligations and rights to replace service providers entrusted to take care of them.
4. The Government shall detail this Article.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴²⁶ Article 12 of Law on the Elderly No. 39/2009/QH12, "Medical examination and treatment:

1. Prioritized medical examination and treatment for the elderly shall be carried out as follows: a) Persons aged full 80 or older shall be given priority for medical examination before other persons, except emergency patients, under-6 children and heavily disabled people; b) Elderly inpatients are arranged proper hospital beds.
2. Hospitals, except pediatrics hospitals, have the following responsibilities: a) To organize gerontologic departments or set aside a number of beds for treatment of elderly patients: b) To rehabilitate elderly patients' health after pernicious disease treatments at hospital and guide their further treatment and care at home; c) To combine traditional medicine with modern medicine in treatment and guide methods of non-medicine treatment at grassroots health establishments for elderly patients: d) The State encourages organizations and individuals to give free-of-charge medical examination and treatment to the elderly.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

elderly is assisted and arranged convenient seats.⁴²⁷ The elderly is also entitled to discounted tickets and fares when using certain services.⁴²⁸

The State invests and encourages organizations and individuals to invest in the construction of cultural, educational, physical training, sports, recreation and tourist establishments to satisfy the elderly's demands for better spiritual life and physical training.⁴²⁹ The State and society create favorable conditions for the elderly to learn and research and participate in cultural, physical training, sports, recreation and tourist activities.⁴³⁰ Persons aged 100 will be

⁴²⁷ Article 15 of Law on the Elderly No. 39/2009/QH12, "Public facilities, mass transit:

1. The construction or renovation of condominiums and public facilities must take into account the elderly's characteristics and use needs.
2. When participating in mass transit, the elderly shall be assisted and arranged convenient seats.
3. The Government shall detail this Article.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴²⁸ Article 16 of Law on the Elderly No. 39/2009/QH12, "Discount of fares and service charges: The elderly are entitled to discount of fares and service charges when using a number of services stipulated by the Government.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴²⁹ Article 14 (1) of Law on the Elderly No. 39/2009/QH12, "Cultural, educational, physical training, sports, recreation and tourist activities (1) The State invests and encourages organizations and individuals to invest in the construction of cultural, educational, physical training, sports, recreation and tourist establishments to satisfy the elderly's demands for better spiritual life and physical training.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴³⁰ Article 14 (2) of Law on the Elderly No. 39/2009/QH12, "Cultural, educational, physical training, sports, recreation and tourist activities: (2) The State and society shall create favorable conditions for the elderly to learn and research and participate in cultural, physical training, sports, recreation and tourist activities through the following measures:

- a) Providing information, documents and guidance for the elderly to participate in learning and research;
- b) Providing support and guidance for the elderly to participate in cultural, recreation, tourist and deep-breathing practices as well as other physical training and sports activities suitable to their health and psychology;
- c) Providing supports in locations, tools, equipment and other material foundations suitable to the elderly's activities; (*continued on next page*)

congratulated and given presents by the President of Vietnam. Persons aged 90 will be congratulated and given presents by chairpersons of provincial-level People's Committees.⁴³¹

Persons aged 80 or above who have no pensions, monthly social insurance allowances or monthly social relief allowances, and the elderly of poor households without persons having duties to take care of them or with such persons but they themselves currently enjoy monthly social relief allowances, are entitled to the benefits of social relief policy, including: health insurance, monthly social relief allowances and payment of funeral and burial costs upon their death.⁴³²

(continued from footnote 430)

d) Encouraging enterprises and individuals to produce and trade in products and commodities suitable to the elderly's needs.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VN M&p_count=532 (accessed December 1, 2018).

⁴³¹ Article 21 of Law on the Elderly No. 39/2009/QH12, "The elderly's longevity congratulations and celebrations:

1. Persons aged 100 will be congratulated and given presents by the President of the Socialist Republic of Vietnam
2. Persons aged 90 will be congratulated and given presents by chairpersons of provincial level People's Committees.
3. Commune, ward or township People's Committees shall coordinate with local Elderly Associations and the elderly's families in organizing longevity celebrations or the elderly when they reach the age of 70. 75. 80. 85. 90. 95. 100 or over on any of the following days:

- a) Vietnam Elderly Day;
- b) The International Elderly Day;
- c) Lunar New Year Festival;
- d) The elderly birthdays.

4. Funds for the implementation of tasks defined in this Article shall be provided by the state budget and social contributions.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VN M&p_count=532 (accessed December 1, 2018).

⁴³² Article 17 of Law on the Elderly No. 39/2009/QH12, "Persons entitled to social patronage policies:

1. The elderly of poor households without persons having the care-taking obligations and rights or with persons having the care-taking obligations and rights who however, currently enjoy monthly social relief allowances.

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The State applies the following measures for the elderly to bring into full play their role suitable to their respective capabilities: creating conditions for the elderly to express their views and aspirations to agencies or organizations on matters of the elderly's concern; creating conditions for elderly scientists and artisans and other elderly with special skills and experiences to continue making contributions; providing preferential loans to the elderly who are directly involved in production and business activities in order to increase their incomes and alleviate poverty; praising and commending the elderly who have outstanding achievements.⁴³³

The Vietnam Elderly Association is a social organization representing the aspirations and legitimate rights and interests of Vietnamese elderly.⁴³⁴ Funds for the Association's operation come from the State budget support; membership fee, and other lawful revenue sources.⁴³⁵

(continued from footnote 432)

2. Persons aged full 80 or over other than those defined in Clause 1 of this Article who have no pensions, monthly social insurance allowances or monthly social relief allowances.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴³³ Article 24 of Law on the Elderly No. 39/2009/QH12 "Responsibilities to promote the elderly's role:

1. The State shall apply the following measures so that the elderly bring into full play their role suitable to their respective capabilities: a) Creating conditions for the elderly to express their views, aspirations and petitions to agencies or organizations on matters of the elderly's concern; b) Creating conditions for elderly scientists and artisans and other elderly with special skills and experiences and aspirations to continue making contributions; c) Providing preferential credit loans to the elderly who are directly involved in production and business activities in order to increase their incomes and alleviate poverty; d) Praising and commending the elderly who record outstanding achievements. 2. Agencies, Elderly Associations, other organizations, families and individuals shall create conditions for the elderly to carry out activities of promoting their role.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴³⁴ Article 25 of Law on the Elderly No. 39/2009/QH12, "The Vietnam Elderly Association: 1. The Vietnam Elderly Association is a social organization representing the aspirations and legitimate rights and interests of Vietnamese elderly. 2. The Vietnam Elderly Association is organized on the principle of voluntariness and operates under the Constitution, laws and its Charter.", *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴³⁵ Article 26 of Law on the Elderly No. 39/2009/QH12, "Funds for operations of the Vietnam Elderly Association: *(continued on next page)*

c) Laws on Social Welfare of Disabled Persons

Overview

Vietnam has about 7 million people with disabilities, accounting for 7.8% of its population. Therefore, the State of Vietnam pays great attention to the social welfare of the disabled. Vietnam signed the Convention on the Rights of Persons with Disabilities (CRPD) in 2008 and recently ratified the Convention in November 2014. The country is also trying to develop and improve the law and policies in order to promote the rights of persons with disabilities. The Law on People with Disabilities⁴³⁶ was passed in 2010 (Law on People with Disabilities (2010). Other laws such as the Labor Code, the Law on Education,⁴³⁷ the Law on Vocational Training⁴³⁸ also contain provisions addressing the protection and care of persons with disabilities.

(continued from footnote 435)

1. Funds for the operations of the Vietnam Elderly Association come from the following sources:

- a) State budget support;
- b) Membership fee;
- c) Other lawful revenue sources.

2. The Vietnam Elderly Association shall manage and use its operation funds according to law.”, *available at* http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84194&p_country=VNM&p_count=532 (accessed December 1, 2018).

⁴³⁶ Law on People with Disabilities No. 51/2010/QH12 (in Vietnamese: Luật Người khuyết tật số 51/2010/QH12), *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=488> (accessed December 1, 2018). This Law provides the rights and obligations of persons with disabilities: and responsibilities of the State, families and society towards persons with disabilities.

⁴³⁷ Law on Education No. 38/2005/QH11 (in Vietnamese: Luật Giáo dục số 38/2005/QH11), *available at* https://www.wto.org/english/thewto_e/acc_e/vnm_e/WTACCVNM43_LEG_14.pdf (accessed December 1, 2018). This Law regulates the national educational system; schools and other educational institutions of the national educational system; and organizations and individuals taking parts in educational activities.

⁴³⁸ Law on Vocational Training No. 74/2014/QH13 (in Vietnamese: Luật Giáo dục nghề nghiệp số 74/2014/QH13), *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=636> (accessed December 1, 2018). This Law governs the system of vocational education; organization and operation of the vocational education institutions; rights and obligations of organizations and individuals involved in the vocational education.

The overall policy of Vietnam is to create favorable conditions for persons with disabilities to exercise, on an equal basis with others, their political, economic, cultural and social rights, and promote their ability to stabilize their life, integrate into the community, and participate in social activities. Persons with disabilities are supported by the State and the society in healthcare, rehabilitation, appropriate job creation and enjoy other rights in accordance with the laws.

Persons with disabilities have the following rights: to participate on an equal basis in social activities; to live independently and integrate into the community; to enjoy exemption from or reduction of certain contributions to social activities; to be provided with healthcare, functional rehabilitation, education, vocational training, employment, legal assistance, access to public facilities, means of transport, information technology and cultural, sports, tourist and other services suitable to their forms and degrees of disability.⁴³⁹

Disability Certification

Degrees of disability are determined by the Disability Degree Determination Council, which is established by the Chairperson of the People's Committee at the commune where the person with disability resides. In case the Council is unable to make conclusions on the degree of disability, or the person with disabilities or his/her lawful representative disagrees with the Council's conclusion, or there is well-grounded evidence that the Council's conclusion is biased and inaccurate, the degrees of disability will be determined by the Medical Examination

⁴³⁹ Article 4 of Law on People with Disabilities No. 51/2010/QH12, "Article 4. Rights and obligations of persons with disabilities:

1. Persons with disabilities are guaranteed the following rights: (a) To participate on an equal basis in social activities; (b) To live independently and integrate into the community; (c) To enjoy exemption from or reduction of certain contributions to social activities; (d) To be provided with healthcare, functional rehabilitation, education, vocational training, employment, legal assistance, access to public facilities, means of transport, information technology and cultural, sports, tourist and other services suitable to their forms and degrees of disability; (e) Other rights provided by law.

2. Persons with disabilities shall perform civic obligations under law.", *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=488> (accessed December 1, 2018).

Council.⁴⁴⁰ Within 5 working days after the conclusion by the Disability Degree Determination Council is issued, the chairperson of the commune People's Committee posts up and publicizes the Council's conclusion and issues a disability certificate.⁴⁴¹

Medical Care for Persons with Disabilities

The State guarantees that persons with disabilities have access to medical examination and treatment as well as appropriate medical services. Persons with disabilities are entitled to health insurance under the Law on Health Insurance.⁴⁴² A disabled person suffering a mental disease, being in the state of incitement or depression, having the intent and/or act of committing suicide or posing danger to other persons, is provided with supports in daily-life allowance, travel

⁴⁴⁰ Article 15 of Law on People with Disabilities No. 51/2010/QH12, "Responsibility to determine degrees of disability:

1. Degrees of disability shall be determined by the Disability Degree Determination Council.
2. Degrees of disability shall be determined by the Medical Examination Council in the following cases:
 - (a) The Disability Degree Determination Council is unable to make conclusions on the degree of disability;
 - (b) The person with disabilities or his/her lawful representative disagrees with the conclusion on degree of disability made by the Disability Degree Determination Council;
 - (c) There is well-grounded evidence on the biased and inaccurate determination of the degree of disability by the Disability Degree Determination Council.
3. If the Medical Examination Council has already made a conclusion on the self-serving ability and the degree of working capacity loss. the degree of disability shall be determined under the Government's regulations.", *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=488> (accessed December 1, 2018).

⁴⁴¹ Article 18 (4) of Law on People with Disabilities No. 51/2010/QH12, "Procedures for determination of degrees of disability:

4. Within 5 working days after the issue of the conclusion by the Disability Degree Determination Council, the chairman of the commune-level People's Committee shall post up and publicize the conclusion of the Disability Degree Determination Council and issue a disability certificate.", *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=488> (accessed December 1, 2018).

⁴⁴² Law on Health Insurance No. 25/2008/QH12 (in Vietnamese: Luật Bảo hiểm Y tế số 25/2008/QH12), *available at* http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82231 (accessed December 1, 2018).

and hospital expenses in the period of compulsory treatment at medical examination and treatment establishments.⁴⁴³

Education for Persons with Disabilities

The State creates conditions for persons with disabilities to study suitable to their own needs and capabilities. Persons with disabilities may be admitted to school at ages higher than the ages prescribed for general education; are given priority in enrolment; are entitled to exemption from or reduction of certain study subjects or educational contents and activities beyond their personal capabilities, and exemption from or reduction of school fees, training expenses and other contributions; are considered for provision of scholarships and learning equipment. Persons with disabilities are provided with equipment and materials in support of their exclusive learning in case of necessity. Persons with sensory disabilities may have their learning in sign language, and persons with visual disabilities may have their learning in Braille under the national standards. Modes of education applicable to persons with disabilities include integrative education, semi-integrative education, and exclusive education, in which integrative education is the main mode. “Integrative education” means a mode of education integrating persons with disabilities with persons without disabilities in educational institutions, “semi-integrative

⁴⁴³ Article 22 of Law on Health Insurance No. 25/2008/QH12, “Levels of health insurance benefits:

1. An insured who uses medical care services defined in Articles 26, 27 and 28 of this Law has medical care costs covered by the health insurance fund at the following levels:

- (a) 100% of the costs, for persons defined in Clauses 2, 9 and 17, Article 12 of this Law;
- (b) 100% of the costs, for cases in which the cost of a check-up is below the level prescribed by the Government and conducted at a commune hospital;
- (c) 95% of the costs, for persons defined in Clauses 3, 13 and 14, Article 12 of this Law;
- (d) 80% of the costs, for other persons.

2. If the insured belongs to different categories, he/she is eligible for the highest benefit for an insured of a category.

3. The Government shall specify levels of medical care costs paid for the cases of transferal to higher-level hospitals, medical examination and treatment at upon request, and use of hi-tech and expensive services and other cases not specified in Clause 1 of this Article.”, *available at* http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82231 (accessed December 1, 2018).

education” means a mode of education combining integrative education with exclusive education for persons with disabilities in educational institutions, and “exclusive education” means a mode of education used exclusively for persons with disabilities in educational institutions.⁴⁴⁴

Vocational Training and Employment for Persons with Disabilities

The State ensures that persons with disabilities are provided with free advice on vocational training, job selection and learning on an equal basis like other persons and creates conditions for them to have their working functions rehabilitated, to receive free job advice, to be employed and perform jobs suitable to their health. Employers are not allowed to refuse to recruit persons with disabilities who fully satisfy the recruitment conditions or to set recruitment criteria in violation of law in order to restrict working opportunities of persons with disabilities.⁴⁴⁵

⁴⁴⁴ Article 2 of Law on People with Disabilities No. 51/2010/QH12, “Article 2. Interpretation of terms. In this Law, the terms below are construed as follows:

1. Person with disabilities means a person who is impaired in one or more body parts or suffers functional decline manifested in the form of disability which causes difficulties to his/her work, daily life and study.
2. Stigma against persons with disabilities means the attitude of disregarding or disrespecting persons with disabilities because of their impairments.
3. Discrimination against persons with disabilities means the act of shunning, refusing, maltreating, disparaging, showing prejudice against, or restricting the rights of, persons with disabilities because of their impairments.
4. Integrative education means a mode of education integrating persons with disabilities with persons without disabilities in educational institutions.
5. Exclusive education means a mode of education used exclusively for persons with disabilities in educational institutions.
6. Semi-integrative education means a mode of education combining integrative education with exclusive education for persons with disabilities in educational institutions.
7. Living independently means that persons with disabilities may decide by themselves on matters related to their own lives.
8. Access means that persons with disabilities may use public facilities, means of transport, information technology, cultural, sports, tourist and other suitable services so as to be able to integrate into the community.”, available at <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=488> (accessed December 1, 2018).

⁴⁴⁵ Article 32 of Law on People with Disabilities No. 51/2010/QH12, “Vocational training for persons with disabilities: (continued on next page)

Self-employed persons with disabilities or households creating jobs for persons with disabilities may borrow loans at preferential interest rates for their business activities and to be guided in production, technology transfer and receive support in product sales.⁴⁴⁶ Enterprises with disabled employees accounting for 30% or more of their total employees may receive supports for improvement of their working conditions and environment suitable to persons with disabilities; be exempt from enterprise income tax; borrow loans at preferential interest rates; receive priority in land, ground and water surface lease, and be exempt from rents of land, ground and water surface for their business activities in proportion to the percentage of employees with disabilities, the degree of their disabilities and the size of enterprises.⁴⁴⁷

(continued from footnote 445)

1. The State ensures that persons with disabilities are provided with free advice on vocational training, job selection and learning according to their capability and ability on an equal basis like other persons.
2. Vocational training establishments shall issue diplomas and certificates and recognize trained jobs when persons with disabilities finish their training programs and fully satisfy the conditions prescribed by heads of state agencies managing vocational training.
3. Vocational training establishments which organize vocational training for persons with disabilities must meet the conditions on vocational training for persons with disabilities and are entitled to preferential policies under law.
4. Persons with disabilities who are vocational trainees and teachers providing vocational training to persons with disabilities are entitled to regimes and policies prescribed by law.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=488> (accessed December 1, 2018).

⁴⁴⁶ Article 33 of Law on People with Disabilities No. 51/2010/QH12, “Employment for persons with disabilities: 6. Self-employed persons with disabilities or households creating jobs for persons with disabilities may borrow loans at preferential interest rates for production and business activities and to be guided in production, technology transfer and receive support in product sales according to regulations of the Government.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=488> (accessed December 1, 2018).

⁴⁴⁷ Article 34 of Law on People with Disabilities No. 51/2010/QH12, “Production and business establishments employing many persons with disabilities: Production and business establishments which employ persons with disabilities accounting for 30% or more of their total employees may receive supports for improvement of their working conditions and environment suitable to persons with disabilities; be exempt from enterprise income tax; borrow loans at preferential interest rates under production and business development
(continued on next page)

Access to Buildings, Public Infrastructures, Public Transport, Information Technology, and Communication

The designs, constructions, renovation and upgrading of condominiums, offices and technical and social infrastructure facilities must comply with national technical standards on construction in order to ensure access by persons with disabilities.⁴⁴⁸ Buildings and structures built before the effective date of the Law on Persons with Disabilities which fail to meet this condition must be improved and upgraded according to the Schedule (Appendix A) set forth by the Law.⁴⁴⁹ Means of public transport must be built with priority seats for persons with disabilities

(continued from footnote 447)

projects; receive priority in land, ground and water surface lease and be exempt from rents of land, ground and water surface to serve production and business activities in proportion to the percentage of employees with disabilities, the degree of their disabilities and the size of enterprises.", *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=488> (accessed December 1, 2018).

⁴⁴⁸ Article 39 of Law on People with Disabilities No. 51/2010/QH12, "Condominiums and public works:

1. The approval of designs, construction and check-and-takeover of new constructions, renovation and upgrading of condominiums, offices and technical and social infrastructure facilities must comply with national technical standards on construction in order to ensure access by persons with disabilities.
2. Condominiums, offices and public technical and social infrastructure facilities built before the effective date of this Law which fail to meet the conditions on access by persons with disabilities shall be improved and upgraded to meet these conditions according to the schedule defined in Article 40 of this Law.", *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?viD=488> (accessed December 1, 2018).

⁴⁴⁹ Article 40 of Law on People with Disabilities No. 51/2010/QH12, "Schedules for improvement of condominiums and public works:

1. By January 1, 2020, the following public works must satisfy the conditions on access by persons with disabilities:

- (a) Offices of the agencies;
- (b) Railway stations, car terminals and ports;
- (c) Medical examination and treatment establishments;
- (d) Educational and vocational training establishments;
- (e) Cultural, physical training and sport works.

2. By January 1, 2025, all condominiums offices, public technical infrastructures and social infrastructure facilities other than those defined in Clause 1 of this Article must satisfy the conditions on access by persons with disabilities. *(continued on next page)*

and have instruments that allow convenient mounting and dismounting or render assistance suitable to persons with disabilities.⁴⁵⁰

The State encourages agencies, organizations, enterprises and individuals to apply and develop information technology reserved for persons with disabilities. The Vietnam Television Station must broadcast programs with Vietnamese subtitles and sign language for persons with disabilities. The State adopt policies on tax exemption and reduction, preferential loans and other supports for research into, manufacture of equipment, provision of services and supply of equipment to enable persons with disabilities to access information technology and communication, and support the collection, compilation and publication of documents printed in Braille for persons with visual disabilities, reading documents for persons with sensory and intellectual disabilities.⁴⁵¹

(continued from footnote 449)

3. The Government shall detail the implementation of the schedules for improvement of each type of works defined in Clauses 1 and 2 of this Article.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=488> (accessed December 1, 2018).

⁴⁵⁰ Article 42 of Law on People with Disabilities No. 51/2010/QH12, “Means of mass transit:

1. Means of mass transit must be built with priority seats for persons with disabilities; with instruments that allow convenient mounting and dismounting or render assistance suitable to the characteristics of persons with disabilities.

2. Means of mass transit to be accessible by persons with disabilities must satisfy national technical standards on accessible transportation promulgated by competent state agencies.

3. Mass transit units shall invest in and arrange means up to technical standards on accessible transportation on transport routes according to the rates prescribed by the Government in each period.

4. Produced or imported means of mass transit satisfying national technical standards on accessible transportation are entitled to tax exemption or reduction under tax law.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=488> (accessed December 1, 2018).

⁴⁵¹ Article 43 of Law on People with Disabilities No. 51/2010/QH12, “Information technology and communication:

1. The State encourages agencies, organizations, enterprises and individuals operating in information technology to apply and develop information technology reserved for persons with disabilities.

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Social Relief

Persons with extremely serious disabilities and persons with serious disabilities are entitled to monthly social allowance. Families of persons with extremely serious disabilities that are directly taking care of these persons; persons who undertake to take care of persons with extremely serious disabilities; and persons with extremely serious disabilities or serious disabilities, who are pregnant or nursing children under 36 months old; are entitled to monthly care-taking fund supports. Persons extremely serious disabilities or serious disabilities, who are children or elderly, are entitled to allowances higher than others of the, same degree of disability.⁴⁵²

(continued from footnote 451)

2. Mass media agencies have the responsibility to cover the material and spiritual life of persons with disabilities. Vietnam Television Station shall broadcast programs with Vietnamese subtitles and sign language for persons with disabilities according to regulations of the Minister of Information and Communications.

3. The State shall adopt policies on tax exemption and reduction, concessional loans and other supports for research into, manufacture or production of equipment, provision of services and supply of equipment to enable persons with disabilities to access information technology and communication: and support the collection, compilation and publication of documents printed in Braille for persons with visual disabilities, reading documents for persons with sensory and intellectual disabilities.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=488> (accessed December 1, 2018).

⁴⁵² Article 44 of Law on People with Disabilities No. 51/2010/QH12 “Monthly social allowances and care-taking fund supports:

1. Entitled to monthly social allowance are:

- (a) Persons with exceptionally serious disabilities, except for the cases defined in Article 45 of this Law;
- (b) Persons with serious disabilities.

2. Entitled to monthly care-taking fund supports are:

- (a) Families of persons with exceptionally serious disabilities that are directly nurturing and taking care of these persons;
- (b) Persons who undertake to nurture and take care of persons with exceptionally serious disabilities;
- (c) Persons with disabilities defined in Clause 1 of this Article, who are pregnant or nursing children under 36 months old.

Persons with disabilities defined at Clause 1 of this Article, who are children or elderly are entitled to allowances higher than others of the, same degree of disability.

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Persons with extremely serious disabilities who have no one to support or cannot take care of themselves are admitted to social relief establishments. The State provides social relief centers with funds for nurturing persons with disabilities.⁴⁵³

3.7.2 Laws Concerning Disaster Prevention and Mitigation

Vietnam frequently has to cope with natural disasters, such as storms, floods, and landslides. The Ordinance on Prevention and Control of Floods and Storms was promulgated in 1993 and amended in 2000. In June 2013, the National Assembly passed the Law on Natural Disaster Prevention and Control⁴⁵⁴ to replace and upgrade this Ordinance.

(continued from footnote 452)

The monthly social allowance level and monthly care-taking fund support level for each type of beneficiary under this Article shall be set by the Government.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=488> (accessed December 1, 2018).

⁴⁵³ Article 45 of Law on People with Disabilities No. 51/2010/QH12, “Nurture of persons with disabilities in social-relief establishments:

1. Persons with exceptionally serious disabilities without anyone to support or without ability to take care of themselves shall be admitted to social- relief establishments.

2. The State shall provide social relief centers with funds for nurturing persons with disabilities defined in Clause 1 of this Article, including:

(a) Monthly nurturing allowance:

(b) Procurement of personal articles and utensils for daily-life activities;

(c) Purchase of health insurance;

(d) Purchase of common curative medicines:

(e) Purchase of instruments and facilities for functional rehabilitation;

(f) Funeral upon death;

(g) Monthly personal hygiene for women with disabilities.

3. The Government shall prescribe the monthly nurturing allowance and funding levels defined at Clause 2 of this Article.”, *available at* <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?VID=488> (accessed December 1, 2018).

⁴⁵⁴ Law on Natural Disaster Prevention and Control No. 33/2013/QH13 (in Vietnamese: Luật Phòng chống thiên tai số 33/2013/QH13), *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed *(continued on next page)*

The Law defines natural disasters as abnormal natural phenomena which may cause damage to human life, property, the environment, living conditions and socioeconomic activities. Natural disasters include typhoon, tropical low pressure, whirlwind, lightning, heavy rain, flood, flashflood, inundation, landslide and land subsidence due to floods or water currents, water rise, seawater intrusion, extreme hot weather, drought, damaging cold, hail, hoarfrost, earthquake, tsunami and other types of natural disaster.⁴⁵⁵

The Law demands proactive prevention, timely response to, and urgent and effective remediation of consequences of natural disasters; and requires that humanity, fairness, transparency and gender equality be guaranteed in natural disaster prevention and control. Natural disaster prevention and control is the responsibility of the State, organizations and individuals, but the State plays the key role. The prevention and control of natural disasters are carried out under the “four on-the-spot” motto: command on the spot, manpower on the spot, means and supplies on the spot and logistics on the spot.⁴⁵⁶

(continued from footnote 454)

December 1, 2018). This Law provides for natural disaster prevention and control activities; rights and obligations of agencies, organizations, households and individuals engaged in natural disaster prevention and control activities; and the state management of, and assurance of resources for, natural disaster prevention and control.

⁴⁵⁵ Article 3(1) of Law on Natural Disaster Prevention and Control No. 33/2013/QH13 “Interpretation of terms: In this Law, the terms below are construed as follows:

1. Natural disasters means abnormal natural phenomena which may cause damage to human life, property, the environment, living conditions and socioeconomic activities. Natural disasters include typhoon, tropical low pressure, whirlwind, lightning, heavy rain, flood, flashflood, inundation, landslide and land subsidence due to floods or water currents, water rise, seawater intrusion, extreme hot weather, drought, damaging cold, hail, hoarfrost, earthquake, tsunami and other types of natural disaster.”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

⁴⁵⁶ Article 4 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, “Basic principles of natural disaster prevention and control:

1. Proactive prevention, timely response to, and urgent and effective remediation of consequences of natural disasters. *(continued on next page)*

With respect to the manpower for natural disaster prevention and control activities, the Law on Natural Disaster and Control provides that local organizations, households, individuals, and militia and self-defense forces are on-the-spot forces. The People's Army and People's Public Security forces perform natural disaster prevention and control tasks and act as the core force in the evacuation of people, means and property, rescue, salvage and assurance of security and social order and safety.⁴⁵⁷ It is worth noting that militia and self-defense forces is different from

(continued from footnote 456)

2. Natural disaster prevention and control are the responsibility of the State, organizations and individuals in which the State plays the key role, organizations and individuals play a proactive role and communities help one another.

3. Natural disaster prevention and control are carried out under the 'four on the-spot motto': command on the spot, manpower on the spot, means and supplies on the spot and logistics on the spot.

4. Natural disaster prevention and control contents must be integrated into national and local socio-economic development master plans and plans and sectoral development master plans and plans.

5. Humanity, fairness, transparency and gender equity must be guaranteed in natural disaster prevention and control.

6. Natural disaster prevention and control activities must be based on scientific grounds, combining traditional experiences and scientific and technological advances, combining structural and non-structural solutions; protecting the environment and eco-systems and adapting to climate change.

7. Natural disaster prevention and control activities are assigned, decentralized and closely coordinated among involved forces and conform to the levels of natural disaster risks.", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

⁴⁵⁷ Article 6 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, "Manpower for natural disaster prevention and control:

1. Local organizations, households and individuals are on-the-spot forces, which shall carry out natural disaster prevention and control activities.

2. Militia and self-defense forces are on-the-spot forces, which shall perform natural disaster prevention and control tasks under local natural disaster prevention and control plans and the mobilization of competent persons.

3. The People's Army and People's Public Security forces shall perform natural disaster prevention and control tasks and act as the core in the evacuation of people, means and properties, rescue and salvage and assurance of security and social order and safety under the mobilization of competent persons.

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the People's Army and People's Public. Particularly, militia and self-defense forces are mass armed forces not separate from production and work; they constitute a part of the people's armed forces of the Socialist Republic of Vietnam. These forces, if organized in communes, wards and townships (commune-level), are called militia: if organized in state agencies, political organizations, socio-political organizations, non-business units and economic organizations, are called self-defense forces.⁴⁵⁸ On the other hand, the People's Army and People's Public Security are professional, full-time armed forces, separate from production activities.

Financial sources for natural disaster prevention and control include (1) State budget funds, (2) natural disaster prevention and control funds,⁴⁵⁹ and (3) voluntary contributions of

(continued from footnote 457)

4. Organizations and individuals that voluntarily support natural disaster prevention and control activities shall follow the command of competent persons.", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

⁴⁵⁸ Law on Militia and Self-defense forces No. 43/2009/QH12, *available at* <https://vanbanphapluat.co/law-no-43-2009-qh12-on-militia-and-self-defense-forces> (accessed December 1, 2018).

⁴⁵⁹ Article 10 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, "Natural disaster prevention and control funds:

1. Natural disaster prevention and control funds are set up at the provincial level and managed by provincial-level People's Committees. Natural disaster prevention and control funds neither include state budget funds nor originate from the state budget.

2. Financial sources of natural disaster prevention and control funds: a/ Compulsory contributions of domestic and foreign economic organizations based in localities, and Vietnamese citizens aged from full 18 years and in the working age as prescribed by law; b/ Other lawful sources.

3. Natural disaster prevention and control funds are used to support natural disaster prevention and control activities, with priority given to the following activities:

(a) Providing emergency relief in food, drinking water, curative medicines and other essentials to those suffering from damage caused by natural disasters.

(b) Supporting the repair of houses, health establishments and schools;

(c) Handling environmental sanitation issues in natural disaster-hit areas.

4. Natural disaster prevention and control funds must be managed and used in a proper, timely, public, transparent, equal and effective manner.

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organizations and individuals.⁴⁶⁰ Natural disaster prevention and control funds are set up at the provincial level and managed by provincial-level People's Committees, but the financial sources for these funds neither include state budget funds nor originate from the state budget. Instead, they come from compulsory contributions of domestic and foreign economic organizations and Vietnamese citizens aged 18 and above, and other lawful sources.⁴⁶¹

(continued from footnote 459)

5. The Government shall specify the setting up of natural disaster prevention and control funds, the levels of contributions, subjects eligible for exemption from, reduction or suspension of payment of, contributions, and the management, use, payment and finalization of those funds.", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018). These funds are set up at the provincial level and managed by provincial-level People's Committees. These funds neither include state budget funds nor originate from the state budget. The financial sources of these funds are mandatory contributions of domestic and foreign economic organizations based in each province and of Vietnamese citizens aged from 18 years and in the working age, and other lawful sources., *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

⁴⁶⁰ Article 8 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, "Financial sources for natural disaster prevention and control:

1. State budget funds.
2. Natural disaster prevention and control funds.
3. Voluntary contributions of organizations and individuals.", *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

⁴⁶¹ Article 10 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, "Natural disaster prevention and control funds:

1. Natural disaster prevention and control funds are set up at the provincial level and managed by provincial-level People's Committees. Natural disaster prevention and control funds neither include state budget funds nor originate from the state budget.
 2. Financial sources of natural disaster prevention and control funds: a/ Compulsory contributions of domestic and foreign economic organizations based in localities, and Vietnamese citizens aged from full 18 years and in the working age as prescribed by law; b/ Other lawful sources.
 3. Natural disaster prevention and control funds are used to support natural disaster prevention and control activities, with priority given to the following activities: (a) Providing emergency relief in food, drinking water,
- (continued on next page)*

The contents of natural disaster prevention include⁴⁶² formulating natural disaster prevention and control strategies, plans, and policies; identifying and assessing natural disaster risks; monitoring and supervising natural disasters; planning residential and manufacturing areas adaptable to natural disasters; reviewing and elaborating plans on the relocation of inhabitants in

(continued from footnote 461)

curative medicines and other essentials to those suffering from damage caused by natural disasters.

(b) Supporting the repair of houses, health establishments and schools; (c) Handling environmental sanitation issues in natural disaster-hit areas.

4. Natural disaster prevention and control funds must be managed and used in a proper, timely, public, transparent, equal and effective manner.

5. The Government shall specify the setting up of natural disaster prevention and control funds, the levels of contributions, subjects eligible for exemption from, reduction or suspension of payment of, contributions, and the management, use, payment and finalization of those funds.”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

⁴⁶² Article 13 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, “Contents of natural disaster prevention:

1. Elaborating, approving and implementing natural disaster prevention and control strategies and plans.
2. Integrating natural disaster prevention and control contents into national and local socio-economic development master plans and plans and sectoral development master plans and plans.
3. Formulating policies on natural disaster prevention and control.
4. Identifying, assessing and zoning natural disaster risks and monitoring and supervising natural disasters.
5. Planning residential areas and organizing production and adaptation to natural disasters; reviewing and elaborating plans on the relocation of inhabitants in areas with a very high natural disaster risk.
6. Identifying levels of natural disaster risks.
7. Building and managing natural disaster prevention and control works.
8. Organizing and joining natural disaster prevention and control information, communication and education activities at all levels and in all sectors and communities.
9. Preparing to respond to natural disasters, including: a/ Elaborating response plans for different levels of natural disaster risks and specific types of natural disasters; b/ Preparing manpower, supplies, means, equipment and essentials in response to natural disasters; c/ Organizing standing units and updating information on natural disaster developments; organizing natural disaster forecast and warning; d/ Organizing and participating in training and drills on natural disaster prevention and control skills.”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

areas with a very high natural disaster risk; identifying levels of natural disaster risks; building and managing construction works for natural disaster prevention and control; providing information and communication regarding natural disaster prevention and control; preparing to respond to natural disasters; and so on. The National Strategy on Natural Disaster Prevention and Control is devised for every 10 years, with a 20-year vision and is updated and adjusted every 5 years or upon great changes in the situation of natural disasters.⁴⁶³

The Law also specifies measures to respond to natural disasters, including forecast, warning, and transmission of information on natural disasters;⁴⁶⁴ issuing direction and command

⁴⁶³ Article 14 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, “National Strategy on Natural Disaster Prevention and Control:

1. The National Strategy on Natural Disaster Prevention and Control is elaborated for every 10 years, with a 20-year vision and is updated and adjusted once every 5 years or upon great changes in the situation of natural disasters.

2. The National Strategy on Natural Disaster Prevention and Control must identify objectives, tasks, solutions, programs, key schemes and projects, for the organization of natural disaster prevention and control activities nationwide.

3. The National Strategy on Natural Disaster Prevention and Control is elaborated based on the following grounds:

a/ The Party’s line and policies and the State’s policies and laws on natural disaster prevention and control and socio-economic development;

b/ The practical situation of natural disaster prevention and control in the country;

c/ Results of identification, assessment and zoning of natural disaster risks, natural disaster developments and climate change; d/ Resources for natural disaster prevention and control activities; dd/ Communities’ needs and adaptability to natural disasters.

4. The Ministry of Agriculture and Rural Development shall assume the prime responsibility for, and coordinate with ministries, ministerial-level agencies, government-attached agencies and localities in, elaborating and submitting the national strategy on natural disaster prevention and control to the Prime Minister for approval.”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

⁴⁶⁴ Articles 24-26 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

to implement natural disaster response measures by competent persons and steering committees; taking measures to respond to natural disasters,⁴⁶⁵ such as:

- evacuating people out of dangerous areas;

⁴⁶⁵ Article 25 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, “Direction and command of response to natural disasters

1. Based on bulletins on natural disaster forecasts and warnings, the Prime Minister, the Central Steering Committee for Natural Disaster Prevention and Control, the National Committee for Search and Rescue, commanding committees for natural disaster prevention and control of ministries, and provincial-level commanding committees for natural disaster prevention and control and search and rescue shall issue documents to direct and command the implementation of natural disaster response measures according to the Government’s regulations.

2. The forms, contents and methods of transmitting and broadcasting documents to direct and command response to natural disasters is provided as follows:

a/ Documents to direct and command response to natural disasters are issued in the form of official telegram or official letter;

b/ The contents of a document to direct and command response to natural disasters must conform to the contents of the bulletin on natural disaster forecasts and warnings and actual developments of natural disasters in localities; natural disaster response and search and rescue measures;

c/ The means for transmitting and broadcasting documents to direct and command response to natural disasters include fax, short message service (SMS), television, radio, early warning system, direct transmission, and other forms.

3. The responsibility to transmit and broadcast documents to direct and command response to natural disasters is provided as follows:

a/ Agencies competent to issue documents to direct and command response to natural disasters shall send such documents to television and radio stations of the same levels and related agencies as prescribed by law;

b/ Commune-level People’s Committees and commanding committees for natural disaster prevention and control and search and rescue shall disseminate the contents of documents to direct and command response to natural disasters to the community and people;

c/ Central and local television and radio stations shall broadcast news reports on the direction and command of response to natural disasters.

4. The Government shall specifically determine agencies responsible for transmitting information; frequency and time of transmitting information to direct and command response to natural disasters; information networks and equipment serving the direction and command of response to natural disasters.”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

- moving ships, boats and aquaculture facilities at sea, in coastal areas or on rivers out of dangerous;
- taking measures to assure safety for houses and public facilities;
- conducting search and rescue, providing first aid to injured people, and supplying food, medicines, drinking water and other essentials for isolated areas, seriously damaged areas and evacuation places;
- maintaining security, social order and safety and protecting property of the State and people in natural disaster-hit area; and
- urgently mobilizing manpower, supplies, means, equipment and essentials for timely response to natural disasters.

Moreover, measures for remediation of natural disaster consequences are also laid down in the Law, such as:⁴⁶⁶

⁴⁶⁶ Article 36 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, “Rights and obligations of agencies, socio-political organizations, socio-political-professional organizations, social organizations and socioprofessional organizations:

1. In natural disaster prevention and control, agencies, socio-political organizations, socio-political-professional organizations, social organizations and socio-professional organizations have the following rights:

a/ To be entitled to remunerations, return of or compensations for supplies, means and equipment involved in the urgent response to natural disasters under mobilization orders of competent agencies or persons;

b/ To access information on natural disaster prevention and control published by competent agencies;

c/ To participate in the elaboration of natural disaster prevention and control plans and natural disaster response plans; d/ To participate in programs on communication, information and education about natural disaster prevention and control; and to improve knowledge about natural disaster prevention and control suitable to their practical conditions;

d/ To receive relief and support as provided by this Law when suffering from damage caused by natural disasters.

2. In natural disaster prevention and control, agencies, socio-political organizations, socio-political-professional organizations, social organizations and socio-professional organizations have the following obligations:

a/ To take the initiative in building and protecting works and physical foundations under their management, assuring their safety during natural disasters;

b/ To elaborate and implement natural disaster prevention and control plans; (*continued on next page*)

- continuing the search and rescue work and the supply of food, medicine and other essentials to affected people;
- making statistics and assessing damage;
- providing plant varieties, animal breeds, supplies, equipment and essential fuels to restore production;
- providing supplies and essential commodities and taking price management and market stabilization measures;
- assuring environmental sanitation, preventing and controlling epidemics in affected areas; and repairing damaged buildings and construction works.

Households and individuals have the following rights in natural disaster prevention and control:⁴⁶⁷

(continued from footnote 466)

c/ To comply with decisions of competent persons on urgent mobilization of manpower, supplies, means, equipment and essentials to serve the response to natural disasters;

d/ To take the initiative in conducting environmental sanitation, epidemic and disease prevention and control in natural disaster-hit areas under their management,” *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

⁴⁶⁷ Article 34 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, “Rights and obligations of households and individuals:

1. Households and individuals have the following rights: a/ To access information on natural disaster prevention and control published by competent agencies; b/ To participate in the elaboration of local plans on natural disaster prevention and control and plans on response to natural disasters; c/ To participate in programs on communication, information and education about natural disaster prevention and control; and to improve their knowledge on natural disaster prevention and control suitable to their practical conditions; d/ To be returned supplies and means; to receive remunerations for their participation in urgent response to natural disasters in the community under the mobilization orders of competent persons; dd/ Participants in the response to natural disasters, who are injured or killed may be considered for entitlements and policies applicable to fallen heroes or war invalids as provided by the law on preferential treatment of persons with meritorious service to the revolution; e/ To receive relief and support in accordance with law when suffering from damage caused by natural disasters.

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- right to gain access to information;
- right to participate in the formulation of local plans on natural disaster prevention and control and plans on response to natural disasters;

(continued from footnote 467)

2. Households and individuals have the following obligations: a/ To take the initiative in building, upgrading and protecting their works and houses to assure safety during natural disasters or remove them to safe places; neither to build houses nor to reside in areas, which can be severely affected by natural disasters; b/ To implement local plans on natural disaster prevention and control and plans on response to natural disasters; c/ To organize production and business activities suitable to the characteristics of natural disasters in their localities; d/ To take the initiative in procuring equipment within their capacity to receive natural disaster forecasts and warnings and natural disaster prevention and control instructions; dd/ To prepare supplies and means within their capacity for natural disaster prevention and control; e/ To take initiative in reserving food, drinking water, supplies and equipment for water treatment, curative medicines and medicines for epidemic prevention suitable to local natural disaster characteristics within their capacity, in order to sustain their livelihoods when natural disasters occur; g/ Owners of ships and boats operating on the sea and rivers shall fully equip appropriate lifebuoys and communication and signaling devices; promptly provide accurate information on their position and the state of their operating means to local administrations and functional agencies when natural disasters occur; when encountering other ships and boats in distress, they shall promptly render salvation, search and rescue, or notify such by all means to the search and rescue agency in case the incident is beyond their capacity; h/ To take the initiative in responding to and remedying consequences of natural disasters to assure safety for themselves and their families; to participate in assisting the community in natural disaster prevention and control; i/ To comply with instructions and commands of competent agencies and persons on evacuation of people and means from, or no entry, into dangerous areas; k/ To comply with decisions of competent agencies on the mobilization of manpower, supplies, means, equipment and essentials to serve the urgent response to natural disasters; l/ To take the initiative in conducting environmental sanitation and epidemic and disease prevention and control in their living and working areas affected by natural disasters; m/ To notify to competent agencies and persons upon detecting incidents or acts, which make natural disaster prevention and control works unsafe, and participate in the handling of such incidents within their capacity; n/ To provide information within their knowledge on developments and consequences of natural disasters to competent agencies; o/ Individuals are obliged to make contributions to the natural disaster prevention and control fund under the regulations of the Government; and to take the initiative in helping people affected by natural disaster in their localities,” *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

- right to participate in programs on communication, information and education about natural disaster prevention and control;
- right to be returned supplies and means and receive remunerations for their participation in urgent response to natural disasters in the community under the mobilization orders of competent persons;
- right to be recognized and entitled to policies applicable to war heroes or invalids for persons injured or killed while participating in the response to natural disasters; and
- right and to receive relief and support when suffering from damage caused by natural disasters.

They also have the obligations in natural disaster prevention and control as stipulated in the Law.

Economic organizations have the following rights:⁴⁶⁸ to be entitled to remunerations, return of or compensations for supplies, means and equipment involved in the urgent response to

⁴⁶⁸ Article 35 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, "Rights and obligations of economic organizations

1. Economic organizations have the following rights: a/ To be entitled to remunerations, return of or compensations for supplies, means and equipment involved in the urgent response to natural disasters in the community under mobilization orders of competent agencies or persons; b/ To invest in projects on building multi-purpose natural disaster prevention and control works under master plans and plans of ministries, ministerial level agencies, government-attached agencies and localities, and may enjoy benefits from such investment in accordance with law.

2. Economic organizations have the following obligations: a/ To take the initiative in building and protecting their works and physical foundations and assure safety for their production and business activities during natural disasters; b/ To elaborate and implement natural disaster prevention and control plans; c/ To apply national technical regulations on safety against natural disaster risks in building works; to observe regulations on protection of natural disaster prevention and control works; d/ To participate in programs on communication, information and education about natural disaster prevention and control; to improve knowledge about natural disaster prevention and control; to organize training and drills in natural disaster prevention and control skills under plans of ministries, ministerial-level agencies, government-attached agencies and localities; dd/ To comply with instructions and commands of competent agencies and persons in taking natural disaster

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natural disasters in the community under mobilization orders of competent agencies or persons; to invest in projects on building multi-purpose natural disaster prevention and control works under the plans of ministries or other agencies and may enjoy benefits from such investment in accordance with law. They also have the obligations in natural disaster prevention and control as stipulated in the Law.

Government agencies and other organizations, including foreign organizations and individuals and international organizations operating in Vietnam, have the following rights:⁴⁶⁹ to be entitled to remunerations, return of or compensations for supplies, means and equipment involved in the urgent response to natural disasters under mobilization orders of competent agencies or persons; to access information on natural disaster prevention and control published by competent agencies; to participate in the formulation of natural disaster prevention and control plans and natural disaster response plans; to participate in programs on communication, information and education about natural disaster prevention and control; to receive relief and support when suffering from damage caused by natural disasters. They also have the obligations in natural disaster prevention and control as stipulated in the Law.

(continued from footnote 468)

prevention and control measures; e/ To obey orders on urgent mobilization of manpower, supplies, means, equipment and essentials in response to emergency circumstances; g/ To take the initiative in conducting environmental sanitation, epidemic and disease prevention and control in natural disaster-hit areas under their management; h/ To participate within their capacity in search, rescue, emergency assistance and remediation of consequences of natural disasters in their localities;

i/ To make contributions to the natural disaster prevention and control fund under the regulations of the Government,”, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

⁴⁶⁹ Articles 36 – 37 of Law on Natural Disaster Prevention and Control No. 33/2013/QH13, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie164788.pdf> (accessed December 1, 2018).

3.8 Laws Concerning Natural Resources and Environment

3.8.1 Overview

Vietnam enacted its first Law on Environmental Protection in 1993⁴⁷⁰. In line with international trends for greater awareness of environmental issues, a new law on environment protection was passed by the National Assembly on November 29, 2005 and became effective on July 1, 2006 (hereinafter “**2006 Law on Environmental Protection**”)⁴⁷¹. Recent years have seen an even further heightening of environmental consciousness and concern in Vietnam. In June 2014, the Law on Environmental Protection was again replaced by a new law, which will come into effect on January 1, 2015 (hereinafter “**2014 Law on Environmental Protection**”)⁴⁷². So far, the 2014 Law on Environmental Protection is the most comprehensive legislation on environmental protection of Vietnam. The Law governs environmental protection activities and applies to regulatory bodies, public agencies, organizations, family households and individuals within the territory of Vietnam, including mainland, islands, territorial waters and airspace. The Law also provides general principles for the conservation of natural resources, which are detailed in

⁴⁷⁰ Law on Environmental Protection 1993 is a legislation (Act) that was enacted by the National Assembly on December 27, 1993 and is entitled to the second highest legal effect only after the Constitution (in Vietnamese: Luật Bảo vệ môi trường ngày 27/12/1993 của Quốc hội).

This Law provides general principles of environmental protection and stipulates the prevention and control of environment degradation, pollution and accidents; the handling of environment degradation; state management of environment protection; international cooperation in environment protection; environment inspection and settlement of violation.

⁴⁷¹ Law on Environmental Protection No. 52/2005/QH11 (in Vietnamese: Luật Bảo vệ môi trường của nước Cộng hòa xã hội chủ nghĩa Việt Nam số 52/2005/QH11), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73671/125789/F-1191853968/VNM73671%20Eng.pdf> (accessed December 1, 2018).

⁴⁷² Law on Environmental Protection No. 55/2014/QH13 (in Vietnamese: Luật Bảo vệ môi trường của nước Cộng hòa xã hội chủ nghĩa Việt Nam 55/2014/QH13), available at http://www.ilo.org/dyn/legosh/en/?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

specialized laws such as Land Law (2013),⁴⁷³ Law on Water Natural Resources (2012),⁴⁷⁴ Law on Mineral Resources (2010),⁴⁷⁵ Law on Biodiversity⁴⁷⁶ (2006), Law on Forest Protection and Development (2004),⁴⁷⁷ Law on Petroleum (1993),⁴⁷⁸ and so on. Furthermore, the Law on Environment Protection devotes a new separate chapter on response to climate change.

⁴⁷³ Land Law No. 45/2013/QH13, *available at* http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_land/mldocument_view/?set_language=en (last access December 1, 2018).

⁴⁷⁴ Law on Water Resources No. 17/2012/QH13 (in Vietnamese: Luật Tài nguyên nước số 17/2012/QH13), *available at* <http://extwprlegs1.fao.org/docs/pdf/vie117928.pdf> (accessed December 1, 2018). This Law stipulates the management, protection, exploitation and use of water resources, as well as the prevention of, combat against and overcoming of harmful effects caused by water in the territory of Vietnam.

⁴⁷⁵ Law on Mineral Resources No. 60/2010/QH12 (in Vietnamese: Luật Khoáng sản số 60/2010/QH12), *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018). This Law provides for geological baseline surveys of minerals; protection of unexploited minerals; mineral exploration and mining; state management of minerals in the territory of Vietnam.

⁴⁷⁶ Law on Biodiversity No. 20/2008/QH12 (in Vietnamese: Luật Đa dạng sinh học số 20/2008/QH12), *available at* <http://vietnam-redd.org/Upload/CMS/Content/Library-GovernmentDocuments/20-2008-QH12.pdf> (accessed December 1, 2018). This Law provides for the conservation and sustainable development of biodiversity; rights and obligations of organizations, households and individuals in the conservation and sustainable development of biodiversity.

⁴⁷⁷ Law on Forest Protection and Development No. 29/2004/QH11 (in Vietnamese: Luật Bảo vệ và phát triển rừng số 29/2004/QH11), *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018). This Law stipulates the management, protection, development and use of forests; forest products processing and trade.

⁴⁷⁸ Law on Petroleum No. 18-L/CTN, which is a legislation (Act) that was enacted by the National Assembly on July 6, 1993, came into effect on September 1, 1993, and is entitled to the second highest legal effect only after the Constitution (in Vietnamese: Luật dầu khí được Quốc hội thông qua ngày 6/7/1993), *available at* <http://vietnamembassy-usa.org/vi/node/2077> (accessed December 1, 2018). This Law stipulates activities of petroleum prospection, exploration and exploitation within the territory, exclusive economic zone and continental shelf of the Socialist Republic of Vietnam.

3.8.2 Laws Concerning Environment Protection

a) State Management Agencies

The Law on Environmental Protection provides that the Ministry of Natural Resources and Environment (MONRE) is the primary regulatory body responsible for protecting the environment. Its responsibilities include: submitting to the Government for promulgation, or itself promulgating and implementing detailed laws and regulations to protect the environment; submitting to the Government national policies, strategies and plans on environmental protection for issuance; establishing and regulating a system of environmental standards; creating plans to combat environmental degradation; approving environmental protection planning; appraising strategic environmental assessment report; appraising, approving environmental impact assessment report; endorsing environmental protection plan; inspecting, endorsing completion of environmental protection works; granting, extending and revoking environmental licenses, certificates; guiding the registration of environmental-friendly establishments and products and granting environmental standard conformity certificates; inspecting, investigating and handling violations of environmental laws, etc.⁴⁷⁹

⁴⁷⁹ Article 141 of Law on Environmental Protection No. 55/2014/QH13, "State management responsibilities of the Minister of Natural Resources and Environment to environmental protection:

The Minister of Natural Resources and Environment is responsible to the Government for unifying state management on environmental protection and takes the following responsibilities: 1. Constructing and submitting to the Government, the Prime Minister legal documents, policies, strategies, planning, plans, programs, and national projects on environmental protection. 2. Constructing and promulgating legal documents by authority, national technical regulations on environment; promulgating technical instruction documents. 3. Self-handling or sending proposal to the Government, the Prime Minister for handling of inter-branch, inter-provincial environmental issues. 4. Directing, instructing and constructing national environmental monitoring system, environmental information and reporting system; directing, organizing national and local environmental actual state assessment. 5. Directing, instructing and organizing the implementation of construction activities by authority, appraising, approving environmental protection planning; appraising strategic environmental assessment report; appraising, approving environmental impact assessment report; endorsing environmental protection plan; inspecting, endorsing completion of environmental protection works.

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While it is MONRE that is primarily responsible for regulating protection of the environment, a number of other agencies are also involved. Other ministries and state bodies, such as the Ministries of Planning and Investment, Agriculture and Rural Development, Industry and Trade, Construction, Health, Transport, National Defense, Public Security, Culture, Sports and Tourism are entrusted with responsibility for particular aspects of environmental protection and management.⁴⁸⁰ The People's Committees at all level are also responsible for state management

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6. Directing, instructing and organizing the implementation of awarding, extending and revoking environmental licenses, certificates by authority. 7. Directing, instructing and organizing the implementation of biological diversity preserving activities, biological safety; carrying out waste management; controlling pollution; improving and restoring the environment. 8. Constructing and organizing the implementation of policies, programs, sustainable and environmental friendly production and consumption models, instructing and endorsing environmental friendly product, institution; directing, instructing environmental health improving activities. 9. Inspecting, investigating and handling violations of the law on environmental protection; settling claims, accusations, petitions in relation to environmental protection according to the law. 10. Directing and instructing the insertion of environmental protection contents into national land use planning and plan, national strategy on water natural resources and general planning of inter-provincial river valley; national overall strategy on basic investigation, survey, exploitation and processing of mineral resources. 11. Constructing and organizing the implementation of assessment criteria system, following up the compliance with the law on environmental protection across the country; communicating, popularizing and educating environmental protection law. 12. Submitting to the Government the participation into international organizations, signing or applying for membership of the international treaty on environmental protection; chairing activities of international cooperation on environmental protection.", available at http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁸⁰ Article 142 of Law on Environmental Protection No. 55/2014/QH13, available at http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018). This is summarized as follows: 1. The Ministry of Natural Resources and Environment is responsible to the Government for unifying state management on environmental protection. 2. The Ministry of Planning and Investment is responsible for ensuring that environmental protection is included in national strategy, planning, plan for socio-economic development. 3. The Ministry of Agriculture and Rural Development is responsible for implementing environmental protection law in production, importing, exporting, use of chemicals, plant protection chemicals, veterinary drugs, fertilizers, waste substances in agriculture. 4. The

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of environmental protection within their scope of authority.⁴⁸¹

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Ministry of Industry and Trade is responsible for handling industrial establishments causing serious environmental pollution under the Ministry's management authority, develop environmental industries. 5. The Minister of Construction is responsible for implementing environmental protection law in construction activities such as infrastructural structures of water supply, water drainage, solid waste and urban waste water treatment, centralized service production area, construction material production bases, trade villages, centralized rural residential area and other activities within the Ministry's scope of management. 6. The Minister of Transport is responsible for implementing environmental protection law in construction activities such as infrastructural structures of traffic, traffic vehicle management and other activities within the Ministry's scope of management. 7. The Minister of Health is responsible for implementing environmental protection law in the areas of health, food hygiene safety, burial and cremation activities; organizing statistics of waste sources, evaluation of pollution degree, treatment of medical waste from hospitals, medical institutions and other activities within the Ministry's scope of management. 8. The Minister of Culture, Sports and Tourism is responsible for implementing environmental protection law in activities of culture, festivals, sports, tourism and other activities within the Ministry's scope of management. 9. The Minister of National Defense is responsible for implementing environmental protection law in the field of national defense and mobilizing forces to cope with and remedy environmental incidents.

The Ministry of Public Security is responsible for fighting against environmental crime; ensuring environmental security; mobilizing forces to cope with environmental incidents., *available at* http://www.ilo.org/dyn/legosh/en/?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁸¹ Article 143 of Law on Environmental Protection No. 55/2014/QH13 "State management responsibilities of the people's committees of all levels on environmental protection: 1. The people's committees of provinces take the following responsibilities: a) Constructing, promulgating by authority legal documents, policies, programs, planning, plans on environmental protection; b) Organizing the implementation of law, strategies, programs, plans and duties on environmental protection; c) Constructing, managing environmental monitoring system in the locality in suitability with general planning of national environmental monitoring; d) Organizing appraisal and establishment of environmental report. Communicating, popularizing and educating policies and law on environmental protection; dd) Organizing appraisal, approval of environmental protection planning, environmental impact assessment report, endorsing completion of environmental protection works, instructing and organizing the inspection of environmental protection plan by authority; e) Awarding, extending, revoking licenses, certificates of environmental protection by authorities; g) Inspecting, investigating, handling law violations of environmental protection; settling claims, accusations, petitions concerning environment in

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b) Strategic Environment Assessment

The Law on Environmental Protection requires strategic environment assessment for important strategies and plans for socio-economic development, such as those for key economic regions, corridor and belt regions, centrally-governed cities and provinces, special

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accordance with the law on complaints and denunciations. h) Being responsible to the Government for any serious environmental pollution in the area. 2. The people's committees of communes take the following responsibilities: a) Promulgating by authorities regulations, programs, and plans on environmental protection; b) Organizing the implementation of strategies, programs, plans and duties on environmental protection; c) Endorsing, inspecting the implementation of environmental protection plan by authorities; d) Organizing appraisal and establishment of environmental protection tasks on a yearly basis; dd) Communicating, popularizing and educating policies and laws on environmental protection; e) Inspecting, investigating, handling law violations on environmental protection; settling claims, accusations, petitions on environmental protection according to the law on complaints and denunciations, g) Coordinating with the people's committees of districts concerned to settle inter-district environmental problems h) Directing state management tasks of the People's committees of communes on environmental protection i) Being responsible to the People's committees of provincial levels for any serious environmental pollution in the area. 3. The People's committees of communes take the following responsibilities: a) Constructing plan, carrying out the duties of environmental protection, environmental hygiene preservation in the area; mobilizing people to construct the contents of environmental protection in the village regulation; providing guidance on putting the criteria of environmental protection into evaluation of hamlets, villages, and small villages (normally inhabited by mountainous ethnic minorities), neighborhoods and courteous families; b) Endorsing, inspecting the implementation of environmental protection plans by authorities; inspecting compliance with the law on environmental protection by households, individuals; c) Detecting and handling by authorities violations of the law on environmental protection or reporting direct to state management agencies of higher levels on environmental protection; d) Reconciling environmental disputes arising in the area in accordance with the law on reconciliation; dd) Managing activities of hamlets, villages, small villages (mountainous ethnic minorities), neighborhoods and organizations to self-govern environmental hygiene preservation and protection in the area; e) Organizing appraisal and establishment of environmental protection tasks on a yearly basis; g) Actively coordinating with production, business, and service entities in the area to popularize information of environmental protection of the institutions to the residential community; h) Being responsible to the People's committees of districts for any serious environmental pollution in the area.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:310166117291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

administrative-economic units, export processing zones, hi-tech zones and industrial zones, etc.⁴⁸² The strategic environment assessment must be carried out simultaneously with the process for preparing the strategy, planning and proposal.⁴⁸³

c) Environmental Impact Assessment (EIA)

The Law on Environmental Protection requires environmental impact assessment for the following projects:⁴⁸⁴ (1) projects subject to the decision on investment made by the National

⁴⁸² Article 13 of Law on Environmental Protection No. 55/2014/QH13, "Strategic environment assessment objects:

1. Strategic environment assessment objects include:

a) General strategy and planning for socio-economic development of socio-economic regions, key economic regions, corridors and belts;

b) General planning for socio-economic development of centrally-governed cities and provinces and special administrative – economic units;

c) Strategy and planning for development of economic, processing and exporting, high technology, and industrial zones;

d) Strategy and planning for extraction and utilization of natural resources that require an inclusion of 02 or more provinces;

dd) Strategy, planning and proposal for industrial and sectoral development at the national, local and provincial level that can significantly affect the environment;

e) Adjustment to the strategy, planning and proposal for specified objects described at Points a, b, c, d and dd of this Clause.

2. List of strategic environment assessment objects shall be regulated by the Government.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁸³ Article 14(2) of Law on Environmental Protection No. 55/2014/QH13, "Carrying out the strategic environment assessment:

(2) The strategic environment assessment must be carried out simultaneously with the process for preparing the strategy, planning and proposal.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁸⁴ Article 18 of Law on Environmental Protection No. 55/2014/QH13, "Environmental impact assessment objects:

1. Environmental impact assessment objects consist of:

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Assembly, Government and the Prime Minister; (2) projects that use land situated in wildlife sanctuaries, national parks, historical – cultural monuments, world heritage sites, biosphere reserves, scenic beauty areas that have been ranked; and (3) projects that can cause bad effects on the environment. Owners of those projects must carry out, on his/her own, or hire an advisory organization to conduct EIA and take responsibility for the results after conducting such assessment. The EIA must be performed in the preparatory stage of the project. The results of EIA must be presented in the EIA report. Expenses for preparation and inspection of the EIA report are covered by the project owner.⁴⁸⁵ During the EIA process, project owners are obliged to

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a) Projects subject to the decision on investment intentions made by the National Assembly, Government and the Prime Minister;

b) Projects that use land parcels situated in wildlife sanctuaries, national parks, historical – cultural monuments, world heritage sites, biosphere reserves, scenic beauty areas that have been ranked;

c) Projects that can cause bad effects on the environment.

2. List of projects mentioned at Points b and c Clause 1 of this Article shall be regulated by the Government.”, *available at*, http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁸⁵ Article 19 of Law on Environmental Protection No. 55/2014/QH13, “Carrying out the environment impact assessment:

1. Owners of projects regulated in Clause 1 Article 18 of this Law shall carry out, on his own, or hire an advisory organization to carry out the environmental impact assessment and take statutory responsibility for the conclusive result after carrying out such assessment.

2. The environment impact assessment must be performed in the preparatory stage of the project.

3. The conclusive result yielded after carrying out the environment impact assessment shall be expressed in the form of the report on environmental impact assessment.

4. Expenses incurred from the formulation and inspection of the report on environmental impact assessment, and included in total investment budget shall be covered by the project owner.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

consult with regulatory agencies, organizations and communities that are directly affected by the project.⁴⁸⁶

An EIA report must be submitted to a competent agency for appraisal. The head of such competent agency must carry out the appraisal of the EIA report through an appraisal council or by obtaining advisory opinions from relevant agencies and organizations and is responsible for the appraisal result. Members of the appraisal council and entities that are requested to contribute their advisory opinions are responsible for such opinions.⁴⁸⁷

⁴⁸⁶ Article 21 of Law on Environmental Protection No. 55/2014/QH13, "Consultation to be required in the process of the strategic environment assessment:

1. The consultation to be required in the process of environmental impact assessment is aimed at completing the report on environmental impact assessment, helps minimize the bad impacts on the environment and human beings and ensure the sustainable development of the project.
2. Project owners are obliged to consult with regulatory agencies, organizations and communities that are directly affected by the project.
3. Projects that do not require the consultation include:
 - a) Those in conformity with the planning for concentrated manufacturing, trading and service provision areas under the approval of the report on environmental impact assessment at the infrastructural construction stage for the project;
 - b) Those specified in the list of state secret projects.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁸⁷ Article 24 of Law on Environmental Protection No. 55/2014/QH13, "Verification of the report on environmental impact assessment:

1. The Head or the person who takes over as a leader of the agency in charge of the verification task shall arrange to carry out the verification of the report on environmental impact assessment by means of seeking the permission from the inspection council or obtaining advisory opinions from relevant agencies and organizations, and concurrently bear legal responsibility for their verification result.
2. Members of the inspection council and entities that are requested to contribute their advisory opinions shall be legally responsible for such of their opinions.
3. When necessary, the agency in charge of verification shall arrange to conduct a poll to obtain the critical opinions from other institutions, organizations and experts in relation to the verification of the report on environmental impact assessment.

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Within 20 days from the date when the EIA report is received after being adjusted at the request of the appraisal agency, the head of the appraisal agency must approve the report; if the report is rejected, the project owner must be notified in writing in which the reasons for such rejection must be clearly explained.⁴⁸⁸ After his EIA report is approved, the project owner must comply with the requests specified in the approval document.⁴⁸⁹ Before commencing operation

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4. Within a verification period, where any adjustment or supplementation is required, the inspection agency is responsible to send a written notification thereof to the project owner.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁸⁸ Article 25 of Law on Environmental Protection No. 55/2014/QH13, "Approval of the report on the environmental impact assessment:

1. Within a period of 20 days which begins with the date when the report on environmental impact assessment is received after being adjusted at the request of the verification agency, the head or the person who takes over as the leader of the inspection agency shall be responsible to approve the report on environmental impact assessment; if the report is rejected, the project owner must be notified in writing in which the reasons for such rejection must be clearly explained.

2. Decision on verifying the report on environmental impact assessment shall serve as the ground for the competent authority's following tasks:

a) Decision on the intention to invest in the projects specified in Article 18 of this Law must be granted if the project is required to obtain such decision in accordance with laws.

b) Issuing and revising the prospecting permit, mineral extraction permit in respect of the mineral exploration and extraction projects;

c) Approving the plan for prospecting or exploration, and the plan for mine development in respect of petroleum exploration and extraction;

d) Issue and revising the construction permit in respect of the projects on the development of works or structures that are required to obtain the construction permit before commencement;

dd) Issuing the investment certificate with reference to projects that are not regulated at Points a, b, c and d in this Clause.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁸⁹ Article 26 of Law on Environmental Protection No. 55/2014/QH13 "Responsibility assumed by the project owner after being granted the approval of their report on the environmental impact assessment:

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of the project, the project owner must apply environmental protection measures in accordance with the decision on the approval of his EIA report, and notify the appraisal agency of the developmental process of environmental protection works functioning as a part of major projects that can cause bad impacts on the environment in accordance with the Governmental regulations. These projects will be commenced only after the appraisal agency has inspected and certified the completion of environmental protection works.⁴⁹⁰

d) Environmental Protection Plans

The Law on Environmental Protection requires environmental protection plans for investment projects not required to have EIA and for business plans not required to have

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1. Comply with the requests specified in the approval of their report on environmental impact assessment.
2. Where any change in the project size, capacity and technology applied in the project execution is blamed for the bad impact on the environment in comparison with the alternatives given in the approved report on environmental impact assessment, but is not too serious to make another report as stipulated at Point c Clause 1 Article 20 of this Law, the project owner must send their explanation to the agency who grants the approval of the report on environmental impact assessment, and the project shall be commenced only after obtaining the permission from such agency.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁹⁰ Article 27 of Law on Environmental Protection No. 55/2014/QH13, "Responsibility assumed by the project owner before bringing the project into operation:

1. Apply measures for the environmental protection under the decision on the approval of their report on environmental impact assessment.
2. Notify the agency who grants the approval of the report on environmental impact assessment of the developmental process of environmental protection works functioning as an ancillary part of major projects that can cause bad impacts on the environment in accordance with the Governmental regulations. These projects will be commenced only after the agency in charge of the approval of the report on environmental impact assessment has inspected and certified the completion of environmental protection works.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

investment projects according to the law on investment.⁴⁹¹ Owners of such investment projects and business plans must prepare the environmental protection plans and submit to competent agencies for certification before the projects or business plans are implemented.⁴⁹²

e) Measures for Environmental Protection

The Law on Environmental Protection specifies measures to protect each component of the environment, including marine and island, water, land, and air.⁴⁹³ The Law also sets forth comprehensive measures for environmental protection in different zones, including economic zones, industrial parks, export-processing zones, hi-tech zones, industrial complexes and concentrated business zones;⁴⁹⁴ in different economic sectors and industries, including manufacturing and business establishments, agricultural production, handicraft trade villages,

⁴⁹¹ Article 29 of Law on Environmental Protection No. 55/2014/QH13, “Objects that require the formulation of environmental protection plan:

1. Investment projects that are not identified as objects that require the environmental impact assessment.
2. Alternatives for the production, trading and services that are not identified as objects that require the formulation of investment projects in accordance with the law on investment.
3. Details of this Article shall be regulated by the Government.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁹² Article 31 of Law on Environmental Protection No. 55/2014/QH13, “Time of registration and certification of the environmental protection plan: Owners of projects, alternatives for production, trading and service provision as regulated in Article 29 of this Law must prepare the environmental protection plan for submission to competent authorities, according to regulations specified in Article 32 of this Law, for the purpose of consideration and certification before the project is commenced and alternatives for production, trading and service provision are put into operation.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁹³ Article 52-64 of Law on Environmental Protection No. 55/2014/QH13, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁹⁴ Article 65-67 of Law on Environmental Protection No. 55/2014/QH13, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

aquaculture, and tourism;⁴⁹⁵ in different kinds of activities such as construction, transport, goods import and transit, import of scrap, use of chemicals, pesticides and veterinary medicines; in different places such as hospitals and medical facilities, research institutes and laboratories, urban areas and residential areas, and households.⁴⁹⁶ The Law has a separate chapter on management of wastes, including hazardous wastes,⁴⁹⁷ and a chapter on tackling pollution, restoring and improving the environment.⁴⁹⁸

f) Financial Resources for Environmental Protection

Environmental Protection Fee

Organizations and individuals discharging waste into the environment or causing negative effects on the environment must pay environmental protection fee. The rate of environmental protection fee depends on the amount of waste discharged into the environment, scale of negative effects on the environment; levels of toxicity or hazard for the environment; and the capacity of waste-receiving environment. Collected environmental protection fees are used for environmental protection activities.⁴⁹⁹

⁴⁹⁵ Article 68-71 of Law on Environmental Protection No. 55/2014/QH13, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁹⁶ Article 72-82 of Law on Environmental Protection No. 55/2014/QH13, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁹⁷ Article 85-103 of Law on Environmental Protection No. 55/2014/QH13, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁹⁸ Article 104-112 of Law on Environmental Protection No. 55/2014/QH13, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁴⁹⁹ Article 148 of Law on Environmental Protection No. 55/2014/QH13, “Cost of environmental protection:

1. Organizations, individuals discharging waste into the environment or causing negative effects on the environment shall pay an environment protection fee. (*continued on next page*)

Environmental Protection Funds

Environmental Protection Funds include the central environmental protection fund, environmental protection funds of ministries and specialized authorities, and provincial environmental protection funds which are established to support environmental protection activities. The sources of funding for national and provincial environmental protection funds include: state budget; environmental protection fees; compensations to the state for environmental damages; and grants, aids, and entrusted investments from domestic and overseas entities.⁵⁰⁰

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2. Rate of environmental protection fee depends on:

- a) Amount of waste discharged into the environment, scale of negative effects on the environment;
- b) Levels of toxicity, levels of hazard for the environment;
- c) Capacity of waste-receiving environment.

3. The rate of environmental protection is adjusted to requirements of environmental protection and socio-economic conditions of the country in each stage.

4. Collected environmental protection fees shall be used for environmental protection activities.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁰⁰ Article 149 of Law on Environmental Protection No. 55/2014/QH13, "Environmental protection fund:

1. The Environmental Protection Funds include the central environment protection fund, environment protection funds of Ministries and specialized authorities, and provincial environment protection funds that are established to support environmental protection activities.

The state has encouraged enterprises, organizations, individuals to establish their own environmental protection funds.

2. Capital for national and provincial environmental protection funds is derived from the following sources:

- a) State budget;
- b) Environmental protection fees;
- c) Compensations to the state for environmental damages;
- d) Grants, aids, and entrusted investments from domestic and overseas entities.

3. The authority to establish environmental protection fund are regulated as follows:

a) The Prime Minister decides the establishment, organization and operation of environmental protection funds

(continued on next page)

g) Incentives and Support for Environmental Protection-Related Activities

The State provides preferences and supports to environmental protection activities, such as constructing domestic wastewater treatment systems; constructing plants for recycling, treating conventional solid waste, hazardous waste, and waste landfill sites; constructing environmental monitoring stations; constructing environmental industrial bases, environmental protection works for the benefits of public interests; manufacturing and trading eco-friendly products; and transforming operation of industrial parks, industrial complex, and entities causing serious pollution to the environment.⁵⁰¹ Organizations, individuals involved in the study, transfer, development and application of science and technology to environmental protection are entitled to preferences and supports.⁵⁰²

(continued from footnote 500)

on national, ministerial, ministerial-level body, economic corporate and state corporate levels;

b) Provincial People's committees decide the establishment, organization and operation of their own environmental protection funds;

c) Organizations, individuals shall establish their own environmental protection funds and operation in accordance with the statute of the fund.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁰¹ Article 151 of Law on Environmental Protection No. 55/2014/QH13, "Incentives and support for environmental protection tasks:

1. The state shall provide favors, supports to environmental protection tasks below:

a) Constructing domestic wastewater treatment systems;

b) Constructing plants for recycling, treating conventional solid waste, hazardous waste, and waste landfill sites;

c) Constructing environmental monitoring stations;

d) Constructing environmental industrial bases, environmental protection works for the benefits of public interests;

dd) Manufacturing and trading eco-friendly products;

e) Transforming operation of industrial parks, industrial complex, and entities causing serious pollution to the environment.

2. The Government shall detail this Article.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁰² Article 152 of Law on Environmental Protection No. 55/2014/QH13), "Development and application of science and technology to environmental protection: *(continued on next page)*

The State invests and provides preferences and supports to individuals, organizations involved in the development of the environmental industry; in the construction and upgrading of technical infrastructure for waste treatment and recycling; in the establishment and development of centralized waste treatment and recycling sites; and in the production and supply of equipment, products in service of environmental protection.⁵⁰³

h) Handling Violations of Environmental Laws

Any organization and individual who violates the law on environmental protection, causing pollution and degradation to the environment, causing losses to other organizations and individuals are responsible for remedying the consequences, restoring the environment, and

(continued from footnote 502)

1. Organizations, individuals involved in the study, transfer, development and application of science and technology to environmental protection shall enjoy favors and supports.

2. Favored activities of study, transfer, development and application of technology to environmental protection include:

- a) Studying, transferring, developing and applying technology of waste recycling;
- b) Studying, transferring, developing and applying environmental-friendly technology and exploiting technology, making effective use of natural resources, saving energy, preserving nature and biological diversity;
- c) Studying, transferring, developing and applying waste treatment technology, preventing, minimizing pollution; reforming, restoring and improving environmental quality;
- d) Studying, transferring, developing and applying pollution control technology, environmental change forecasting and warning technology; observing and assessing environmental quality;
- dd) Studying and constructing facilities to cope with climate change;
- e) Studying and applying measures to improve environmental health, minimize environmental impact on people.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁰³ Article 153 of Law on Environmental Protection No. 55/2014/QH13, “Environmental industry development: The state shall invest and provide favors and supports to individuals, organizations being involved in the development of environmental industry; in the construction and upgrading of technical infrastructure for waste treatment and recycling; in the establishment and development of centralized waste treatment and recycling sites; in the production and supply of equipment, products in service of environmental protection.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

compensating for the damages.⁵⁰⁴ Serious violations can be subject to criminal liability. The Penal Code contains a separate chapter on environmental crimes.

The heads of agencies, organizations, officials and public servants who abuse their titles and powers to cause troubles and harassment to organizations, individuals, be involved in cover-ups on violators of environmental protection or show lack of responsibility for environmental pollution and problem, depending on the nature and seriousness of violations, are subject to penalties according to applicable law.⁵⁰⁵

i) Environmental Dispute Resolution

Environmental disputes are resolved in accordance with the law on non-contractual civil dispute settlement.⁵⁰⁶ Organizations, individuals are entitled to file a complaint and lawsuit against any violation of environmental protection in accordance with the law. Individuals are entitled to report any violation of environmental protection law to the authorities according to the law on complaints and denunciations. The statute of limitation for filing an environmental lawsuit begins

⁵⁰⁴ Article 160(1) of Law on Environmental Protection No. 55/2014/QH13, "Actions against violations: 1. Any organization and individual who violates the law on environmental protection causing pollution and degradation to the environment, causing losses to other organizations and individuals shall be responsible for remedying the consequences, restoring the environment, compensating for the damages in accordance with the regulation of this Law and relevant laws.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁰⁵ Article 160(2) of Law on Environmental Protection No. 55/2014/QH13 "Actions against violations: 2. Heads of agencies, organizations, officials and public servants who misuse their titles and powers to cause troubles and harassment to organizations, individuals, be involved in cover-ups on violators of environmental protection or show lack of responsibility for environmental pollution and problem, depending on the nature and seriousness of violations, shall incur penalties according to applicable regulations of the law.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁰⁶ Article 161(3) of Law on Environmental Protection No. 55/2014/QH13 "Environmental disputes: 3. Settlement of environmental disputes shall be done in accordance with the law on non-contractual civil dispute settlement and the regulation of relevant law.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

to run when the aggrieved individual discovers damage caused by the violation of environmental protection regulations.⁵⁰⁷ Damages caused by environmental pollution and degradation include deterioration in environmental function and utility, and loss of human life and health, property and other interests of the organizations or individuals due to such deterioration.⁵⁰⁸

3.8.3 Laws Concerning Conservation of Natural Resources

a) Water Resources

Under the Law on Water Resources (2012),⁵⁰⁹ water resources include underground water, surface water, rain water and sea water in territory of the Socialist Republic of Vietnam.⁵¹⁰

⁵⁰⁷ Article 162 of Law on Environmental Protection No. 55/2014/QH13, “Complaints, denunciations and lawsuits:

1. Organizations, individuals are entitled to file a complaint and lawsuit against any breach of environmental protection in accordance with the law.
2. Individuals are entitled to report any breach of environmental protection to the authorities according to the law on claims and denunciations.
3. Time limit for filing a lawsuit over environment shall begin when the aggrieved individual's detection of the damage caused by the breach of environmental protection regulations by other organizations, individuals.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018). Therefore, the statute of limitation begins to run from the date when the aggrieved individual discovers damage caused by the breach of environmental protection regulations.

⁵⁰⁸ Article 163 of Law on Environmental Protection No. 55/2014/QH13, “Damages caused by environmental pollution and degradation: Damages caused by environmental pollution and degradation include:

1. Deterioration in environmental function and productivity
2. Loss of human life and health, properties and legal interests of the organizations, individuals due to the deterioration.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁰⁹ Law on Water Resources No. 17/2012/QH13, *available at* <http://extwprlegs1.fao.org/docs/pdf/vie117928.pdf> (accessed December 1, 2018).

⁵¹⁰ Article 2(1) of Law on Water Resources No. 17/2012/QH13, “Interpretation of terms: 1. Water resources include underground water, surface water, rain water and sea water in territory of the Socialist
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Conservation of water resources is the duty of everyone, in which prevention is the main task. Conservation of water resources must be combined with forest protection and development of forest. The exploitation and use of water resources must ensure saving, safety, effectiveness, multi-purpose use, fairness, reasonableness, and equality.⁵¹¹

(continued from footnote 510)

Republic of Vietnam.”, available at http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵¹¹ Article 3 of Law on Water Resources No. 17/2012/QH13, “Principle of management, protection, exploitation and use of water resources, as well as the prevention of, combat against and overcoming of harmful effects caused by water:

1. Management of water resources must ensure uniform with river basin, water sources, combining with management based on administrative area.
2. Water resources must be managed in general, uniform of water quantity and quality, between surface water and underground water; water on mainland and water on gate river area, internal waters, and territorial waters; between upstream and downstream, combining with management of other natural resources.
3. Protection, exploitation and use of water resources, as well as the prevention of, combat against and overcoming of harmful effects caused by water must comply with strategy, master plan on water resources have been approved by competent state management agencies; linked with environmental protection, protection of natural landscapes, historic - cultural vestiges, scenic places and other natural resources; assurance of national defense and security, social order and safety.
4. Protection of water resources is duty of all agencies, organizations, individuals and taking prevention as main duty, combining with protection, development of forest, capacity of recycling water resources, combining with protection of water quality and aquatic ecology, overcoming and restraining pollution, deterioration, depletion of water sources.
5. Exploitation, use of water resources must be in saving, safety and effectiveness; ensure to synthetic use, for multiple objectives, be fair, reasonable, harmonious on benefit, equal on interests and duties among organizations, individuals.
6. Prevention of, combat against and overcoming of harmful effects caused by water must have active plan and measure; ensure harmonious combination of national benefits, regional benefits and branch benefits; combination between modern science and technology with traditional experiences of people and suitable to socio-economic conditions.
7. Master plan on protection, exploitation and use of water resources, as well as the prevention of, combat

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All organizations and individuals must be responsible for protection of water resources. Those who discharge sewage into water sources must be granted permits by competent agencies; however, those who discharge sewage that does not contain toxic chemicals or radioactive substances on a small scale are not required to obtain permits.⁵¹²

(continued from footnote 511)

against and overcoming of harmful effects caused by water must contribute to develop society - economy and have measures ensuring life of inhabitants, national defense and security, protection of historic - cultural vestiges, scenic places and environment.

8. Master plans, plans. Programs, projects on development of society-economy, national defense and security must associate with water sources, water resource protection; ensure maintaining minimum flow on rivers not exceeding exploitation threshold with respect to aquifers and have measure ensuring life of inhabitants.

9. Assurance of territory sovereignty, national benefits, equality and reasonable in protection, exploitation, use and development of water resources, as well as the prevention of, combat against and overcoming of harmful effects caused by water with respect to inter-country water sources.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵¹² Article 37 of Law on Water Resources No. 17/2012/QH13 "Discharge of sewage into water sources:

1. Master plan of urban areas, concentrated residential areas in rural, tourist areas, recreation areas, industrial areas, economical areas, export processing areas, concentrated industrial clusters, trade villages must have system of sewage collection, process be suitable to scale of sewage discharge, water sources' capacity to receive sewage and must be accepted by competent state management agencies of water resources before submitting for approval.

2. Plans on construction, renovate, upgrade establishment of manufacture, business must have items of investment on, construction of system collecting and separating rain water, sewage; sewage treatment system; system of drainage, conduits for sewage ensuring technical regulations and standards.

3. Organizations, individuals discharging sewage into water sources must be licensed by competent state agencies specified in Article 73 of this Law, except for case specified in clause 5 of this Article.

4. Granting permit to discharge sewage into water sources must base on technical regulations and standards on the quality of sewage, the function of water sources, water sources' capacity to receive sewage.

5. Organizations, individuals discharge sewage with small scale and sewage not containing toxic chemicals, radioactive substances do not require possessing a permit of discharging sewage into water sources.

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Organizations and individuals investing in use of circulated water, reuse of water, collection, use of rain water, use of water desalted from brackish water, saline water, or investing in water-saving equipment and technology, are entitled to preferential loans and tax incentives.⁵¹³

Registration and permit are not required for the exploitation and use of water resources in the following cases: exploitation and use of water for living of households; exploitation and use of water with small scale for business purposes; exploitation and use of sea water for manufacture of salt; exploitation and use of water for culture, religion, and scientific research; and exploitation and use of water for preventing and extinguishing fire, tackling pollution incidents, epidemics and other emergencies as prescribed by Law on Emergency.⁵¹⁴ In the remaining cases, organizations and individuals must obtain permits by competent agencies before deciding investment in the exploitation and use of water resources.⁵¹⁵

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6. The Government details grant of permit of discharging sewage into water sources.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵¹³ Article 41 of Law on Water Resources No. 17/2012/QH13, “Incentives for using water in saving and effectiveness:

1. Organizations, individuals investing in use of circulated water, reuse of water, collection, use of rain water, use of water desalted from brackish water, saline water, investing in equipment, technology saving water, are entitled to loan of preferential capital and exempt, reduce tax as prescribed by law.

2. The Government provides on incentives for using water in saving and effectiveness.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵¹⁴ Ordinance on Emergency dated March 23, 2000 of the Standing Committee of the National Assembly (in Vietnamese: Pháp lệnh tình trạng khẩn cấp ngày 23/3/2000 của Ủy ban Thường vụ Quốc hội) implemented by Decree No. 71/2002/ND-CP. The Ordinance on Emergency is classified as state secret and is unpublished. The ordinance is issued by the Standing Committee of the National Assembly and has lower legal effect than a legislative Act.

⁵¹⁵ Article 44 of Ordinance on Emergency dated March 23, 2000 of the Standing Committee of the National Assembly.

Organizations and individuals exploiting water resources must pay royalties for the right to exploit water resources in the following cases: exploit water for power generation with commercial purposes; exploit water for business, service, non-agricultural manufacture; exploit underground water for planting industrial trees, raising cattle or aquaculture on a large scale. The royalty for the right to exploit water resources is determined based on quality of water sources, types of water sources, conditions of exploitation, scale, time of exploitation, and purpose of using water.⁵¹⁶

b) Mineral Resources

Under the Law on Mineral Resources (2010),⁵¹⁷ to conserve mineral resources, mineral mining activities must comply with mineral strategies and master plans and connected with the protection of environment, natural landscape, historical-cultural relics, scenic places and other natural resources while assuring national defense, security and social order and safety.⁵¹⁸ In mineral mining, socio-economic effectiveness and environmental protection must be considered basic criteria for making investment decisions; and advanced mining technologies which are suitable to the size and characteristics of each mine as well as each kind of mineral must be applied in order to recover minerals to the maximum.⁵¹⁹ Mineral activities, including mineral

⁵¹⁶ Article 65 of Ordinance on Emergency dated March 23, 2000 of the Standing Committee of the National Assembly.

⁵¹⁷ Law on Mineral Resources No. 60/2010/QH12, available at <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018).

⁵¹⁸ Under Articles 80 and 81 of the Law on Mineral Resources No. 60/2010/QH12, available at <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018), the Ministry of Natural Resources and Environment is responsible to the Government for performing the state management of mineral resources nationwide. The People's Committees at all levels are responsible for performing the state management of mineral resources within their geographical area.

⁵¹⁹ Article 4 of Law on Mineral Resources No. 60/2010/QH12, "Principles of mineral activities:
1. Mineral activities must comply with mineral strategies and master plans and connected with the protection of environment, natural landscape, historical-cultural relics, scenic places and other natural resources while
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exploration and mineral mining, may be carried out only after obtaining licenses from competent agencies.

Mineral exploration and mining licenses are granted only for areas in which no organization or individual is lawfully conducting mineral exploration or mining and which are not banned or temporarily banned from mineral activities.⁵²⁰ Each organization or individual is granted

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assuring national defense, security and social order and safety.

2. Mineral activities may only be carried out only after obtaining permission from competent state management agencies.

3. Mineral exploration must fully evaluate the deposits and quality of all kinds of minerals in an exploration area.

4. In mineral mining, socio-economic effectiveness and environmental protection must be considered basic criteria for making investment decisions; and advanced mining technologies which are suitable to the size and characteristics of each mine as well as each kind of mineral shall be applied in order to recover minerals to the maximum.", available at <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018).

⁵²⁰ Article 40 of Law on Mineral Resources No. 60/2010/QH12, "Principles and conditions for granting mineral exploration licenses:

1. Mineral exploration licenses are granted on the following principles:

a) Mineral exploration licenses shall be granted only for areas in which no organization or individual is lawfully conducting mineral exploration or mining and which are not banned or temporarily banned from mineral activities, national mineral reserves areas or areas in which geological baseline surveys are being conducted for minerals of the same kind of minerals being applied for;

b) Each organization or individual shall be granted no more than 5 mineral exploration licenses, excluding the expired ones; the to-be-explored total area for a specific mineral under all licenses must not exceed 2 times the exploration area under a single license prescribed in Clause 2, Article 38 of this Law.

2. To be granted mineral exploration licenses, organizations and individuals must meet the following conditions:

a) Being selected by competent state management agencies under Article 36 of this Law or having won auctions for mineral mining rights in unexplored areas under this Law; organizations and individuals that are ineligible for mineral exploration practice under in Clause 1, Article 35 of this Law must sign contracts with eligible organizations defined in Clause 1, Article 35 of this Law;

b) Having an exploration project conformable with the mineral master plans; having obtained the Prime Minister's written permission, for toxic minerals;

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no more than 5 mineral exploration licenses, excluding the expired ones; the to-be-explored total area for a specific mineral under all licenses must not exceed 2 times of the exploration area under a single license. To be granted mineral exploration licenses, organizations and individuals must meet the following conditions: (1) being selected by competent agencies or having won auctions for mining rights in unexplored areas; (2) having an exploration project conformable with the mineral master plans, and having obtained the Prime Minister's written permission, for toxic minerals; and (3) having an equity capital at least equal to 50% of the total investment capital for the implementation of the mineral exploration project. A mineral exploration license is valid for at most 48 months and may be extended multiple times for a total maximum duration of 48 months. Upon each extension, the licensed organization or individual must return at least 30% of exploration area stated in the granted license.⁵²¹ Organizations and individuals engaged in mineral exploration can transfer their mineral exploration rights, provided that the transferees must satisfy all the conditions for the grant of mineral exploration licenses. Transfer of the mineral exploration right must be approved by a competent agency which has the authority to grant mineral exploration licenses.⁵²²

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c) Having an equity capital at least equal to 50% of the total investment capital for the implementation of the mineral exploration project.

3. Business households defined in Clause 2. Article 34 of this Law may explore minerals for use as common construction materials if they fully meet the conditions set by the Government.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018).

⁵²¹ Article 41(2) of Law on Mineral Resources No. 60/2010/QH12, "Mineral exploration licenses: 2. A mineral exploration license is valid for 48 months at most and may be extended multiple times for a total maximum duration of 48 months. Upon each extension, the licensed organization or individual shall return at least 30% of exploration area stated in the granted license.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018).

⁵²² Article 43 of Law on Mineral Resources No. 60/2010/QH12, "Transfer of the mineral exploration right: 1. Transferees of the mineral exploration right must satisfy all the conditions for the grant of mineral exploration licenses under this Law.

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To obtain a mining license, an organization or individual must meet the following conditions:

- (1) having an investment project to mine minerals in the explored area with approved mineral deposits in conformity with the master plans, and such a project must contain a plan on employment of professional human resources, and advanced and appropriate equipment, technologies and mining methods; for toxic minerals, the Prime Minister's written permission is also required;
- (2) having an EIA report or an environmental protection plan made under the environmental protection law; and
- (3) having an equity capital at least equal to 30% of the total investment capital of the mining investment project.⁵²³

(continued from footnote 522)

2. Transfer of the mineral exploration right must be approved by a state management agency competent to grant mineral exploration licenses. After obtaining such approval, transferees of the mineral exploration right may be granted new mineral exploration licenses.

3. To transfer the mineral exploration right, an organization or individual must have performed at least 50% of the cost estimate of the mineral exploration project.

4. The Government shall detail the transfer of the mineral exploration right." *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018).

⁵²³ Article 53 of Law on Mineral Resources No. 60/2010/QH12, "Principles and conditions for grant of mining licenses:

1. Grant of a mining license must adhere to the following principles:

- a) A mining license is granted only for areas in which no organization or individual is lawfully exploring or mining minerals, but not for areas banned or temporarily banned from mineral activities or areas of national mineral deposits;
- b) A mineral area in which large-scale mining can be effective may not be divided for the grant of mining licenses to many organizations or individuals for small-scale mining.

2. To obtain a mining license, an organization or individual must satisfy all the following conditions:

- a) Having an investment project to mine minerals in the explored area with approved mineral deposits in conformity with the master plans specified at Points b, c and d, Clause 1, Article 10 of this Law. Such a project must contain a plan on employment of professional human resources, and advanced and appropriate equipment,

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A mining license is valid for at most 30 years at most and may be extended multiple times with the total extension period not exceeding 20 years.⁵²⁴ In case a licensed organization or individual transfers the mining right, the transferee's mining duration is the remaining period of the mining license previously granted. The transferor must have completed capital construction work and put mines into operation, and the transferee of the mining right must satisfy all conditions for the grant of mining licenses. Transfer of the mining right must be approved by a competent agency having the authority to grant mining licenses.⁵²⁵

Organizations and individuals licensed for mining must pay a fee for the grant of the mining right. The State may collect the fee through or not through auction. The fee for the grant of

(continued from footnote 523)

technologies and mining methods; for toxic minerals, the Prime Minister's written permission is also required;

b) Having an environmental impact assessment report or an environmental protection commitment made under the environmental protection law;

c) Having an equity capital at least equal to 30% of the total investment capital of the mining investment project.

3. Business households defined in Clause 2, Article 51 of this Law may mine minerals for use as common construction materials or conduct salvage mining if they satisfy all the conditions set by the Government.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018).

⁵²⁴ Article 54(2) of Law on Mineral Resources No. 60/2010/QH12 "Mining licenses: 2. A mining license is valid for 30 years at most and may be extended multiple times with the total extension period not exceeding 20 years.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018).

⁵²⁵ Article 66 of Law on Mineral Resources No. 60/2010/QH12, "Transfer of the mining right:

1. Organizations and individuals licensed for mining that have completed capital construction work and put mines into operation may transfer the mining right.
2. Transferees of the mining right must satisfy all conditions for the grant of mining licenses.
3. Transfer of the mining right must be approved by a state management agency competent to grant mining licenses. If obtaining such approval, transferees of the mining right will be granted new mining licenses.
4. The Government shall detail the transfer of the mining right.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018).

the mining right is determined based on the price, deposit, quality, kind or group of minerals, and mining conditions.⁵²⁶

c) Forest Resources

The Law on Forest Protection and Development (2004)⁵²⁷ lays out the rules for management, protection, development, and use of Vietnam's forests. It also defines forest owner's rights and obligations. The law also explicitly bans unplanned and unpermitted timber logging. Under the law, forests are classified into protective forests, special-use forests, and production forests.⁵²⁸

⁵²⁶ Article 77 of Law on Mineral Resources No. 60/2010/QH12, "Fee for the grant of the mining right:

1. Organizations and individuals licensed for mining shall pay a fee for the grant of the mining right. The State may collect the fee through or not through auction.
2. The fee for the grant of the mining right shall be determined based on the price, deposit, quality, kind or group of minerals, and mining conditions.
3. The Government shall specify the method of calculating, and rates of, the fee for the grant of the mining right.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=10501> (accessed December 1, 2018).

⁵²⁷ Law on Forest Protection and Development No. 29/2004/QH11, *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018).

⁵²⁸ Article 4 of Law on Forest Protection and Development No. 29/2004/QH11, "Forest classification Based on their major use purposes, forests are classified into three following kinds:

1. Protection forests, which are used mainly to protect water sources and land, prevent erosion and desertification, restrict natural calamities and regulate climate, thus contributing to environmental protection, including:

- a/ Headwater protection forests;
- b/ Wind- and sand-shielding protection forests;
- c/ Protection forests for tide shielding and sea encroachment prevention;
- d/ Protection forests for environmental protection.

2. Special-use forests, which are used mainly for conservation of nature, specimens of the national forest ecosystems and forest biological gene sources; for scientific research; protection of historical and cultural relics as well as landscapes; in service of recreation and tourism in combination with protection, contributing to environmental protection, including:

- a/ National parks; (*continued on next page*)

Forest protection and development activities must ensure sustainable economic, social, environmental, national defense and security development; be in line with the socio- economic development strategy and forestry development strategy; comply with the national and local forest protection and development plans; and comply with the forest management regulation issued by the Prime Minister. Forest protection is the responsibility⁵²⁹ of all agencies, organizations,

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b/ Nature conservation zones, including nature reserves and species-habitat conservation zones;

c/ Landscape protection areas, including forests of historical or cultural relics as well as scenic landscapes;

d/ Scientific research and experiment forests.

3. Production forests, which are used mainly for production and trading of timber and non-timber forest products in combination with protection, contributing to environmental protection, including:

a/ Natural production forests;

b/ Planted production forests;

c/ Seeding forests, including the selected and recognized planted forests and natural forests.”, *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018).

⁵²⁹ Article 9 of Law on Forest Protection and Development No. 29/2004/QH11, “Forest protection and development principles

1. Forest protection and development activities must ensure sustainable economic, social, environmental, defense and security development; be in line with the socio-economic development strategy and forestry development strategy; comply with the national and local forest protection and development planning’s and plans; and comply with the forest management regulation issued by the Prime Minister.

2. To protect forests is the responsibility of all agencies, organizations, households and individuals. Forest protection and development must ensure the principles of managing forests in a sustainable manner; combining forest protection and development with rational exploitation so as to promote the efficiency of forest resources; closely combining afforestation, zoning off for forest tending, regeneration and enrichment with protection of the existing forest acreage; combining forestry with agriculture and fishery; boosting the economic-forest plantation in association with development of the forest-product processing industry with a view to raising the value of forest products.

3. Forest protection and development must be in line with the land-use planning’s and plans. The forest and land assignment, lease, recovery and use-purpose change must comply with the provisions of this Law, the Land Law and other relevant law provisions, ensuring long-term stability along the direction of socialization of forestry. *(continued on next page)*

households and individuals. The Law prohibits illegal conducts, including unlawful logging, exploitation, hunting, trapping, foraging, and destroying of resources or ecosystems.⁵³⁰

The State assigns or leases forests or forest land to organizations, households or individuals for forest protection and development. Special-use forests are assigned without levies to special-use forest management boards, research and development institutions and forestry-

(continued from footnote 529)

4. To ensure the harmony between the State's and forest owners' interests; between the economic benefits of forests and the interests of protection, environmental protection and nature conservation; between the immediate and long-term interests, ensuring that forestry practitioners can live mainly on forestry.

5. Forest owners shall exercise their rights and perform their obligations in the forest-use terms according to the provisions of this Law and other law provisions, causing no harms to other forest owners' legitimate interests.", *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018).

⁵³⁰ Article 12 of Law on Forest Protection and Development No. 29/2004/QH11, "Article 12. Prohibited acts: 1. Illegally logging or exploiting forests. 2. Illegally hunting, shooting, catching, trapping, caging or slaughtering forest animals. 3. Illegally collecting specimens in forests. 4. Illegally destroying forest resources or ecosystems. 5. Violating regulations on forest fire prevention and fighting. 6. Violating regulations on prevention and elimination of organisms harmful to forests. 7. Illegally encroaching upon, appropriating, or changing use purposes of, forests. 8. Illegally exploiting forest landscapes and environment as well as forestry services. 9. Illegally transporting, processing, advertising, trading in, using, consuming, storing, exporting or importing forest plants and animals. 10. Abusing one's positions and/or powers to act against the regulations on forest management, protection and development. 11. Grazing cattle in the strictly-protected zones of special-use forests, newly-planted forests or coppices. 12. Raising or releasing animals or planting trees, which are of species other than the native ones in special-use forests without permission of competent State agencies. 13. Illegally exploiting biological resources, mineral resources and other natural resources; altering natural landscapes and developments of forests; exerting adverse impacts on the natural life of forest wildlife; illegally bringing toxic chemicals, explosives or inflammables into forests. 14. Illegally assigning, leasing forests; exchanging, transferring, inheriting, donating, mortgaging, providing guarantee or contributing capital with forest use right value or value of planted production forests. 15. Destroying works in service of forest protection and development. 16. Other acts of harming forest resources and ecosystems.", *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018).

training and vocational training establishments for special-use forest management, protection and development. Special-use forests being landscape protection zones are leased to economic organizations with the annual rental payment, for forest protection and development in combination with landscape business, convalescence and/or eco-environmental tourism.⁵³¹

Protective forests are assigned without levies to protective forest management boards, economic organizations, people's armed force units, households and individuals living therein for management, protection and development. Protective forests are also leased to economic organizations with the annual rental payment for forest protection and development in combination with forestry- agricultural-fishery production, landscape business, convalescence and/or eco-environmental tourism.⁵³²

Natural production forests and planted production forests are assigned to households or individuals living on the forest land without levies, and to economic organizations with levies. Overseas Vietnamese who invest into Vietnam to implement forestry investment projects are assigned planted production forests with levies. The State leases production forests to domestic economic organizations, households and individuals with an annual rental payment for forestry production. Leases of planted production forests may be given to overseas Vietnamese, foreign organizations and individuals with a lump-sum rental payment for the whole lease term or with an annual rental payment.⁵³³

⁵³¹ Articles 24-25 of Law on Forest Protection and Development No. 29/2004/QH11, *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018).

⁵³² Articles 24-25 of Law on Forest Protection and Development No. 29/2004/QH11, *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018).

⁵³³ Articles 24-25 of Law on Forest Protection and Development No. 29/2004/QH11, *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018).

The Law also specifies the contents of forest protection, including: protection of forest ecosystems; protection of forest plants and animals; forest fire prevention and fighting; prevention and elimination of organisms harmful to forests; monitoring of trading, transportation, export, import, temporary import for re-export, temporary export for re-import and transit of forest plants and animals.⁵³⁴

The Ministry of Agriculture and Rural Development assumes the primary responsibility in overseeing forest protection and development in coordination with the Ministry of Natural Resources and Environment, Ministry of Public Security, and Ministry of Defense.⁵³⁵

d) Law on Royalties (Tax on Natural Resources)

The Law on Royalties (2009)⁵³⁶ stipulates that organizations and individuals who exploit

⁵³⁴ Articles 40-44 of Law on Forest Protection and Development No. 29/2004/QH11, *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018).

⁵³⁵ Article 8 of Law on Forest Protection and Development No. 29/2004/QH11, “State management responsibilities for forest protection and development: 1. The Government exercises the unified State management over forest protection and development. 2. The Ministry of Agriculture and Rural Development takes responsibility before the Government for exercising the State management over forest protection and development nationwide. 3. The Ministry of Natural Resources and Environment, the Ministry of Public Security, the Ministry of Defense and the other ministries as well as ministerial-level agencies shall, within the ambit of their tasks and powers, have to coordinate with the Ministry of Agriculture and Rural Development in exercising the State management over forest protection and development. 4. The People’s Committees at all levels shall have to exercise the State management over forest protection and development in their respective localities according to their competence. The Government shall prescribe the organization, tasks and powers of specialized forestry agencies from central to district levels and of forestry officers in communes, wards and townships with forests.”, *available at* http://envietnam.org/library/Law%20articles/Law_on_forest_protection_and_development.pdf (accessed December 1, 2018).

⁵³⁶ Law on Royalties No. 45/2009/QH12 (in Vietnamese: Luật Thuế tài nguyên số 45/2009/QH12), *available at* <http://www.vietnam-redd.org/Upload/CMS/Content/Library-GovernmentDocuments/45-2009-QH12.pdf> (accessed December 1, 2018). This Law provides for royalty-liable objects, royalty payers, royalty bases, and royalty declaration, payment, exemption and reduction.

royalty-labile natural resources must pay royalties to the state budget.⁵³⁷ Royalty-labile natural resources include metallic minerals, non-metallic minerals, crude oil, natural gas, coal gas, natural forest products other than animals, natural aquatic products including marine animals and plants, natural water including surface water and groundwater, and natural swallow's nests.⁵³⁸ Royalty bases include natural resource output used for royalty calculation, royalty-labile price and royalty rate.⁵³⁹

3.8.4 Laws Concerning Climate Change

Chapter IV of the Law on Environmental Protection⁵⁴⁰ specifically addresses response to climate change. In general, all activities relating to the environmental protection must be harmoniously connected with the response to climate change, and all organizations and individuals are responsible to fulfill requirements for the environmental protection and response to climate change in their business activities.⁵⁴¹ Main contents of response to climate change must

⁵³⁷ Article 3(1) of Law on Royalties No. 45/2009/QH12, "Royalty payers: (1) Royalty payers include organizations and individuals that exploit royalty-labile natural resources.", *available at* <http://www.vietnam-redd.org/Upload/CMS/Content/Library-GovernmentDocuments/45-2009-QH12.pdf> (accessed December 1, 2018).

⁵³⁸ Article 2 of Law on Royalties No. 45/2009/QH12, "Royalty-labile objects: 1. Metallic minerals 2. Non-metallic minerals 3. Crude oil 4. Natural gas, coal gas 5. Natural forest products, other than animals 6. Natural water, including surface water and groundwater 7. Natural swallow's nests 8. Other resources prescribed by the National Assembly Standing Committee.", *available at* <http://www.vietnam-redd.org/Upload/CMS/Content/Library-GovernmentDocuments/45-2009-QH12.pdf> (accessed December 1, 2018).

⁵³⁹ Article 4 of Law on Royalties No. 45/2009/QH12, "Royalty bases Royalty bases include natural resource output used for royalty calculation, royalty liable price and royalty rate.", *available at* <http://www.vietnam-redd.org/Upload/CMS/Content/Library-GovernmentDocuments/45-2009-QH12.pdf> (accessed December 1, 2018).

⁵⁴⁰ Law on Environmental Protection No. 55/2014/QH13, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁴¹ Article 39 of Law on Environmental Protection No. 55/2014/QH13 "General provisions on the response to climate change:

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be included in the strategy, planning, proposal for socio-economic development as well as planning for the development of every industry or sector.⁵⁴²

Chapter IV specifies the contents of management of greenhouse gas emissions, including:⁵⁴³ setting the national regulations on the inventorying of greenhouse gases; taking

(continued from footnote 541)

1. All activities relating to the environmental protection must be harmoniously connected with the response to climate change.
2. Organizations or individuals shall be responsible to fulfill requirements for the environmental protection and response to climate change during their production, trading and service provision as stipulated in this Law and other relevant laws.
3. Ministries, quasi-ministerial organs and People's Committees at all administrative levels shall design and develop the action plan for the environmental protection and response to climate change within their area of competence.
4. The Ministry of Natural Resources and Environment shall assist the Government in designing, implementing and providing guidelines for the responses to climate change.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁴² Article 40 of Law on Environmental Protection No. 55/2014/QH13, "Integration of main contents of responses to climate change with the strategy, planning and proposal for socio-economic development:

1. Main contents of response to climate change must be included in the strategy, planning, proposal for socio-economic development as well as planning for industrial and sectoral development, which is applicable to objects required to make a report on strategic environment assessment as prescribed in Article 13 of this Law.
2. The integration of main contents of responses to climate change into the strategy, planning and proposal for socio-economic development as well as planning for industrial and sectoral development must rely on the assessment of correlation of activities described in the strategy, planning and proposal with the environment, climate change, and a range of measures to be taken for the environmental protection and response to climate change.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁴³ Article 41 of Law on Environmental Protection No. 55/2014/QH13, "Management of greenhouse gas emissions:

1. Management of greenhouse gas emissions shall be described as follows:
 - a) Setting the national regulations on the inventorying of greenhouse gases;

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action to reduce the harmful impact of greenhouse gases in conformity with socio-economic conditions; managing the forest resources in a sustainable manner, conserving and increasing forest carbon stock, protecting and fostering ecosystems; examining and inspecting the compliance with regulations on inventorying and reducing greenhouse gas emissions; creating and developing carbon credit markets in the country, and participating in carbon credit markets in the globe; and entering into the international cooperation in an effort to reduce greenhouse gases.

For management of ozone-depleting substances,⁵⁴⁴ the Law prioritizes the introduction and implementation of policies on and plans for management, mitigation and elimination of ozone-

(continued from footnote 543)

- b) Taking action to reduce the harmful impact of greenhouse gases in conformity with socio-economic conditions;
- c) Managing the forest resources in a sustainable manner, conserving and increasing forest carbon stock, protecting and fostering ecosystems;
- d) Examining and inspecting the compliance with regulations on inventorying and reducing greenhouse gas emissions;
- dd) Creating and developing carbon credit markets in the country, and participating in carbon credit markets in the globe;
- e) Entering into the international cooperation in an effort to reduce greenhouse gases.

2. The Ministry of Natural Resources and Environment shall direct and cooperate with relevant Ministries and industries in carrying out the inventorying of greenhouse gases, compile a national report on the management of greenhouse gas emission which meet the rigorous standards set out in the international agreements to which the Socialist Republic of Vietnam is a signatory.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁴⁴ Article 42 of Law on Environmental Protection No. 55/2014/QH13, “Management of ozone-depleting substances:

1. Prioritize the introduction and implementation of policies on and plans for management, mitigation and elimination of ozone-depleting substances.
2. Prohibit the production, importation, temporary importation and re-exportation as well as consumption of ozone-depleting substances in uniformity with the regulations set out in the international agreements to which the Socialist Republic of Vietnam is a signatory.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

depleting substances; and prohibits the production, importation, temporary importation and re-exportation as well as consumption of ozone-depleting substances in line with the international agreements to which Vietnam is a signatory.

The Law promotes the production, importation and employment of renewable energy-driven machinery, equipment and means of transport; and requires that all organizations, family households or individuals are responsible to manufacture and consume eco-friendly products and services.⁵⁴⁵ The Heads of state budget-funded institutions must prioritize using eco-friendly products and services that have been certified with eco-labels. Owners of manufacturing or business establishments are responsible for reducing, reusing and recycling wastes and generating energy from wastes. The Government provides preferential policies on the mitigation, reuse and recycling of wastes and generation of energy from wastes.⁵⁴⁶

Communities have the right to be provided with and to request information about climate change issues, except information on the list of State's secrets, and are responsible for participating in activities relating to the response to climate change. The regulatory agency in charge of climate change issues bears the responsibility for providing information and creating events to raise people's awareness of climate change, as well as providing better supports for communities to get involved in activities relating to the response to climate change.⁵⁴⁷

⁵⁴⁵ Articles 43-44 of Law on Environmental Protection No. 55/2014/QH13, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁴⁶ Article 45. of Law on Environmental Protection No. 55/2014/QH13, "Waste-to-energy process:
1. Owner of manufacturing or business establishments must be responsible for reducing, reusing and recycling wastes, and generating the energy from wastes.
2. The Government shall provide preferential policies on the mitigation, reuse and recycling of wastes, and generation of the energy from wastes.", *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁴⁷ Article 46. of Law on Environmental Protection No. 55/2014/QH13, "Rights and responsibilities of the human community for the response to climate change:

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All activities relating to the research, transfer and application of technological and scientific advances for the response to climate change are given priority, such as science and technology advances relating to the management, assessment, supervision and prediction of impacts caused by climate change on the socio-economic growth, environmental issues and community health, reduction of greenhouse gases, enhancement of the competitiveness of the economy and key manufacturing industries, and the development of low carbon economy and green growth.⁵⁴⁸

(continued from footnote 547)

1. Human community shall be vested with the right to provide and request the provision of information about climate change issues, exclusive of information specified in the list of state secret information.
2. Human community shall be responsible for participating in activities relating to the response to climate change.
3. The regulatory agency in charge of climate change issues shall bear responsibility for providing information and create events to raise people's awareness of climate change as well as provide better supports to human communities to get involved in activities relating to the response to climate change.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁴⁸ Article 47 of Law on Environmental Protection No. 55/2014/QH13, “Development and application of technological and scientific advances for the response to climate change:

1. All activities relating to the study, transfer and application of technological and scientific advances for the response to climate change shall be given priority, including:
 - a) Developing a single scientific discipline or a combination of scientific disciplines of the management, assessment, supervision and prediction of impacts caused by climate change on the socio-economic growth, environmental issues and community health;
 - b) Conduct basic and applied scientific investigation and research; develop and transfer technological advances in reducing greenhouse gases and coping with climate change; enhance the competitiveness of the economy, key manufacturing industries; promote the development of low carbon economy and green growth.
2. Agencies, organizations and manufacturing or business establishment shall be responsible for conducting or engaging in scientific and technological researches, transfer and application with the aim of responding to the climate change.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

The State of Vietnam adopts policies on international cooperation to attract more investments and financial aids, develop and transfer technologies, and enhance its competence in taking measures to respond to the climate change with the aim of building a green economy in the future.⁵⁴⁹

On October 5, 2012, the Prime Minister issued the National Action Plan on Climate Change for the period 2012-2020 (Decision No. 1474/QĐ-TTg).⁵⁵⁰ The Plan sets forth specific objectives and tasks by 2020 to respond to climate change, including: strengthening capacity of climate monitoring and early warning of natural disasters; ensuring food security and water security; proactively responding to natural disasters, preventing flooding for large cities, and reinforcing river and sea dikes and reservoir safety; mitigating greenhouse gas emissions, and developing the economy towards low carbon; enhancing management capacity and improving mechanism and policies on climate change; mobilizing the participation of the economic sectors, research institutions, professional organizations, and non-governmental organizations in response to climate change; building communities in effective adaptation to climate change; raising awareness and developing human resources; developing science and technology as the basis for policy making, impact assessment, and determination of measures to mitigate climate change;

⁵⁴⁹ Article 48 of Law on Environmental Protection No. 55/2014/QH13 “International cooperation in the response to climate change:

1. The State shall introduce policies on international cooperation in attracting more investments, financial aids, develop and transfer technologies, and enhance its competence in taking measures to respond to the climate change with the aim of building a green economy in the future.
2. The Government shall regulate the roadmap and modality for their participation in reducing global greenhouse gases in conformity with socio-economic conditions and commitments made in the international agreements to which the Socialist Republic of Vietnam is a signatory.”, *available at* http://www.ilo.org/dyn/legosh/en/f?p=14100:503:3101661175291::NO:503:P503_REFERENCE_FILE_ID:172934:NO (accessed December 1, 2018).

⁵⁵⁰ Decision No. 1474/QĐ-TTg, *available at* <https://vanbanphapluat.co/decision-no-1474-qd-ttg-on-issuance-of-national-action-plan-on-climate-change> (accessed December 1, 2018).

developing international cooperation and raising the position and role of Vietnam in international activities on climate change; and mobilizing resources and finance to respond to climate change.

3.9 Laws Concerning Conservation and Promotion of Culture and Way of Life

3.9.1 Laws on Cultural Heritage

a) Overview

The Law on Cultural Heritage was first enacted in 2001 and amended in 2009.⁵⁵¹ The Law governs the protection and promotion of the values of cultural heritages and stipulates the rights and obligations of organizations and individuals with respect to cultural heritages in Vietnam. Cultural heritage defined in the Law includes intangible and tangible cultural heritages, which are spiritual and material products having historical, cultural or scientific value and handed down from generation to generation in Vietnam.⁵⁵² Intangible cultural heritage means spiritual products associated with related communities, individuals, objects and cultural spaces, which are of historical, cultural or scientific value, express the identity of communities, are constantly recreated and transmitted from generation to generation orally, through craft teaching, performing arts or in

⁵⁵¹ Law on Cultural Heritage No. 28/2001/QH10 (in Vietnamese: Luật di sản văn hóa số 28/2001/QH10), available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage> (accessed December 1, 2018), as amended by Law No. 32/2009/QH12 (in Vietnamese: Luật số 32/2009/QH12 của Quốc hội sửa đổi, bổ sung một số điều của Luật di sản văn hóa), available at <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018). Law on Cultural Heritage provides for activities of protecting and promoting the values of cultural heritages; defines rights and obligations of organizations and individuals with respect to cultural heritages in the Socialist Republic of Vietnam.

⁵⁵² Article 1 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), “Cultural heritage provided for in this Law includes intangible and tangible cultural heritages, which are spiritual and material products having historical, cultural or scientific value and handed down from generation to generation in the Socialist Republic of Vietnam.”, available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage> (accessed December 1, 2018).

other forms.⁵⁵³ Tangible cultural heritages are material products of historical, cultural or scientific value, including historical-cultural relics, famous landscapes and beauty spots, vestiges, antiques and national precious objects.⁵⁵⁴

b) Ownership of Cultural Heritages

The State of Vietnam exercises its unified management over state-owned cultural heritages, and recognizes and protects collective ownership, joint ownership of the community, private ownership and other forms of ownership over cultural heritages.⁵⁵⁵ All cultural heritages under the ground, in the mainland, on islands, in the inland waters, territorial waters, exclusive

⁵⁵³ Article 4(1) of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12). "In this Law, the following terms and expressions shall be construed as follows: 1. Intangible cultural heritage means spiritual products associated with related communities, individuals, objects and cultural spaces, which are of historical, cultural or scientific value, express the identity of communities, are constantly recreated and transmitted from generation to generation orally, through craft teaching, performing arts or in other forms.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage=9469>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁵⁴ Article 4(2) of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "In this Law, the following terms and expressions shall be construed as follows: Tangible cultural heritages are material products of historical, cultural or scientific value, including historical-cultural relics, famous landscapes and beauty spots, vestiges, antiques and national precious objects.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage=9469>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁵⁵ Article 5 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "The State exercises the unified management over the cultural heritage, which is under the entire populations; ownership; recognizes and protects forms of collective ownership, joint ownership of the community, private ownership and other forms of ownership over cultural heritages according to the provisions of law. The ownership right and copyright over cultural heritages are defined under the provisions of this Law, the Civil Code and other relevant provisions of law.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage=9469>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

economic zones and continental shelf of the Socialist Republic of Vietnam are owned by the State.⁵⁵⁶ Cultural heritages discovered with unidentified owners and recovered in the course of archaeological excavation are owned by the State.⁵⁵⁷

The Ministry of Culture, Sports and Tourism is responsible for exercising the State management over cultural heritage.⁵⁵⁸ The People's Committees at all levels, within their scope of authority, are responsible for state management over cultural heritages in their localities.⁵⁵⁹

⁵⁵⁶ Article 6 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "All cultural heritages under the ground, in the mainland, on islands, in the inland waters, territorial waters, exclusive economic zones and continental shelf of the Socialist Republic of Vietnam are under the entire population's ownership.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage> (accessed December 1, 2018).

⁵⁵⁷ Article 7 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12) "Cultural heritages discovered with unidentified owners and recovered in the course of archaeological exploration and excavation, are all under the entire population's ownership.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁵⁸ Article 55.2 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12) "The Ministry of Culture and Information is answerable to the Government for exercising the State management over cultural heritage.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁵⁹ Article 55 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12),

1. The Government exercises the unified State management over cultural heritages.
2. The Ministry of Culture and Information is answerable to the Government for exercising the State management over cultural heritage.
3. The ministries, ministerial-level agencies, agencies attached to the Government shall have to exercise the State management over cultural heritages according to the responsibility assignment by the Government.

The Government shall specify the responsibilities of the ministries, ministerial-level agencies and agencies attached to the Government for coordinating with the Ministry of Culture and Information to exercise the unified State management over cultural heritage.

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c) The State's Policies towards Cultural Heritages

All cultural heritages on the Vietnamese territory, whether of domestic or foreign origin and regardless of forms of ownership, are protected and have their values promoted.⁵⁶⁰ Vietnamese cultural heritages in foreign countries are protected under international customs and international treaties which Vietnam has signed or acceded to. The State adopts the policy of protecting and promoting the value of cultural heritages in order to raise the people's spiritual life, contributing to the socio-economic development of the country; and encourages domestic and foreign organizations and individuals to contribute or provide financial supports to the protection and promotion of the values of cultural heritages.⁵⁶¹ The State protects the lawful rights and interests

(continued from footnote 559)

4. The People Committees of all levels shall, within the ambit of their tasks and powers, exercise the State management over cultural heritages in their respective localities according to the responsibility assignment by the Government.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritagephapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁶⁰ Article 8 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "1. All cultural heritages on the Vietnamese territory, which have domestic or foreign origin and are under the ownership in various forms, shall be protected and have their values promoted.

2. Vietnamese cultural heritages in foreign countries shall be protected under the international practices and the provisions of the international treaties which the Socialist Republic of Vietnam has signed or acceded to.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritagephapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁶¹ Article 9 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "1. The State adopts the policy of protecting and promoting the value of cultural heritages in order to raise the people spiritual life, contributing to the socio-economic development of the country; encourages domestic and foreign organizations and individuals to contribute or provide financial supports to the protection and promotion of the values of cultural heritages

2. The State protects the lawful rights and interests of owners of cultural heritages. Owners of cultural heritages shall be responsible for protecting and promoting the values of such cultural heritages.

3. The State invests in personnel training and fostering, research into and application of sciences and

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of owners of cultural heritages, and invests in personnel training and fostering, research into and application of sciences and technologies to the protection and promotion of the values of cultural heritages.⁵⁶²

d) Rights and Obligations of Concerned Parties

All organizations and individuals, both from public and private sectors, have the right to lawfully own cultural heritages and to visit and study cultural heritages. They also have the obligation to respect, protect and promote the values of cultural heritages; to promptly notify places where vestiges, antiques, national precious objects, historical-cultural relics, famous landscapes and beauty spots are discovered; hand over vestiges, antiques, national precious objects found by themselves to the nearest competent State agencies; and to prevent or request the competent State bodies to prevent or promptly handle acts of undermining, appropriating or illegally using cultural heritages.⁵⁶³ It is worth noting that there is also a proactive approach for the

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technologies to the protection and promotion of the values of cultural heritages.”, available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁶² Article 9 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage=9469>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁶³ Article 14 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), “Organizations and individuals shall have the following rights and obligations:

1. To lawfully own cultural heritages;
2. To visit and study cultural heritages;
3. To respect, protect and promote the values of cultural heritages;
4. To promptly notify places where vestiges, antiques, national precious objects, historical-cultural relics, famous landscapes and beauty spots are discovered; and hand over vestiges, antiques, national precious objects found by themselves to the nearest competent State agencies;
5. To prevent or request the competent State bodies to prevent or promptly handle acts of undermining, appropriating or illegally using cultural heritages.”, *(continued on next page)*

responsible state agency to preserve cultural heritage. Specifically, the responsible agency/body must take measures specified in Chapter IV of the Law on Cultural Heritage to preserve cultural heritage (see subsection e) *Prohibited Acts* below on the State's measures).

In addition to the aforementioned rights and obligations, owners of cultural heritages have further rights and obligations,⁵⁶⁴ such as: to apply measures for protecting and promoting the values of cultural heritages; to promptly report to the competent State bodies on cases where cultural heritages are in danger of having their values falsified, being ruined or lost; to send collections of intangible cultural heritages, vestiges, antiques, national precious objects to the State museums or the competent State bodies in cases the owners lack conditions and capability to protect and promote the values thereof; and to create favorable conditions for organizations and individuals to visit, travel to and study cultural heritages.

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available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁶⁴ Article 15 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "Organizations and individuals being owners of cultural heritages shall have the following rights and obligations:

1. To observe the provisions in Article 14 of this Law;
2. To apply measures for protecting and promoting the values of cultural heritages; to promptly report to the competent State bodies on cases where cultural heritages are in danger of having their values falsified, being ruined or lost;
3. To send collections of intangible cultural heritages, vestiges, antiques, national precious objects to the State museums or the competent State bodies in cases where they lack conditions and capability to protect and promote the values thereof;
4. To create favorable conditions for organizations and individuals to visit, travel to and study cultural heritages;
5. To exercise other rights and perform other obligations provided for by law.", available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

Organizations and individuals that directly manage cultural heritages have the following rights and obligations:⁵⁶⁵ to protect and preserve the cultural heritages; to apply measures to promptly prevent or stop acts of infringing upon cultural heritages; to promptly notify the owners or the nearest competent State agencies when cultural heritages are lost or in danger of being ruined; and to create favorable conditions for organizations and individuals to visit, travel to and study cultural heritages.

e) Prohibited Acts

The Law prohibits the following acts:⁵⁶⁶ (1) appropriating or improperly altering historical-cultural relics, spots of beauty or scenic places; (2) ruining or posing a danger of ruining cultural

⁵⁶⁵ Article 16 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), “Organizations and individuals that directly manage cultural heritages shall have the following rights and obligations:

1. To protect and preserve the cultural heritages;
2. To apply measures to promptly prevent or stop acts of infringing upon cultural heritages;
3. To promptly notify the owners or the nearest competent State agencies when cultural heritages are lost or in danger of being ruined;
4. To create favorable conditions for organizations and individuals to visit, travel to and study cultural heritages;
5. To exercise other rights and perform other obligations provided for by law.”, *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁶⁶ Article 13 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), “The following acts are strictly prohibited:

1. Appropriating or improperly altering historical-cultural relics, spots of beauty or scenic places;
2. Ruining or posing a danger of ruining cultural heritages;
3. Conducting illegal excavations at archaeological sites or illegal construction, encroaching upon the land within historical-cultural relics, famous landscapes and beauty spots;
4. Illegally trading, exchanging or transporting vestiges, antiques or national precious objects pertaining to historical-cultural relics, spots of beauty or scenic places, or vestiges, antiques or national precious objects of illegal origin; illegally carrying abroad vestiges, antiques or national precious objects;
5. Taking advantage of the protection and promotion of the values of cultural heritages to seek illicit profits, carry out superstitious activities or commit other illegal acts.”, (*continued on next page*)

heritages; (3) conducting illegal excavations at archaeological sites or illegal construction, encroaching upon the land within historical-cultural relics, famous landscapes and beauty spots; (4) illegally trading, exchanging or transporting vestiges, antiques or national precious objects pertaining to historical-cultural relics, spots of beauty or scenic places, or vestiges, antiques or national precious objects of illegal origin; illegally carrying abroad vestiges, antiques or national precious objects; and (5) taking advantage of the protection and promotion of the values of cultural heritages to seek illicit profits, carry out superstitious activities or commit other illegal acts.

f) Protection of Cultural Heritages

The Law specifies measures to protect and promote the value of intangible and tangible cultural heritages. For intangible cultural heritages, the State takes the following measures: (1) to study, collect, inventory and classify intangible cultural heritages; (2) to transmit, disseminate, publish, perform and revive intangible cultural heritages; (3) to encourage and create conditions for organizations and individuals to research, collect, store, transmit and introduce intangible cultural heritages; (4) to provide professional guidance on protecting and promoting the values of intangible cultural heritages at the request of holders of intangible cultural heritages; and (5) to finance the protection and promotion of the values of intangible cultural heritages and the prevention of the danger of deterioration and disappearance of intangible cultural heritages.⁵⁶⁷

(continued from footnote 566)

available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁶⁷ Article 17 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), “The State protects and promotes the values of intangible cultural heritages through the following measures:

1. To study, collect, inventory and classify intangible cultural heritages;
2. To transmit, disseminate, publish, perform and revive intangible cultural heritages;
3. To encourage and create conditions for organizations and individuals to research, collect, store, transmit and introduce intangible cultural heritages;
4. To provide professional guidance on protecting and promoting the values of intangible cultural heritages at the request of holders of intangible cultural heritages. (*continued on next page*)

The chairpersons of the People's Committee at the provincial level must review and select intangible cultural heritages in their localities and make proposal to the Minister of Culture, Sports and Tourism to include them in the national list of intangible cultural heritages.⁵⁶⁸ The Prime Minister considers and decides to make proposal to the United Nations Educational, Scientific and Cultural Organization (UNESCO) to recognize Vietnam's typical intangible cultural heritages as World Cultural Heritages.⁵⁶⁹

(continued from footnote 567)

5. To finance the protection and promotion of the values of intangible cultural heritages and the prevention of the danger of deterioration and disappearance of intangible cultural heritages.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁶⁸ Article 18 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "1. Chairpersons of People's Committees of provinces and centrally run cities (below collectively referred to as provincial-level) shall organize the inventory of intangible cultural heritages in their localities and select intangible cultural heritages and make scientific dossiers thereof to propose the Minister of Culture, Sports and Tourism to include them in the national list of intangible cultural heritages.

2. The Minister of Culture, Sports and Tourism shall decide to publicize the national list of intangible cultural heritages and issue certificates of intangible cultural heritages in this list.

In case there are grounds to believe that intangible cultural heritages which have been included in the national list of intangible cultural heritages are ineligible for inclusion in this list, the Minister of Culture, Sports and Tourism shall decide to remove those heritages from the national list of intangible cultural heritages.

3. The Minister of Culture, Sports and Tourism shall detail Clause 1 of this Article.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁶⁹ Article 19 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "The Prime Minister shall consider and decide to propose the United Nations Educational, Scientific and Cultural Organization (UNESCO) to recognize Vietnam typical intangible cultural heritages as World Cultural Heritages, at the proposals of the Minister of Culture and Information.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

For tangible heritages which are historical-cultural relics, the Law imposes requirements on investment projects on renovation or construction of works outside the protection zones of relics. If before being approved, such projects are deemed likely to adversely affect the natural scenery and ecological environment of such relics, there must be written appraisal opinions of the competent State agencies in charge of culture. If investors of such projects make any request, the competent State agencies must supply relevant documents and make specific proposals on protection of relics so that the investors can select appropriate solutions to ensure the protection and promotion of values of relics. Investors must coordinate with and create conditions for competent state agencies in charge of culture to supervise the renovation and construction of these works.⁵⁷⁰

Each province must have its archaeological planning devised, approved and publicized after obtaining written consent of the Minister of Culture, Sports and Tourism. Investors of projects on renovation or construction of works in places subject to archaeological planning must coordinate with and create conditions for competent state agencies in charge of culture to conduct archaeological exploration and excavation before these projects are implemented and supervise the renovation and construction of these works. In the course of renovation and

⁵⁷⁰ Article 36 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), “1. If before being approved, projects on renovation or construction of works lying outside relics protection zones prescribed in Article 32 of this Law are deemed likely to adversely affect the natural scenery and ecological environment of such relics, there must be written appraisal opinions of the competent State agencies in charge of culture and information.

2. In cases where investors of projects on renovation or construction of works specified in Clause 1 of this Article make any request, the competent State agencies in charge of culture and information shall have to supply relevant documents and make specific proposals on protection of relics so that such investors can select appropriate solutions ensuring the protection and promotion of values of relics.

3. Investors of projects on the renovation or construction of works in places where relics can be affected shall coordinate with and create conditions for competent state agencies in charge of culture, sports and tourism to supervise the renovation and construction of these works.”, *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

construction of works, if realizing that there may be relics, vestiges, antiques or national precious objects or discovering such objects, project owners must suspend construction and promptly notify such to competent state agencies in charge of culture. Upon receiving notice from project owners, the competent state agencies in charge of culture must take timely handling measures to ensure construction progress. When finding it necessary to terminate construction of works in those places in order to protect relics, the agencies must report such to their superior agencies for decision.⁵⁷¹

⁵⁷¹ Article 37 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12)

“1. Provincial-level People's Committee chairpersons shall organize the formulation of archaeological plannings in their localities and approve and publicize these plannings after obtaining written consent of the Minister of Culture, Sports and Tourism.

2. Investors of projects on renovation or construction of works in places under archaeological planning shall coordinate with and create conditions for competent state agencies in charge of culture, sports and tourism to conduct archaeological exploration and excavation before these projects are implemented and supervise the renovation and construction of these works.

3. In the course of renovation and construction of works, if realizing that there may be relics, vestiges, antiques or national precious objects or discovering relics, vestiges, antiques or national precious objects, project owners shall suspend construction and promptly notify such to competent state agencies in charge of culture, sports and tourism.

Upon receiving notification from project owners, competent state agencies in charge of culture, sports and tourism shall take timely handling measures to ensure construction progress. When finding it necessary to terminate construction of works in those places in order to protect relics, competent state agencies in charge of culture, sports and tourism shall report such to competent superior agencies for decision.

4. When it is necessary to conduct archaeological exploration and excavation in places where works are renovated or constructed, archaeological exploration and excavation funds are specified as follows:

a/ For a work renovated or constructed with state capital, exploration and excavation funds shall be included in the total investment capital of that work;

b/ For a work renovated or constructed with non-state capital, exploration and excavation funds shall be allocated by the State.

The Minister of Finance shall assume the prime responsibility for and coordinate with the Minister of Culture, Sports and Tourism in, guiding procedures and allocating funds for exploration and excavation activities in the cases specified in this Clause.”, *(continued on next page)*

Archaeological exploitation and excavation may be conducted only after a permit of the Minister of Culture, Sports and Tourism is issued. In case an archaeological site is being ruined or threatened to be ruined, the provincial-level People's Committee chairperson must issue an urgent excavation permit within 3 days after receiving a written request and immediately report thereon to the Ministry of Culture, Sports and Tourism. In case of refusal, he/she must state the reason therefor in writing.⁵⁷²

All vestiges and antiques collected in the course of archaeological exploration and excavation or discovered and handed over by organizations or individuals must be temporarily stored in provincial-level museums of localities where they are discovered. Based on the value and requirements of preserving such vestiges and antiques, the Minister of Culture, Sports and Tourism decides to hand over them to public museums with appropriate functions for the protection and promotion of their values. Organizations or individuals that discover and hand over vestiges and antiques will be reimbursed the expenses for discovery and preservation and be rewarded a sum of money.⁵⁷³

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available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁷² Articles 38 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "1. Archaeological exploitation and excavation may be conducted only after permits of the Minister of Culture, Sports and Tourism are obtained.

2. In case an archaeological site is being ruined or threatened to be ruined, the provincial-level People's Committee chairperson shall issue an urgent excavation permit within 3 days after receiving a written request and immediately report thereon to the Ministry of Culture, Sports and Tourism. In case of refusal, he/she shall state the reason therefor in writing.", available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁷³ Article 41 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "1. All vestiges and antiques collected in the course of archaeological exploration and excavation or discovered
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The State encourages organizations and individuals to register their own vestiges and antiques with competent state agencies in charge of culture. Vestiges and antiques must be examined at antique examination establishments before registration. Antique examination establishments are responsible for their examination results.⁵⁷⁴

Vestiges, antiques and national precious objects owned by the State, political organizations or socio-political organizations must be managed in museums and must not be sold, purchased, donated nor presented as gifts. Vestiges and antiques under other forms of ownership may be purchased, sold, exchanged, donated or bequeathed as inheritance at home

(continued from footnote 573)

and handed over by organizations or individuals must be temporarily stored in provincial-level museums of localities where they are discovered. Provincial-level museums shall receive, manage and report on vestiges and antiques to the Minister of Culture. Sports and Tourism. 2. Based on the value and requirements of preserving vestiges and antiques specified in Clause 1 of this Article, the Minister of Culture. Sports and Tourism shall decide to hand over vestiges and antiques to public museums with appropriate functions for the protection and promotion of their values. 3. Organizations or individuals that discover and hand over vestiges and antiques will be refunded discovery and preservation expenses and rewarded a sum of money as prescribed by the Government.”, *available at* <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁷⁴ Article 42 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), “1. The State encourages organizations and individuals to register their own vestiges and antiques with competent state agencies in charge of culture, sports and tourism.
2. Vestiges and antiques must be examined at antique examination establishments before registration. Antique examination establishments shall be responsible before law for their examination results.
3. Owners of registered vestiges and antiques have the following rights:
a/ To be issued vestige or antique registration certificates by competent state agencies in charge of culture, sports and tourism; to have information on registered vestiges and antiques kept confidential at their request;
b/To be provided with professional guidance on, and created conditions for protecting and promoting the values of vestiges and antiques, by competent state agencies in charge of culture, sports and tourism.
4. The Minister of Culture. Sports and Tourism shall specify procedures for registration of vestiges and antiques, and conditions for the establishment and operation of antique examination establishments.”, *available at* <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

and abroad. National precious objects under other forms of ownership may only be purchased, sold, exchanged, donated and bequeathed as inheritance in the country in accordance with the law. The bringing of vestiges and antiques abroad must be permitted by the competent State agencies in charge of culture. Vestiges, antiques and national precious objects are sold and purchased at agreed prices or in auctions. The State is given priority to purchase those objects.⁵⁷⁵

The bringing of vestiges, antiques, national precious objects abroad for display, exhibition, research or preservation must satisfy the following conditions: (1) getting insured by recipients of vestiges, antiques and national precious objects; and (2) obtaining the Prime Minister's decisions permitting the bringing of national precious objects abroad; or the Culture Minister's decisions permitting the bringing of vestiges and antiques abroad.⁵⁷⁶

⁵⁷⁵ Article 43 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "Vestiges, antiques and national precious objects under the ownership of the entire population, political organizations or socio-political organizations must be managed in museums and must not be sold, purchased, donated nor presented as gifts. Vestiges and antiques under other ownership forms may be purchased, sold, exchanged, donated or bequeathed as inheritance at home and abroad according to the provisions of law. National precious objects under other ownership forms may only be purchased, sold, exchanged, donated and bequeathed as inheritance in the country under the provisions of law.

The bringing of vestiges and antiques abroad must be permitted by the competent State agencies in charge of culture and information.

2. The purchase and sale of vestiges, antiques and national precious objects shall be affected at agreed prices or in auctions. The State shall be given priority to purchase vestiges, antiques and national precious objects.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage=9469>; <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁷⁶ Article 44 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "The bringing of vestiges, antiques, national precious objects abroad for display, exhibition, research or preservation must satisfy the following conditions:

1. Getting insured by recipients of vestiges, antiques and national precious objects;
2. Obtaining the Prime Ministers' decisions permitting the bringing of national precious objects abroad; or the Culture and Information Ministers' decisions permitting the bringing of vestiges and antiques abroad."

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3.9.2 Laws on Local Wisdom

a) Overview

Local wisdom is not defined in the Law, but according to the World Intellectual Property Organization, local wisdom can be understood broadly, including traditional knowledge of agriculture, science, technique, ecology, medicine, genetic sources and folklore. Vietnamese laws addressing the protection and promotion of local wisdom can be found in different legislations, such as the Law on Intellectual Property, Law on Cultural Heritage, Law on Pharmacy, and Law on Biodiversity.

b) Protection and Promotion of Folklore and Other Intangible Cultural Heritages

The Law on Cultural Heritage⁵⁷⁷ sets forth measures to protect and promote the value of intangible cultural heritages. The State encourages the collection, compilation, translation, statistics, classification and archival of literary, art and scientific works, oral philology, folk oratorio of the Vietnamese ethnic groups for popularization at home and cultural exchange with foreign countries.⁵⁷⁸ The Law on Intellectual Property recognizes copyrights to folk artistic and literary works. Organizations and individuals when using such works must indicate the origins of those expressions of folklore and protect their real values.⁵⁷⁹ Vietnam has no single law specifically

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, available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage> (accessed December 1, 2018).

⁵⁷⁷ Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage> (accessed December 1, 2018).

⁵⁷⁸ Article 23 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), “The State adopts policies to encourage the collection, compilation, translation, statistics, classification and archival of literary, art and scientific works, oral philology, folk oratorio of the Vietnamese nationalities community for popularization at home and cultural exchange with foreign countries.”, available at <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage> (accessed December 1, 2018).

⁵⁷⁹ Article 23 of Law on Intellectual Property No. 50/2005/QH11 (as amended by Law No. 36/2009/QH12), “Copyright to folklore or folk art works of folklore: 1. Folklore or folk art works mean collective creations based on traditions of a community or individuals reflecting such community’s earnest expectations, of which
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devoted to protection of "folk wisdom". The content related to folk wisdom is included in the four Laws as mentioned in this Section (*i.e.*, Law on Intellectual Property, Law on Cultural Heritage, Law on Pharmacy, and Law on Biodiversity).

The State encourages the maintenance, restoration and development of traditional handicrafts of typical values; the research into and application of knowledge about traditional medicine and pharmacy; the maintenance and promotion of values of the gastronomy, the nation's traditional costumes and other folk knowledge.⁵⁸⁰ The State honors and adopts preferential policies for craftspeople who have outstanding talents and have made great contribution to protecting and promoting the values of intangible cultural heritages through the following measures: to award state honorable titles; to facilitate and finance the creation, performance, display and introduction of products of craftspeople; to provide monthly cost-of-living allowances and other preferential treatment to craftspeople who have been awarded state honorable titles but earn low incomes and meet with difficulties.⁵⁸¹

(continued from footnote 579)

the expression is appropriate to its cultural and social characteristics, and its standards and values, which have been handed down by imitation or other modes. Folklore and folk art works include: a/ Folk tales, lyrics and riddles; b/ Folk songs and melodies; c/ Folk dances, plays, rites and games; d/ Folk art products, including graphics, paintings, sculptures, musical instruments, architectural models, and products of other folk arts expressed in whatever material form. 2. Organizations and individuals using folklore and folk art works of folklore must refer to their sources and preserve their true values.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn063en.pdf>; (accessed December 1, 2018).

⁵⁸⁰ Article 24 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12), "The State adopts policies to encourage the maintenance, restoration and development of traditional handicrafts of typical values; the research into and application of knowledge about traditional medicine and pharmacy; the maintenance and promotion of values of the gastronomy, the nation's traditional costumes and other folk knowledge.", *available at* <https://vanbanphapluat.co/law-no-28-2001-qh10-of-june-29-2001-on-cultural-heritage> (accessed December 1, 2018).

⁵⁸¹ Article 26 of Law on Cultural Heritage No. 28/2001/QH10 (as amended by Law No. 32/2009/QH12) "1. The State honors and adopts policies of preferential treatment towards craftspeople who have outstanding
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c) Protection and Promotion of Local Wisdom Regarding Medicine

The Law on Pharmacy recognizes the value of traditional medicine. Traditional drug means a drug that composed herbal ingredients that are processed, prepared, or combined according to traditional drug principles or methods.⁵⁸² The State encourages research into and inheritance of traditional medicine recipes and experiences, and harmoniously combines traditional medicine and modern medicine as well as pharmacy.⁵⁸³ The Law contains a separate chapter governing traditional medicaments and drugs from medical materials.⁵⁸⁴

(continued from footnote 581)

talents, hold, and have made meritorious services in protecting and promoting, the values of intangible cultural heritages, through the following measures:

- a/ To award or posthumously award orders or state honorable titles or apply other forms of honoring;
- b/ To facilitate and finance the creation, performance, display and introduction of products of craftspeople;
- c/ To provide monthly cost-of-living allowances and other preferential treatment to craftspeople who have been awarded state honorable titles but earn low incomes and meet with difficulties.

2. The Government shall promulgate policies of preferential treatment towards craftspeople as specified at Points b and c. Clause 1 of this Article.”, *available at* <https://vanbanphapluat.co/law-no-32-2009-qh12-of-june-18-2009-amending-and-supplementing-a-number-of-articles-of-the-law-on-cultural-heritages> (accessed December 1, 2018).

⁵⁸² Article 2 of Law on Pharmacy No. 105/2016/QH13 “Definitions: 8. Traditional drug (including traditional ingredients) means a drug that composed herbal ingredients that are processed, prepared, or combined according to traditional drug principles or methods; it may have a traditional or modern dosage form.”, *available at* http://www.economica.vn/Content/files/LAW%20%26%20REG/105_2016_QH13%20Law%20on%20Pharmacy.pdf (accessed December 1, 2018).

⁵⁸³ Article 7 of Law on Pharmacy No. 105/2016/QH13, “State policies on pharmacy: 3. Provide incentives for manufacture of drugs, medicinal ingredients, essential drugs, drugs for prevention and treatment of sexually transmitted diseases, vaccines, biologicals, herbal drugs, traditional drugs, rare drugs; provide incentives for scientific research into concoction technology and biotechnology for creation of new drugs.”, *available at* http://www.economica.vn/Content/files/LAW%20%26%20REG/105_2016_QH13%20Law%20on%20Pharmacy.pdf (accessed December 1, 2018).

⁵⁸⁴ Articles 69-73 of Law on Pharmacy No. 105/2016/QH13, *available at* http://www.economica.vn/Content/files/LAW%20%26%20REG/105_2016_QH13%20Law%20on%20Pharmacy.pdf (accessed December 1, 2018).

d) Protection and Promotion of Local Wisdom Regarding Biodiversity

The Law on Biodiversity recognizes the value of traditional knowledge of genetic resources, which is defined as knowledge, experience and initiatives of native people on the conservation and use of genetic resources.⁵⁸⁵ The State protects traditional knowledge copyrights on genetic resources, encourages and supports organizations and individuals to register traditional knowledge copyrights on genetic resources.⁵⁸⁶

⁵⁸⁵ Article 3 (28) of Law on Biodiversity No. 20/2008/QH12, “Traditional knowledge of genetic resources means knowledge, experience and initiatives of native people on the conservation and use of genetic resources.”, *available at* <http://vietnam-redd.org/Upload/CMS/Content/Library-GovernmentDocuments/20-2008-QH12.pdf> (accessed December 1, 2018).

⁵⁸⁶ Article 64 of Law on Biodiversity No. 20/2008/QH12, “Traditional knowledge copyrights on genetic resources:

1. The State protects traditional knowledge copyrights on genetic resources and encourages and supports organizations and individuals to register traditional knowledge copyrights on genetic resources.
2. The Ministry of Science and Technology shall assume the prime responsibility for, and coordinate with concerned ministries and ministerial-level agencies in, guiding procedures for registration of traditional knowledge copyrights on genetic resources.”, *available at* <http://vietnam-redd.org/Upload/CMS/Content/Library-GovernmentDocuments/20-2008-QH12.pdf> (accessed December 1, 2018).

Chapter 4: Summary of Laws Concerning Politics and National Security

4.1 Laws Concerning Administrative Procedures

Currently, administrative procedures in Vietnam are governed by Law on Administrative Procedures No. 93/2015/QH13. It regulates fundamental principles in administrative procedures; tasks, powers and responsibilities of procedure-conducting agencies and persons; rights and obligations of procedure participants and related agencies, organizations and individuals; order and procedures for instituting lawsuits, settling administrative cases, executing administrative judgments and settling complaints and denunciations in administrative procedures. Additionally, this law aims to safeguard justice, human rights, citizens' rights, the socialist regime, interests of the State, and lawful rights and interests of agencies, organizations and individuals; educates people in strictly abiding by law; and ensures the stability, continuity and effectiveness of the national administration.⁵⁸⁷

General Provision

Administrative decision means a document issued by a state administrative agency, another agency or organization assigned to perform the state administrative management or by a competent person in this agency or organization, on a specific matter in administrative management activities, and applicable once to one or a number of specific subjects. Similarly, administrative act means an act taken by a state administrative agency or a competent person in

⁵⁸⁷ Article 1 of Law on Administrative Procedures No. 93/2015/QH13, "Scope of regulation and tasks of the Law on Administrative Procedures: The Law on Administrative Procedures prescribes fundamental principles in administrative procedures; tasks, powers and responsibilities of procedure-conducting agencies and persons; rights and obligations of procedure participants and related agencies, organizations and individuals; order and procedures for instituting lawsuits, settling administrative cases, executing administrative judgments and settling complaints and denunciations in administrative procedures. The Law on Administrative Procedures contributes to safeguarding justice, human rights, citizens' rights, the socialist regime, interests of the State, and lawful rights and interests of agencies, organizations and individuals; educates people in strictly abiding by law; and ensures the stability, continuity and effectiveness of the national administration.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed April 19, 2019).

this agency or another agency or organization assigned to perform the state administrative management to or not to perform its/his/her tasks or official duties in accordance with law.⁵⁸⁸

Agencies, organizations and individuals have the right to institute administrative lawsuits to request the court to protect their lawful rights and interests.⁵⁸⁹

The Law on Administrative Procedures applies to all administrative procedural activities conducted in the territory, including the mainland, islands, maritime zones and air space, of the Socialist Republic of Vietnam and to administrative procedural activities conducted overseas by representative missions of the Socialist Republic of Vietnam.⁵⁹⁰

⁵⁸⁸ Article 3 of Law on Administrative Procedures No. 93/2015/QH13, “Interpretation of terms: In this Law: the terms below are construed as follows:

1. Administrative decision means a document issued by a state administrative agency, another agency or organization assigned to perform the state administrative management or by a competent person in this agency or organization, on a specific matter in administrative management activities, and applicable once to one or a number of specific subjects...

3. Administrative act means an act taken by a state administrative agency or a competent person in this agency or another agency or organization assigned to perform the state administrative management to or not to perform its/his/her tasks or official duties in accordance with law., *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed April 19, 2019).

⁵⁸⁹ Article 5 of Law on Administrative Procedures No. 93/2015/QH13, “Right to request the court to protect lawful rights and interests: Agencies, organizations and individuals have the right to institute administrative lawsuits to request the court to protect their lawful rights and interests in accordance with this Law.”, *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed April 19, 2019).

⁵⁹⁰ Article 2 of Law on Administrative Procedures No. 93/2015/QH13, “Subjects of application and effect of the Law on Administrative Procedures:

1. The Law on Administrative Procedures applies to all administrative procedural activities conducted in the territory, including the mainland, islands, maritime zones and air space, of the Socialist Republic of Vietnam.

2. The Law on Administrative Procedures applies to administrative procedural activities conducted overseas by representative missions of the Socialist Republic of Vietnam.

3. The Law on Administrative Procedures applies to the settlement of administrative cases involving foreign
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During the settlement of an administrative case, a court may examine the legality of administrative documents and acts related to those on which the lawsuit is instituted and recommend competent agencies, organizations and individuals to re-examine such administrative documents and acts and notify it of re-examination results. The court may recommend competent agencies and individuals to examine, amend, supplement or annul legal documents when detecting that such documents are contrary to the Constitution, laws or legal documents of superior state agencies.⁵⁹¹ Adversarial process is applied in the trial⁵⁹², however,

(continued from footnote 590)

elements. In case a treaty to which the Socialist Republic of Vietnam is a contracting party otherwise provides, such treaty will prevail.

4. Administrative cases involving foreign agencies, organizations and individuals and international organizations eligible for diplomatic or consular privileges and immunities in accordance with Vietnamese law or treaties to which the Socialist Republic of Vietnam is a contracting party shall be settled through diplomatic channels.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed April 19, 2019).

⁵⁹¹ Article 6 of Law on Administrative Procedures No. 93/2015/QH13, "Examination and handling of legal documents, administrative documents and acts related to administrative cases:

1. In the course of settlement of an administrative case, a court may examine the legality of administrative documents and acts related to those on which the lawsuit is instituted and recommend competent agencies, organizations and individuals to re-examine such administrative documents and acts and notify it of re-examination results in accordance with this Law and other relevant laws.

2. The court may recommend competent agencies and individuals to examine, amend, supplement or annul legal documents when detecting that such documents are contrary to the Constitution, laws or legal documents of superior state agencies in accordance with this Law and other relevant laws in order to ensure lawful rights and interests of agencies, organizations and individuals. Competent agencies and individuals shall notify the court of results of the handling of legal documents recommended to be handled in accordance with law for use as a basis for the court to settle cases.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed April 19, 2019).

⁵⁹² Article 18 of Law on Administrative Procedures No. 93/2015/QH13, "Assurance of adversarial process in trial:

1. The court shall guarantee the exercise by involved parties and defense counsels of lawful rights and interests of involved parties of the right to adversarial process in first-instance, appellate, cassation and reopening trial in accordance with this Law. *(continued on next page)*

the law also requires the court to assist involved parties in collecting documents and evidences and collect and verify evidences; request agencies, organizations and individuals to provide documents and evidences to it or involved parties.⁵⁹³

Jurisdiction of Courts

District -level courts and provincial-level courts have jurisdiction over lawsuits concerning administrative decisions or acts, except: (i) administrative decisions or acts pertaining to state secrets in the fields of national defense, security and foreign affairs in accordance with law; (ii) Court rulings or acts in the application of administrative handling measures or handling of acts obstructing procedural activities; (iii) Internal administrative decisions or acts of agencies and organizations. Lawsuits over disciplinary decisions on dismissal of civil servants holding the

(continued from footnote 592)

2. Involved parties and defense counsels of lawful rights and interests of involved parties may collect, submit and provide documents and evidences after the court accepts the administrative case and shall notify one another of submitted documents and evidences; may present their arguments, counter-arguments and viewpoints on the assessment of evidences and laws applied to defend their claims and lawful rights and interests or to reject claims of others in accordance with this Law.

3. In the course of trial, all documents and evidences shall be examined in an adequate, objective, comprehensive and public manner, except where such documents and evidences may not be publicized in accordance with this Law. The court shall administer the adversarial process, give questions about unclear matters and base itself on adversarial results to make judgments and rulings.", available at <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed April 19, 2019).

⁵⁹³ Article 9 of Law on Administrative Procedures No. 93/2015/QH13, "Provision of documents and evidences, burden of proof in administrative procedures:

1. Involved parties have the right and obligation to furnish the court with documents and evidences and prove that their claims are grounded and lawful. Individuals that institute lawsuits or claim the protection of lawful rights and interests of others have the right and obligation to collect and provide documents and evidences and prove their claims like involved parties.

2. The court shall assist involved parties in collecting documents and evidences and collect and verify evidences; request agencies, organizations and individuals to provide documents and evidences to it or involved parties in accordance with this Law.", available at <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed April 19, 2019).

position of general director of a general department or equivalent or lower position, over decisions on settlement of complaints about decisions on handling of competition cases and over voter lists are also under jurisdiction of courts under this law.⁵⁹⁴ In case the court, during the first instance procedures, finds that the submitted case is a civil case, not an administrative one, it shall settle the case in accordance with civil procedure law.⁵⁹⁵

Conduct of Procedure

Conductors of administrative procedure comprises of courts, procuracies, chief justices, judges, people's assessors, verifiers and clerks of courts, chief procurators, procurators and

⁵⁹⁴ Article 30 of Law on Administrative Procedures No. 93/2015/QH13, "Lawsuits under jurisdiction of courts:

1. Lawsuits over administrative decisions or acts, except: a/ Administrative decisions or acts pertaining to state secrets in the fields of national defense, security and foreign affairs in accordance with law; b/ Court rulings or acts in the application of administrative handling measures or handling of acts obstructing procedural activities; c/ Internal administrative decisions or acts of agencies and organizations.
2. Lawsuits over disciplinary decisions on dismissal of civil servants holding the position of general director of a general department or equivalent or lower position.
3. Lawsuits over decisions on settlement of complaints about decisions on handling of competition cases.
4. Lawsuits over voter lists., *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

⁵⁹⁵ Article 34 of Law on Administrative Procedures No. 93/2015/QH13, "Transfer of cases to other courts and settlement of disputes over jurisdiction:

1. In the course of settlement of an administrative case according to the first-instance procedures, if the court determines that such case is a civil case but not an administrative one and the settlement thereof falls under its jurisdiction, it shall settle such case according to general procedures prescribed by the civil procedure law, and concurrently notify such to the involved parties and the same-level procuracy.
2. Before deciding to bring a case to trial according to the first-instance procedures, if there is a ground to determine that the settlement of the case falls under the jurisdiction of another court, the judge assigned to settle the administrative case shall issue a decision to transfer the case file to a competent court and delete it from the case acceptance book and concurrently notify such to the involved parties and the same-level procuracy.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

examiners.⁵⁹⁶ On the other hand, participants in administrative procedure includes involved parties, representatives of involved parties, defense counsels of the lawful rights and interests of involved parties, witnesses, expert witnesses and interpreters.⁵⁹⁷ During the settlement of a case, involved parties or their representatives may request the court currently settling the case to apply one or several provisional urgent measures to provisionally deal with urgent requests of involved parties, protect evidences or preserve the current state so as to prevent irremediable damage or to assure the case settlement or judgment execution.⁵⁹⁸ Provisional urgent measures denotes suspension of execution of administrative decisions, disciplinary decisions on dismissal or

⁵⁹⁶ Article 36 of Law on Administrative Procedures No. 93/2015/QH13, “Procedure-conducting agencies and persons: 1. Administrative procedure-conducting agencies include: a/ Courts; b/ Procuracies. 2. Administrative procedure-conducting persons include: a/ Chief justices, judges, people’s assessors, verifiers and clerks of courts; b/ Chief procurators, procurators and examiners.”, *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

⁵⁹⁷ Article 53 of Law on Administrative Procedures No. 93/2015/QH13, “Procedure participants: Administrative procedure participants include involved parties, representatives of involved parties, defense counsels of the lawful rights and interests of involved parties, witnesses, expert witnesses and interpreters.”, *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

⁵⁹⁸ Article 66 of Law on Administrative Procedures No. 93/2015/QH13, “Right to request application of provisional urgent measures:

1. In the course of settlement of a case, involved parties or their representatives may request the court currently settling the case to apply one or several provisional urgent measures specified in Article 68 of this Law to provisionally deal with urgent requests of involved parties, protect evidences or preserve the current state so as to prevent irremediable damage or to assure the case settlement or judgment execution.

consequences, agencies, organizations or individuals may file applications to request competent courts to issue decisions on application of provisional urgent measures specified in Article 68 of this Law simultaneously with the filing of lawsuit petitions with such courts.

3. Requesters for application of provisional urgent measures are not required to pay a security.”, *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

decisions on handling of competition cases; suspension of performance of administrative acts; and ban on or compulsion of performance of certain acts.⁵⁹⁹

Evidences in an administrative case include factual things which are handed or produced to the court by involved parties or other agencies, organizations or individuals in the process of conducting procedures or collected by the court. They will be used by the court as grounds for determining whether factual circumstances of the case as well as claims or objections of involved parties are grounded and lawful.⁶⁰⁰ Evidences must be objectively, comprehensively, adequately and accurate. The court shall assess evidences one by one, the link between evidences and confirm the legality, relevance and proving value of every evidences.⁶⁰¹ Every evidence shall be publicly and equally disclosed and used, except the evidences pertaining state secrets, national fine customs and traditions, professional secrets, business secrets and privacy secrets.⁶⁰²

⁵⁹⁹ Article 68 of Law on Administrative Procedures No. 93/2015/QH13: "Provisional urgent measures: 1. Suspension of execution of administrative decisions, disciplinary decisions on dismissal or decisions on handling of competition cases. 2. Suspension of performance of administrative acts. 3. Ban on or compulsion of performance of certain acts.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

⁶⁰⁰ Article 80 of Law on Administrative Procedures No. 93/2015/QH13: Evidences: Evidences in an administrative case include factual things which are handed or produced to the court by involved parties or other agencies, organizations or individuals in the process of conducting procedures or collected by the court according to the order and procedures prescribed in this Law and used by the court as grounds for determining whether factual circumstances of the case as well as claims or objections of involved parties are grounded and lawful.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

⁶⁰¹ Article 95 of Law on Administrative Procedures No. 93/2015/QH13, "Assessment of evidences: 1. The assessment of evidences must be objective, comprehensive, adequate and accurate. 2. The court shall assess evidences one by one, the link between evidences and confirm the legality, relevance and proving value of every evidences.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

⁶⁰² Article 96 of Law on Administrative Procedures No. 93/2015/QH13, "Disclosure and use of evidences: 1. Every evidence shall be publicly and equally disclosed and used, except the case specified in Clause 2 of this Article.

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Conditions for Acceptance of Lawsuits

Agencies, organizations or individuals may institute lawsuits over administrative decisions or acts or disciplinary decisions on dismissal in case they disagree with these decisions or acts or they have filed complaints with persons competent to settle complaints but their complaints remain unsettled upon the expiration of the law-prescribed time limit for complaint settlement or they disagree with the settlement of their complaints about these decisions or acts.⁶⁰³

Statute of Limitations

The statute of limitations for lawsuit institution means a time limit within which agencies, organizations or individuals may institute lawsuits to request courts settling administrative cases in order to protect their infringed lawful rights and interests. Upon the expiration of that time limit, they no longer have the right to institute lawsuits.

The statute of limitations for lawsuit institution in each case is in the following:

- 1) one year from the date of receipt of or knowledge about an administrative decision or act or a disciplinary decision on dismissal;
- 2) thirty days from the date of receipt of a decision on settlement of a complaint about a decision on handling of a competition case;

(continued from footnote 602)

2. The court shall not publicly disclose evidences pertaining state secrets, national fine customs and traditions, professional secrets, business secrets and privacy secrets at the legitimate request of involved parties but shall notify involved parties of evidences which may not be disclosed.

3. Procedure-conducting persons and procedure participants shall keep evidences confidential in the case specified in Clause 2 of this Article in accordance with law.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

⁶⁰³ Article 115 of Law on Administrative Procedures No. 93/2015/QH13, "1. Agencies, organizations or individuals may institute lawsuits over administrative decisions or acts or disciplinary decisions on dismissal in case they disagree with these decisions or acts or they have filed complaints with persons competent to settle complaints but their complaints remain unsettled upon the expiration of the law-prescribed time limit for complaint settlement or they disagree with the settlement of their complaints about these decisions or acts.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

3) the period from the date of receipt of a notice of results of complaint settlement by the voter list-making agency or the date of expiration of the time limit for complaint settlement, in case no notice of results of complaint settlement by the voter list-making agency is received, to the date five days prior to the election date.⁶⁰⁴

Right to Appeal

Appellate trial means the retrial by an appellate court of a case with the first-instance court's judgment or ruling having not yet taken legal effect and being appealed or protested against. Involved parties or their lawful representatives have the right to appeal against judgments or decisions of the first-instance court to suspend or terminate the settlement of cases in order to request the appellate court to conduct retrial according to appellate procedures.⁶⁰⁵

⁶⁰⁴ Article 116 of Law on Administrative Procedures No. 93/2015/QH13, "Statute of limitations for lawsuit institution: 1. The statute of limitations for lawsuit institution means a time limit within which agencies, organizations or individuals may institute lawsuits to request courts settling administrative cases in order to protect their infringed lawful rights and interests. Upon the expiration of that time limit, they no longer have the right to institute lawsuits. 2. The statute of limitations for lawsuit institution in each case is:
a/ One year from the date of receipt of or knowledge about an administrative decision or act or a disciplinary decision on dismissal;
b/ Thirty days from the date of receipt of a decision on settlement of a complaint about a decision on handling of a competition case;
c/ The period from the date of receipt of a notice of results of complaint settlement by the voter list-making agency or the date of expiration of the time limit for complaint settlement, in case no notice of results of complaint settlement by the voter list-making agency is received, to the date five days prior to the election date., *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

⁶⁰⁵ Article 203 of Law on Administrative Procedures No. 93/2015/QH13, "Nature of appellate trial: Appellate trial means the retrial by an appellate court of a case with the first-instance court's judgment or ruling having not yet taken legal effect and being appealed or protested against." Article 204 of Law on Administrative Procedures No. 93/2015/QH13, "Persons having the right to appeal: Involved parties or their lawful representatives have the right to appeal against judgments or decisions of the first-instance court to suspend or terminate the settlement of cases in order to request the appellate court to conduct retrial according to appellate procedures.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

Administrative Cases Involving Foreign Elements

Administrative case involving foreign elements means an administrative case that contains any of the following features: 1) an involved party is a foreigner, foreign agency or organization, branch or representative office of a foreign agency or organization, or an international organization or its representative agency in Vietnam; 2) an involved party is an overseas Vietnamese citizen; 3) The administrative legal relationship is established, changed or terminated overseas; 4) the case involves overseas assets.⁶⁰⁶

Foreigners, foreign agencies and organizations, branches or representative offices of foreign agencies and organizations, and international organizations or their representative agencies in Vietnam may institute lawsuits at Vietnamese courts to request review of administrative decisions or administrative acts when having grounds to believe that such decisions or acts are illegal and infringe upon their lawful rights and interests. They have procedural rights and obligations like Vietnamese citizens, agencies and organizations. The principle of reciprocity may be applied to restrict relevant administrative procedural rights of foreigners, foreign agencies and organizations, branches or representative offices of foreign agencies and organizations, and international organizations or their representative agencies in Vietnam which the courts of their countries have restricted toward Vietnamese citizens, agencies

⁶⁰⁶ Article 298 of Law on Administrative Procedures No. 93/2015/QH13, “Principles of application:

1. This Chapter prescribes procedures for settlement of administrative cases involving foreign elements. If this Chapter does not prescribe such procedures, other relevant provisions of this Law shall be applied to settle such cases. 2. Administrative case involving foreign elements means an administrative case falling in any of the following cases: a/ An involved party is a foreigner, foreign agency or organization, branch or representative office of a foreign agency or organization, or an international organization or its representative agency in Vietnam; b/ An involved party is an overseas Vietnamese citizen; c/ The administrative legal relationship is established, changed or terminated overseas; d/ The case involves overseas assets.”, *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

and organizations, and branches and representative offices of overseas Vietnamese agencies and organizations.⁶⁰⁷

4.2 Laws Concerning Information of the Government

4.2.1 Disclosure of Information

In 2016, the National Assembly promulgated Law No. 104/2016/QH13 or Law on Access to Information which specifies the exercise of citizens' right of access to information, principles, order and procedures for the exercise of the right of access to information, and responsibilities and obligations of state agencies to ensure citizens' right of access to information.⁶⁰⁸ According to this law, "Information" means information or data contained in available documents, dossiers

⁶⁰⁷ Article 299 of Law on Administrative Procedures No. 93/2015/QH13: "Procedural rights and obligations of foreign agencies, organizations and individuals, branches or representative offices of foreign agencies and organizations, and international organizations or their representative agencies in Vietnam:

1. Foreigners, foreign agencies and organizations, branches or representative offices of foreign agencies and organizations, and international organizations or their representative agencies in Vietnam may institute lawsuits at Vietnamese courts to request review of administrative decisions or administrative acts when having grounds to believe that such decisions or acts are illegal and infringe upon their lawful rights and interests.

2. When participating in administrative procedures, foreign agencies, organizations and individuals, branches or representative offices of foreign agencies and organizations, and international organizations or their representative agencies in Vietnam have procedural rights and obligations like Vietnamese citizens, agencies and organizations. 3. The Vietnamese State may apply the principle of reciprocity to restrict relevant administrative procedural rights of foreigners, foreign agencies and organizations, branches or representative offices of foreign agencies and organizations, and international organizations or their representative agencies in Vietnam which the courts of their countries have restricted toward Vietnamese citizens, agencies and organizations, and branches and representative offices of overseas Vietnamese agencies and organizations.", *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn082en.pdf> (accessed June 23, 2019).

⁶⁰⁸ Article 1 of Law on Access to Information No. 104/2016/QH13, "Scope of regulation: This Law prescribes the exercise of citizens' right of access to information, principles, order and procedures for the exercise of the right of access to information, and responsibilities and obligations of state agencies to guarantee citizens' right of access to information.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11040> (accessed June 23, 2019).

or materials in the form of handwritten, printed or electronic copy, picture, photo, drawing, tape, or disc, or video or audio recording or another form created by a state agency. Information created by a state agency means information or data created by a state agency during the course of performing its functions and tasks and exercising its powers as prescribed by law, which is signed and affixed with a seal, or certified in writing by a competent person of such state agency.⁶⁰⁹

Ensuring the Right of Access to Information

The law ensure that all citizens are equal in exercising their right of access to information. Provided information must be accurate and complete. Provision of information must be timely, transparent and convenient for citizens and follow the order and procedures prescribed by law. Restriction on the right of access to information is possible but only when it is allowed by a law and necessary to ensure national defense and security, social order and safety, social morality or community well-being. The exercise of the right of access to information by a citizen must not infringe upon interests of the country or people, or upon lawful rights and interests of agencies, organizations or other persons. More importantly, the State shall create favorable conditions for persons with disabilities and inhabitants of border, island and mountainous areas and areas with extremely difficult socio-economic conditions to exercise their right of access to

⁶⁰⁹ Article 2 of Law on Access to Information No. 104/2016/QH13, “Interpretation of terms: In this Law, the terms below are construed as follows: 1. *Information* means information or data contained in available documents, dossiers or materials in the form of handwritten, printed or electronic copy, picture, photo, drawing, tape, or disc, or video or audio recording or another form created by a state agency. 2. *Information created by a state agency* means information or data created by a state agency during the course of performing its functions and tasks and exercising its powers as prescribed by law, which is signed and affixed with a seal, or certified in writing by a competent person of such state agency.”, available at <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11040> (accessed June 23, 2019).

information.⁶¹⁰ Foreigners residing in Vietnam also have the right to request the provision of information directly concerning their rights and obligations.⁶¹¹

However, there are some specific information that the law defines as inaccessible, which include state secrets, including information with important contents relating to politics, national defense and security, foreign relations, economy, science and technology and other fields as prescribed by a law. In addition, information the access to which could harm the interests of the State or adversely affect national defense and security, international relations, social order and safety, social morality or community well-being; or could harm the life, living or property of other persons; information classified as work secrets; information on internal meetings of state agencies; and documents drafted by state agencies for their internal affairs are also prescribed inaccessible.⁶¹²

⁶¹⁰ Article 3 of Law on Access to Information No. 104/2016/QH13, “Principles of guaranteeing the right of access to information:

1. All citizens are equal and not discriminated in exercising their right of access to information.
2. Provided information must be accurate and complete.
3. Provision of information must be timely, transparent and convenient for citizens and follow the order and procedures prescribed by law.
4. Any restriction on the right of access to information shall be prescribed by a law when it is necessary to ensure national defense and security, social order and safety, social morality or community well-being.
5. The exercise of the right of access to information by a citizen must not infringe upon interests of the country or people, or upon lawful rights and interests of agencies, organizations or other persons.
6. The State shall create favorable conditions for persons with disabilities and inhabitants of border, island and mountainous areas and areas with extremely difficult socio-economic conditions to exercise their right of access to information.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11040> (accessed June 23, 2019).

⁶¹¹ Article 36 of Law on Access to Information No. 104/2016/QH13, “Provisions on application: 1. Foreigners residing in Vietnam have the right to request the provision of information directly concerning their rights and obligations.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11040> (accessed June 23, 2019).

⁶¹² Article 6 of Law on Access to Information No. 104/2016/QH13, “Information that is inaccessible to
(continued on next page)

4.2.2 Maintaining Confidentiality of the Government

The Ordinance on State Secrets Protection dated December 28, 2000 (hereinafter referred to as “Ordinance on State Secrets Protection (2000)”) was promulgated in 2000 and became effective on April 1, 2001.⁶¹³ The Ordinance on State Secrets Protection(2000) was implemented by Decree Detailing the Implementation of the Ordinance on the Protection of State Secrets No. 33/2002/ND-CP dated March 28, 2002 of the Government which governs the confidentiality of the Government.⁶¹⁴

State secrets are defined as information on cases, affairs, documents, objects, venues, time, speech, carrying important contents in the fields of politics, national defense, security, external affairs, economy, science, technology and other fields, which the State does not publicize

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citizens: 1. Information classified as state secrets, including information with important contents relating to politics, national defense and security, foreign relations, economy, science and technology and other fields as prescribed by a law. Citizens may access in accordance with this Law information classified as state secrets which have been declassified. 2. Information the access to which could harm the interests of the State or adversely affect national defense and security, international relations, social order and safety, social morality or community well-being; or could harm the life, living or property of other persons; information classified as work secrets; information on internal meetings of state agencies; and documents drafted by state agencies for their internal affairs., *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11040> (accessed June 23, 2019).

⁶¹³ This Ordinance will be replaced by Law on Protection of State Secrets No. 29/2018/QH14, which will be effective on July1, 2020 (no English available). See The Voice of Vietnam, President’s order to enact nine laws announced, *available at* <https://vovworld.vn/en-US/news/presidents-order-to-enact-nine-laws-announced-707024.vov>., Vietnam News, President’s order on nine new laws announced, *available at* <http://vietnamnews.vn/politics-laws/481840/presidents-order-on-nine-new-laws-announced.html#pFePyYQDGQpZiljt.99>. and Thomson Reuters, Data Protection in Vietnam: Overview, p. 2, *available at* <https://www.amchamvietnam.com/wp-content/uploads/2019/05/Data-Protection-in-Vietnam-Overview-April-2019.pdf>. (accessed June 23, 2019).

⁶¹⁴ Decree Detailing the Implementation of the Ordinance on the Protection of State Secrets No. 33/2002/ND-CP (in Vietnamese), *available at* <https://vanbanphapluat.co/decreed-of-government-no-33-2002-nd-cp-of-march-28-2002-detailing-the-implementation-of-the-ordinance-on-the-protection-of-state-secrets> (accessed April 1, 2019).

or has not yet publicized and the disclosure of which will cause harm to the State of the Socialist Republic of Vietnam.⁶¹⁵ All acts of gathering, disclosing, losing, appropriating, buying and selling, and illegally destroying State secrets, and the abuse of State secret protection to conceal acts of law breaking, infringing upon the legitimate rights and interests of agencies, organizations and citizens, or obstructing the implementation of State plans are strictly forbidden.⁶¹⁶

Depending on the importance of the information and the extent of harm caused if disclosed, State secrets are classified into three categories: absolute secret, top secret and secret.

The State secrets in the following fields are classified as “absolute secret”: (1) national security strategies; national defense plans; plans on mobilization to cope with wars; weapons and means of decisive significance for the national defense capability; (2) domestic and foreign policies of the Communist Party of Vietnam and the State of the Socialist Republic of Vietnam, which are not or have not yet been publicized; information transferred by foreign countries or international organizations to Vietnam, which are determined by the Government as being absolute secret; (3) intelligence and counter-intelligence organization and activities prescribed by the Government; (4) the national cipher; (5) the national strategic reserves; data on State budget estimates and settlement regarding domains not yet publicized; plans on money

⁶¹⁵ Article 1 of the Ordinance on State Secrets Protection (2000), “The State secrets mean information on cases, affairs, documents, objects, venues, time, speech, carrying important contents in the fields of politics, national defense, security, external affairs, economy, science, technology and other fields, which the State does not publicize or has not yet publicized and the disclosure of which will cause harm to the State of the Socialist Republic of Vietnam.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

⁶¹⁶ Article 3 of the Ordinance on State Secrets Protection (2000), “All acts of gathering, disclosing, losing, appropriating, buying and selling, and illegally destroying State secrets, and the abuse of State secret protection to conceal acts of law breaking, infringing upon the legitimate rights and interests of agencies, organizations and citizens, or obstructing the implementation of State plans are strictly forbidden. The access to, preservation, supply and treatment of State secrets must comply with the Government’s regulations.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

issuance, safety lock of each money sample and papers with monetary value; unpublicized schemes or plans for money recovery and change; (6) restricted areas, places; other information and documents which are determined by the Government as absolute secret.⁶¹⁷

The State secrets in the following scope are classified as “top secret”: (1) high-level talks and contacts between Vietnam and foreign countries or international organizations in the political, defense, security, external, economic, scientific, technological and other domains, which have not yet been publicized; information transferred by foreign countries or international organizations to Vietnam, which are determined by the Government as top secret; (2) operation, organization, equipment and combat plans of people’s armed force units; plans for production, transport and storage of weapons; important works on border, air space, sea and island defense; (3) military maps; the locations and height value of major checkpoints of the meteorological, hydrographic and marine-gauging stations; the data on the height and absolute zero of marine-gauging checkpoints; (4) the volume of money printed and issued; reserve money in Vietnam Dong and foreign currencies; data on cash overspending and inflation, not yet publicized; plans on prices

⁶¹⁷ Article 5 of the Ordinance on State Secrets Protection (2000), “The State secrets in the following fields are classified as absolute secret:

1. The national security strategies; the national defense plans; the plans on mobilization to cope with wars; weapons and means of decisive significance for the national defense capability;
2. The domestic and foreign lines and policies of the Communist Party of Vietnam and the State of the Socialist Republic of Vietnam, which are not or have not yet been publicized.

Information transferred by foreign countries or international organizations to Vietnam, which are determined by the Government as being absolute secret;

3. Intelligence and counter-intelligence organization and activities prescribed by the Government;
4. The national cipher;
5. The national strategic reserves; data on State budget estimates and settlement regarding domains not yet publicized; plans on money issuance, safety lock of each money sample and papers with monetary value; unpublicized schemes or plans for money recovery and change;
6. Restricted areas, places; other information and documents which are determined by the Government as absolute secret.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

of strategic commodities under the State management, which have not yet been publicized; (5) depositories and volumes of precious and rare metals, gems, foreign exchanges and other precious and rare objects of the State; (6) scientific works, inventions, patents, utility solutions, know-hows of special importance for national defense, security, economy, sciences, technologies, which have not yet been publicized by the State; (7) plans for export, import of special commodities which plays an important role in the national development and defense, which are not or have not yet been publicized.⁶¹⁸

⁶¹⁸ Article 6 of the Ordinance on State Secrets Protection (2000) “The State secrets in the following scope are classified top secret:

1. High-level talks and contacts between our country and foreign countries or international organizations in the political, defense, security, external, economic, scientific, technological and other domains, which have not yet been publicized.

Information transferred by foreign countries or international organizations to Vietnam, which are determined by the Government as top secret;

2. Operation organization, equipment and combat plans of people’s armed force units, except the organization and operation prescribed in Clause 3, Article 5 of this Ordinance; plans for production, transport and storage of weapons; important works on border, air space, sea and island defense;

3. Military maps; State coordinates of grade I, grade II of the comprehensive national network enclosed with the point notes.

The locations and height value of major checkpoints of the meteorological, hydrographic and marine-gauging stations; the data on the height and absolute zero of marine-gauging checkpoints;

4. The volume of money printed, issued; reserve money in Vietnam Dong and foreign currencies; data on cash overspending and inflation, not yet publicized; plans on prices of strategic commodities under the State management, which have not yet been publicized;

5. Depositories and volumes of precious and rare metals, gems, foreign exchanges and other precious and rare objects of the State;

6. Scientific works, inventions, patents, utility solutions, professional knowhows of special importance for national defense, security, economy, sciences, technologies, which have not yet been publicized by the State;

7. Plans for export, import of special commodities which occupy important position in the national development and defense, which are not or have not yet been publicized;

8. Other information and documents, which are determined as top secret by the Government.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

The State secrets other than those above are classified as “secret”. The Ministry of Public Security is in charge of state management over State secrets protection. The Chief Justice of the Supreme People’s Court, the Head of the Supreme People’s Procuracy, ministers, heads of ministerial-level agencies, heads of political organizations, socio-political organizations or social organizations at the central level are responsible for devising lists of State secrets of their respective agencies or organizations. Chairpersons of the People’s Committees at the provincial level are responsible for devising lists of State secrets of their respective localities.⁶¹⁹ The Prime Minister has the authority to decide on the lists of State secrets categorized as “absolutely secrets” and “top secrets” of the central and local agencies and organizations. The Minister of Public Security has the authority to decide on the lists of State secrets categorized as “secrets”.⁶²⁰

⁶¹⁹ Article 1 of Decree Detailing the Implementation of the Ordinance on the Protection of State Secrets No. 33/2002/ND-CP, “Persons responsible for elaborating lists of State secrets: The Chief Judge of the Supreme People’s Court, the Chairman of the Supreme People’s Procuracy, the ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government; the heads of the political organizations, socio-political organizations or social organizations at the central level shall have to make lists of State secrets of their respective agencies or organizations. The presidents of the People’s Committees of the provinces or centrally-run cities shall have to make lists of State secrets of their respective localities on the basis of proposals of their departments, sections and immediate subordinate People’s Committees. The Supreme People’s Court, the Supreme People’s Procuracy, the ministries, the ministerial-level agencies, the agencies attached to the Government, the political organizations, the socio-political organizations, the social organizations and the People’s Committees of the provinces and centrally-run cities are hereinafter referred collectively to as the central and local agencies and organizations.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

⁶²⁰ Article 4 of Decree Detailing the Implementation of the Ordinance on the Protection of State Secrets No. 33/2002/ND-CP, “Appraisal of and decision on lists of State secrets:

1. The Prime Minister shall decide on the lists of State secrets categorized as Strictly Confidential or Top Secret of the central and local agencies and organizations.

2. The Minister of Public Security shall decide on the lists of State secrets categorized as Confidential after reaching agreements with the heads of the central and local agencies and organizations; and appraise lists of State secrets of the Strictly Confidential or Top Secret degree of the central and local agencies and organizations for

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The Ordinance on State Secrets Protection and the implementing decree specify different measures to protect state secrets. For example, the contents of State secrets, if transmitted by telecommunications means and computers, must be coded according to the law on cipher.⁶²¹ Scientific projects, inventions, patents and utility solutions of agencies, organizations or citizens, which are related to contents of the State secrets, must be registered at the competent State bodies in charge of science and technology.⁶²² Vietnamese agencies, organizations and citizens, when having contacts with foreign organizations and/or individuals, must abide by law on State secret protection; when carrying out programs on international cooperation related to State secrets, they must obtain consent of the competent State bodies in charge of State secrets protection.⁶²³ When undertaking international cooperation programs or performing public

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further submission thereof to the Prime Minister for decision.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

⁶²¹ Article 16 of Decree Detailing the Implementation of the Ordinance on the Protection of State Secrets No. 33/2002/ND-CP, “Protection of State secrets when being transmitted by communications means contents of State secrets, when being transmitted by telecommunications and computer means, must be encrypted according to the provisions of the legislation on cipher.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

⁶²² Article 12 of Decree Detailing the Implementation of the Ordinance on the Protection of State Secrets No. 33/2002/ND-CP, “Registration of inventions, innovations and utility solutions with contents classified as State secrets:

1. Agencies, organizations and individuals that have inventions, innovations and/or utility solutions with contents classified as State secrets shall have to register them at the agency in charge of the State management over science and technology. The registration of inventions, innovations and utility solutions with contents classified as State secrets of the Ministry of Defense, the Ministry of Public Security and the Government Cipher Commission shall be governed by separate regulations.

2. The State science and technology management agency shall have to keep and preserve such inventions, innovations and utility solutions according to current provisions of the legislation on protection of State secrets.”, *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

⁶²³ Article 17 of Decree Detailing the Implementation of the Ordinance on the Protection of State Secrets
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missions, if they are requested to supply news classified as State secrets to foreign organizations and individuals, they must comply with the following principles: (1) protecting the national interests; (2) supplying only news already approved by the competent authorities (State secrets of the Absolute Secret degree must be approved by the Prime Minister; State secrets of the Top Secret degree must be approved by the Minister of Public Security or the Minister of Defense; State secrets of the Secret degree must be approved by the heads or their authorized persons of the central and local agencies and organizations); (3) requesting the news receivers to use such news for right purposes as agreed and not to disclose them to the third party.⁶²⁴

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No. 33/2002/ND-CP, "Protection of State secrets in publishing, press or other mass media activities:

1. Agencies, organizations and individuals must not supply news classified as State secrets to the press agencies.
2. The heads of the publishing and press agencies and journalists shall have to abide by the regulations on protection of State secrets according to the Press Law and legal documents on protection of State secrets.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

⁶²⁴ Article 19 of Decree Detailing the Implementation of the Ordinance on the Protection of State Secrets No. 33/2002/ND-CP, "Protection of State secrets in contacts with foreign organizations and individuals:

1. Vietnamese agencies, organizations and citizens, in their contacts with foreign organizations and individuals, must not disclose State secrets.
2. When undertaking international cooperation programs or performing public missions, if they are requested to supply news classified as State secrets to foreign organizations and individuals, they must comply with the following principles:

a/ Protecting the national interests.

b/ Supplying only news already approved by the competent authorities according to the following regulations:

- + State secrets of the Strictly Confidential shall be approved by the Prime Minister;
- + State secrets of the Top Secret degree shall be approved by the Minister of Public Security. Particularly, those in national defense shall be approved by the Minister of Defense;
- + State secrets of the Confidential shall be approved by the heads or their authorized persons of the central and local agencies and organizations.

c/ Requesting the news receivers to use such news for right purposes as agreed and not to disclose them to the third party.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

Vietnamese citizens who wish to carry abroad documents and/or objects bearing State secrets in service of their work or scientific research, must ask for permission of the heads of the central and local agencies or organizations or their authorized persons.⁶²⁵

Restricted zones and places, places where State secrets are kept, and places where activities with contents classified as State secrets are carried out (including places for printing, duplication or photocopying; places for meeting and briefing on State secrets; stores for keeping encrypted products, places for decoding, communicating and receiving secret information; places for conducting scientific research and experiments with contents classified as State secrets) must be safeguarded under internal security regulations. Unauthorized persons must not gain access to these places. Officials who come to work must produce letters of introduction together with their people's identity cards, and will be received and arranged to work in exclusive rooms.

4.3 Laws Concerning Liability of Government Personnel for Tortious Act

The Law on State Compensation Liability (2017) provides for the State's liability to pay compensation to individuals and organizations suffering from damage caused by government personnel in administrative management, legal proceedings and judgment enforcement activities.⁶²⁶

⁶²⁵ Article 20 of Decree Detailing the Implementation of the Ordinance on the Protection of State Secrets No. 33/2002/ND-CP "Carrying abroad documents and/or objects bearing State secrets: Vietnamese citizens, who wish to carry abroad documents and/or objects bearing State secrets in service of their work or scientific research, must ask for permission of the heads of the central and local agencies or organizations or their authorized persons. While staying abroad, they must apply measures to manage and keep secret such documents and/or objects. The supply thereof to foreign organizations and individuals must comply with the provisions in Article 19 of this Decree.", *available at* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=16> (accessed April 1, 2019).

⁶²⁶ Article 1 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, "Scope of regulation: This Law prescribes the State's liability to pay compensation to individuals and organizations suffering from
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4.3.1 State's Compensation Liability

Damage sufferers; heirs of damage sufferers that are deceased; organizations taking over rights and obligations of damage-suffering organizations that no longer exist and at-law representatives of damage sufferers that are required by the Civil Code and authorized individuals or legal entities have the right to claim compensation.⁶²⁷ The statute of limitations for claiming compensation is 3 years from the date a person having the right to claim receives a document for use as a basis for claiming compensation.⁶²⁸

The State shall pay compensation when all of the following grounds are available: (1) one of the grounds for determining that an illegal act of an official duty performer causes damage and making a corresponding compensation claim as specified in Clause 2 of Article 7; (2) an actual damage caused to a damage sufferer within the scope of state compensation liability prescribed

(continued from footnote 626)

damage caused by official duty performers in administrative management, legal proceedings and judgment execution activities; compensable damage; rights and obligations of individuals and organizations suffering from damage; compensation-settling agencies; procedures for settlement of compensation claims; restoration of honor; compensation funds; reimbursement liability; and responsibilities of state agencies in state compensation work., *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶²⁷ Article 5 of Law on State Compensation Liability (2017) No. 10/2017/QH14, "The right to claim compensation: The following persons have the right to claim state compensation: 1. Damage sufferers; 2. Heirs of damage sufferers that are deceased; organizations taking over rights and obligations of damage-suffering organizations that no longer exist; 3. At-law representatives of damage sufferers that are required by the Civil Code to have at-law representatives; 4. Individuals or legal entities authorized by persons specified in Clauses 1, 2 and 3 of this Article to exercise the right to claim compensation.", *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶²⁸ Article 6 of Law on State Compensation Liability (2017) No. 10/2017/QH14, "Statute of limitations for claiming compensation: 1. The statute of limitations for claiming compensation is 3 years from the date a person having the right to claim compensation specified in Clause 1, 2 or 3, Article 5 of this Law receives a document for use as a basis for claiming compensation...", *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

in this Law and (3) a cause-and-effect relationship between the actual damage and damage-causing act.⁶²⁹

The compensation settlement must be carried out in a timely, public, equal, goodwill, honest and lawful manner and based on negotiations between the compensation-settling agency and compensation claimant in accordance with this Law.⁶³⁰

⁶²⁹ Article 7 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Grounds for determination of state compensation liability:

1. The State shall pay compensation when all of the following grounds are available:

a/ One of the grounds for determining that an illegal act of an official duty performer causes damage and making a corresponding compensation claim as specified in Clause 2 of this Article;

b/ An actual damage caused to a damage sufferer within the scope of state compensation liability prescribed in this Law;

c/ A cause-and-effect relationship between the actual damage and damage-causing act.

2. Grounds for determining that an illegal act of an official duty performer causes damage and making a corresponding compensation claim include:

a/ A document to be used as a basis for claiming compensation as prescribed in this Law and a request for the agency directly managing the damage-causing official duty performer or the court with jurisdiction to settle civil cases to settle the compensation claim;

b/ The court with jurisdiction to settle administrative cases has determined that an illegal act of a sued official duty performer has caused a damage within the scope of state compensation liability and a compensation claim is made before or at the meeting to check the delivery of, access to, and public display of, evidence and have dialogues;

c/ The court with jurisdiction to settle criminal cases has determined that an illegal act of the defendant being an official duty performer has caused a damage within the scope of state compensation liability in the administrative management, civil proceedings, administrative proceedings, execution of criminal judgments or civil judgments, and a compensation claim is made in the course of settlement of a criminal case.”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶³⁰ Article 4 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Principles of payment of state compensation: 2. The settlement of a compensation claim shall be carried out in a timely, public, equal, goodwill, honest and lawful manner and based on negotiations between the compensation-settling agency and compensation claimant in accordance with this Law.”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

The State is liable to compensate for damage caused by government personnel in the following cases:⁶³¹ (1) illegal issuance of decisions on sanctioning of administrative violations;

⁶³¹ Article 17 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, "Scope of state compensation liability in administrative management activities: The State is liable to compensate for damage in the following cases:

1. Illegal issuance of decisions on sanctioning of administrative violations;
2. Illegal application of deterrent measures and security for the handling of administrative violations;
3. Illegal application of one of the following measures to remedy consequences of administrative violations:
 - a/ Compelling the dismantlement of construction works or parts of construction works built without or at variance with construction permits;
 - b/ Compelling the removal of infringing elements on goods, goods packages, business means or objects;
 - c/ Compelling the recall of products or goods of inferior quality;
4. Illegal application of coercive measures to enforce decisions on sanctioning of administrative violations;
5. Illegal application of one of the following administrative handling measures:
 - a/ Education of persons in communes, wards or townships;
 - b/ Consignment of persons to reformatories;
 - c/ Consignment of persons to compulsory education establishments;
 - d/ Consignment of persons to compulsory detoxification establishments;
6. Failure to apply or application in contravention of the Law on Denunciations of the following measures to protect denouncers at their request:
 - a/ Staying, suspending or cancelling part or the whole of disciplining decisions or other decisions infringing upon lawful rights and interests of denouncers; restoring working positions, jobs, incomes and other lawful benefits from work for denouncers at their workplaces;
 - b/ Staying, suspending or cancelling part or the whole of administrative decisions or acts infringing upon lawful rights and interests of denouncers; restoring lawful rights and interests of denouncers which have been infringed upon at their places of residence;
 - c/ Applying measures to deter and handle acts infringing upon or threatening to infringe upon the life, health, property, honor, dignity or prestige of denouncers in accordance with law;
7. Taking of the prohibited acts of intentionally providing untruthful information without any correction and failing to provide information as specified in the Law on Access to Information;
8. Illegal grant or revocation of, or refusal to grant, enterprise registration certificates, business household registration certificates, investment registration certificates, licenses and papers which are valid like licenses granted by competent state agencies;

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(2) illegal application of deterrent measures and security for the handling of administrative violations; (3) illegal application of the measures to remedy consequences of administrative violations; (4) illegal application of coercive measures to enforce decisions on sanctioning of administrative violations; (5) illegal application of the administrative handling measures specified by law; (6) failure to apply or application in contravention of the Law on Denunciations of the measures to protect denouncers at their request; (7) taking of the prohibited acts of intentionally providing untruthful information without any correction and failing to provide information as specified in the Law on Access to Information; (8) Illegal grant or revocation of, or refusal to grant, enterprise registration certificates, business household registration certificates, investment registration certificates, licenses and papers which are valid like licenses granted by competent state agencies; (9) illegal imposition of taxes, charges or fees; illegal collection of taxes, charges or fees; illegal collection of tax arrears or refunding taxes; illegal collection of land use levy; (10) illegal application of the customs procedures; (11) illegal allocation, lease or recovery of land, permission for land use purpose change; illegal compensation for, and support of, ground clearance and resettlement; illegal grant or revocation of certificates of land use rights and

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9. Illegal imposition of taxes, charges or fees; illegal collection of taxes, charges or fees; illegal collection of tax arrears or refunding taxes; illegal collection of land use levy;

10. Illegal application of the customs procedures;

11. Illegal allocation, lease or recovery of land, permission for land use purpose change; illegal compensation for, and support of, ground clearance and resettlement; illegal grant or revocation of certificates of land use rights and ownership of houses and other land-attached assets;

12. Illegal issuance of decisions on settlement of competition-related matters or cases;

13. Grant of protection titles in case of having a legal ground to believe that applicants have no right to file applications or legal grounds to believe that subject matters do not satisfy the protection conditions; refusal to grant protection titles for the reason that subject matters do not satisfy the protection conditions without any legal grounds; invalidation of protection titles without any legal grounds;

14. Illegal issuance of decisions to impose the discipline of forcible resignation on civil servants holding the post of general department director or equivalent or lower posts., *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

ownership of houses and other land-attached assets; (12) illegal issuance of decisions on settlement of competition-related matters or cases; (13) grant of protection titles in case of having a legal ground to believe that applicants have no right to file applications or legal grounds to believe that subject matters do not satisfy the protection conditions; refusal to grant protection titles for the reason that subject matters do not satisfy the protection conditions without any legal grounds; invalidation of protection titles without any legal grounds and (14) illegal issuance of decisions to impose the discipline of forcible resignation on civil servants holding the post of general department director or equivalent or lower posts.

4.3.2 Procedure for Settling Compensation Claims

Individuals and organizations, when believing that they suffer from damage caused by government personnel (a compensation claimant) shall submit one dossier set directly or send it by post to the compensation-settling agency.⁶³² A compensation-settling agency shall receive a dossier, record it in a dossier receipt book and issue a dossier receipt to the compensation claimant in case the dossier is directly submitted. In case the dossier is sent by post, within 2 working days after receiving it, the compensation-settling agency shall notify in writing the compensation claimant of the dossier receipt.⁶³³

⁶³² Article 41 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Compensation claim dossiers: 4. A compensation claimant shall submit one dossier set directly or send it by post to the compensation-settling agency.”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶³³ Article 42 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Procedures for receiving and processing dossiers:

1. A compensation-settling agency shall receive a dossier, record it in a dossier receipt book and issue a dossier receipt to the compensation claimant in case the dossier is directly submitted. In case the dossier is sent by post, within 2 working days after receiving it, the compensation-settling agency shall notify in writing the compensation claimant of the dossier receipt.”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

A compensation claim must contain details of damage-causing act of the official duty performer; the cause-and-effect relationship between the actual damage and the damage-causing act of the official duty performer and damage, method of calculation and level of claimed compensation.⁶³⁴

Within 2 working days after receiving a valid dossier specified in Article 41 of this Law, a compensation-settling agency shall accept it and record it in a dossier acceptance book, unless such dossier does not meet the validity requirement.⁶³⁵ Within 2 working days after accepting a dossier, a compensation-settling agency shall appoint a person to settle compensation who must have professional experience in the sector or field in which the compensation claim is made and must neither have rights and interests related to the case or matter nor be a relative of the damage-causing official duty performer or damage sufferer.⁶³⁶

Within 15 days after accepting a dossier, a compensation-settling person shall complete the verification of damage. In case a case or matter subject to compensation claim settlement

⁶³⁴ Article 41 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Compensation claim dossiers: 3. A written claim for compensation must contain the following principal details: ...c/ Damage-causing act of the official duty performer; d/ The cause-and-effect relationship between the actual damage and the damage-causing act of the official duty performer; dd/ Damage, method of calculation and level of claimed compensation..., *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶³⁵ Article 43 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Acceptance of dossiers and appointment of persons to settle compensation: 1. Within 2 working days after receiving a valid dossier specified in Article 41 of this Law, a compensation-settling agency shall accept it and record it in a dossier acceptance book..., *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶³⁶ Article 43 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Acceptance of dossiers and appointment of persons to settle compensation: 3. The appointment of a person to settle compensation shall be made as follows: a/ Within 2 working days after accepting a dossier, a compensation-settling agency shall appoint a person to settle compensation; b/ A person to settle compensation must have professional experience in the sector or field in which the compensation claim is made; must neither have rights and interests related to the case or matter nor be a relative of the damage-causing official duty performer or damage sufferer as specified by the Civil Code.”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

involves complicated circumstances or needs to be verified at different places, the time limit for verification of damage is 30 days, which may be prolonged as prescribed by the law, from the date of acceptance of the dossier. A compensation-settling person shall complete a report on verification of damage for use as a basis for negotiations on compensation within 3 working days after the verification of damage is completed.⁶³⁷ Within 2 working days after completing a report on verification of damage, a compensation-settling agency shall hold negotiations on compensation. Negotiations must be completed within 10 days after they are started. For a case or matter subject to compensation claim settlement involves many complicated circumstances, the time limit for negotiations is 15 days.⁶³⁸

⁶³⁷ Article 45 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, "Verification of damage: 2. Within 15 days after accepting a dossier, a compensation-settling person shall complete the verification of damage. In case a case or matter subject to compensation claim settlement involves complicated circumstances or needs to be verified at different places, the time limit for verification of damage is 30 days from the date of acceptance of the dossier. The time limit for verification of damage prescribed in this Clause may be prolonged under an agreement between the compensation claimant and compensation-settling person for 15 days from the date of its expiration. 3. Within 3 working days after the verification of damage is completed, a compensation-settling person shall complete a report on verification of damage for use as a basis for negotiations on compensation.", *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶³⁸ Article 46 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, "Negotiations on compensation: 1. Within 2 working days after completing a report on verification of damage, a compensation-settling agency shall hold negotiations on compensation. Negotiations must be completed within 10 days after they are started. For a case or matter subject to compensation claim settlement involves many complicated circumstances, the time limit for negotiations is 15 days. The time limit for negotiations prescribed in this Clause may be prolonged under an agreement between the compensation claimant and compensation-settling person for 10 days from the date of its expiration.", *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

Right after a negotiation is completed, the compensation-settling person shall make a minutes of negotiation results.⁶³⁹ If the negotiation is successful, the head of a compensation-settling agency shall issue a compensation settlement decision and hand it to the competent claimant at the negotiation venue.⁶⁴⁰ A compensation settlement decision will take effect 15 days after it is handed to the compensation claimant.⁶⁴¹

Within 15 days after receiving a compensation settlement decision, if a compensation claimant disagrees with it; or after the minutes of successful negotiation results is made, if the agency directly managing the damage-causing official duty performer fails to issue a compensation settlement decision; or after the minutes of unsuccessful negotiation results is made, a compensation claimant may initiate a lawsuit at a court for settlement of his/her/its compensation claim.⁶⁴²

⁶³⁹ Article 46 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Negotiations on compensation: 7. Negotiations shall be recorded in minutes. In case the parties carry out many negotiations, each negotiation shall be recorded in minutes. Right after a negotiation is completed, the compensation-settling person shall make a minutes of negotiation results.”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶⁴⁰ Article 47 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Compensation settlement decisions: 1. Right after a minutes of successful negotiation results is made, the head of a compensation-settling agency shall issue a compensation settlement decision and hand it to the competent claimant at the negotiation venue.”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶⁴¹ Article 47 of the Law on State Compensation Liability (2017), No. 10/2017/QH14, “Compensation settlement decisions: 2. A compensation settlement decision will take effect 15 days after it is handed to the compensation claimant.”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶⁴² Article 52 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Initiation of lawsuits and procedures for settlement of compensation claims at court: 2. Within 15 days after receiving a compensation settlement decision specified Article 47 of this Law, if a compensation claimant disagrees with it; or after the minutes of successful negotiation results specified in Clause 7, Article 46 of this Law is made, if the agency directly managing the damage-causing official duty performer fails to issue a compensation
(continued on next page)

4.3.3 Government Personnel's Reimbursement Obligation

An official duty performer who is at fault in causing a damage is obliged to reimburse to the state budget part or the whole of the money amount already paid by the State as compensation to the damage sufferer. In case many official duty performers jointly cause a damage, these persons are all obliged to reimburse compensation amounts in proportion to the degree of their own fault and damage compensable by the State.⁶⁴³ The grounds for determination of the reimbursed amount include the degree of fault, money amount paid by the State as compensation and level of intentionality and may be reduced if specific conditions have been fulfilled.⁶⁴⁴

(continued from footnote 642)

settlement decision; or after the minutes of unsuccessful negotiation results specified in Clause 7, Article 46 of this Law is made, a compensation claimant may initiate a lawsuit at a court for settlement of his/her/its compensation claim.", *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶⁴³ Article 64 of the Law on State Compensation Liability (2017), "Reimbursement obligation of official duty performers:

1. An official duty performer who is at fault in causing a damage is obliged to reimburse to the state budget part or the whole of the money amount already paid by the State as compensation to the damage sufferer.
2. In case many official duty performers jointly cause a damage, these persons are all obliged to reimburse compensation amounts in proportion to the degree of their own fault and damage compensable by the State.", *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶⁴⁴ Article 65 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, "Determination of amounts to be reimbursed and reduction of reimbursement amounts:

1. Grounds for determining an amount to be reimbursed include:
 - a/ Degree of fault of the official duty performer;
 - b/ Money amount paid by the State as compensation.
2. In case a damage is caused by only one official duty performer, the money amount to be reimbursed shall be determined as follows:
 - a/ The official duty performer who is intentionally at fault in causing the damage and confirmed to be guilty under a legally effective judgment shall reimburse the whole money amount paid by the State to the damage sufferer as the compensation;

(continued on next page)

Within 10 days after completing the payment of a compensation amount, the head of the agency that has paid it shall form a council to consider the reimbursement liability. In case a damage is caused by many official duty performers from different agencies, the council shall be participated by representatives of the agencies related to the occurrence of the damage. Within 20 days after being formed, a council for consideration of reimbursement liability shall complete the identification of damage-causing official duty performers, degree of fault and reimbursement liability of these persons and money amount to be reimbursed and send a written request to the head of the agency that has paid the compensation amount. Based on the written request of the

(continued from footnote 644)

b/ For the official duty performer who is intentionally at fault in causing the damage but whose act is not serious enough for penal liability examination, between 30 and 50 months' his/her wage calculated at the time of issuance of the reimbursement decision shall be used for reimbursement which must not exceed 50% of the money amount paid by the State as the compensation;

c/ For the official duty performer who is unintentionally at fault in causing the damage, between 3 and 5 months' his/her wage calculated at the time of issuance of the reimbursement decision shall be used for reimbursement which must not exceed 50% of the money amount paid by the State as the compensation;

d/ In case 50% of the money amount paid by the State as the compensation is lower than 30 months' wage as specified at Point b of this Clause or lower than 3 months' wage as specified at Point c of this Clause, the money amount which the official duty performer shall reimburse is equal to 50% of the money amount paid by the State as the compensation.

3. In case a damage is jointly caused by many official duty performers, the money amount to be reimbursed by each of them shall be determined under Clause 2 but the total reimbursement amount must not exceed the money amount by the State as the compensation to the damage sufferer.

4. A money amount to be reimbursed by an official duty performer may be reduced if he/she fully satisfies the following conditions:

a/ Having taken the initiative in remedying the consequences;

b/ Having fulfilled his/her obligations throughout the course of settlement of the compensation claim and reimbursed at least 50% of the to-be-reimbursed money amount;

c/ Meeting financial difficulties.

The head of the agency directly managing the damage-causing official duty performer may decide to reduce the total to-be-reimbursed money amount by no more than 30%.", *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

council for consideration of reimbursement liability, the head of the agency that has paid the compensation amount shall issue a decision on reimbursement to be executed by the damage-causing official duty performer.⁶⁴⁵

Reimbursement may be made in a lump sum or in installments as determined in reimbursement decisions. In case the reimbursement is made by gradual deduction from the monthly wage of an official duty performer, the deduction level must be equal to between 10% and 30% of the monthly wage. In case a reimbursement-liable official duty performer is nursing an under 36-month infant or is a pregnant woman, he/she is entitled to reimbursement postponement under a decision of the head of the agency directly managing him/her.⁶⁴⁶

⁶⁴⁵ Article 66 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Competence and procedures for determining the reimbursement liability:

1. Within 10 days after completing the payment of a compensation amount, the head of the agency that has paid it shall form a council to consider the reimbursement liability. In case a damage is caused by many official duty performers from different agencies, the council for consideration of reimbursement liability shall be participated by representatives of the agencies related to the occurrence of the damage.

2. Within 20 days after being formed, a council for consideration of reimbursement liability shall complete the identification of damage-causing official duty performers, degree of fault and reimbursement liability of these persons and money amount to be reimbursed by each of them, and send a written request to the head of the agency that has paid the compensation amount. In case of a complicated case or matter, this time limit may be prolonged up to 30 days.

3. Based on the written request of the council for consideration of reimbursement liability, the head of the agency that has paid the compensation amount shall:

a/ Issue a decision on reimbursement to be executed by the damage-causing official duty performer...”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

⁶⁴⁶ Article 68 of the Law on State Compensation Liability (2017) No. 10/2017/QH14, “Reimbursement:

1. Reimbursement may be made in a lump sum or in installments as determined in reimbursement decisions.

2. In case the reimbursement is made by gradual deduction from the monthly wage of an official duty performer, the deduction level must be equal to between 10% and 30% of the monthly wage.

3. In case a reimbursement-liable official duty performer is nursing an under 36-month infant or is a pregnant woman, he/she is entitled to reimbursement postponement under a decision of the head of the agency directly managing him/her.”, *available at* <http://vbpl.vn/botuphap/Pages/vbpqen-toanvan.aspx?ItemID=11097> (accessed June 23, 2019).

4.4 Laws Concerning Peacekeeping and Controlling the State of Nation

4.4.1 Laws Concerning State of Emergency

Under the Constitution, the Standing Committee of the National Assembly has the power to declare and cancel a state of emergency throughout the country or in a particular locality.⁶⁴⁷ In case the Standing Committee of the National Assembly cannot meet, the President will have such power.⁶⁴⁸ The Standing Committee of the National Assembly promulgated the Ordinance on State of Emergency in 2000, which is implemented by the Government's decrees.⁶⁴⁹ State of emergency is also governed by other laws such as the Law on National Defense, Law on Prevention and Fight against Infectious Diseases, Law on Prevention and Fight against Natural Disasters.

A state of emergency is declared when there is a severe disaster caused by nature or human beings or a dangerous epidemic which is widely spreading on a large scale, seriously

⁶⁴⁷ Article 74 of The Constitution of the Socialist Republic of Vietnam (2013), "The Standing Committee of the National Assembly has the following duties and powers: 10. To proclaim general or partial mobilization; to proclaim a state of emergency throughout the country or in a particular region.", *available at* <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94490/114946/F114201808/VNM94490%20Eng.pdf> (accessed April 1, 2019).

⁶⁴⁸ Article 88 of The Constitution of the Socialist Republic of Vietnam (2013), "The State President has the following duties and powers: 5. To have overall command of the armed forces and hold the office of Chairman of the National Defence and Security Council; to decide on conferment, promotion, demotion, and deprivation of army rank of general, commander-in-chief, vice- commander-in-chief, and naval commander-in-chief; to appoint, to release from duty, and to remove from office, chief of the general staff, and Chairman of Political Head Office of Vietnamese People's Army; on the basis of resolutions of the National Assembly or of the National Assembly's Standing Committee, to proclaim or remove the decision on the state of war; on the basis of resolutions of the National Assembly's Standing Committee, to issue order on general mobilization or limited mobilization, to declare or remove the state of emergency; in cases where the National Assembly Standing Committee cannot meet, to declare the state of emergency nationwide or in a locality;" , *available at* <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94490/114946/F114201808/VNM94490%20Eng.pdf> (accessed April 1, 2019).

⁶⁴⁹ See the Government's Decree 74/2002/ND-CP dated August 21, 2002 of the Government implementing the Ordinance on State of Emergency in cases where national security and public order and safety are seriously threatened; Decree 71/2002/ND-CP dated July 23, 2002 of the Government implementing the Ordinance on the State of Emergency in case of severe natural disasters or dangerous epidemics.

threatening property of the State or other organizations or threatening the life, health, property of the People; or a situation seriously threatening national security and public order and safety.⁶⁵⁰

The decision to declare or cancel a state of emergency is made by the Standing Committee of the National Assembly at the proposal of the Prime Minister. The declaration or cancellation of the state of emergency is announced by the President.

The Law on National Defense dated June 8, 2018 (hereinafter referred to as “Law on National Defense (2018)”) was promulgated in 2018 and became effective on January 1, 2019.⁶⁵¹

It provides that state of emergency is a social status of the country when facing the danger of direct invasion or when an armed invasion or a riot has occurred, but not to the extent of declaration of the state of war.⁶⁵² When the political security, social order and safety in one or

⁶⁵⁰ Article 57 of Law on the Organization of the National Assembly No. 57/2014/QH13 dated November 20, 2014, effective on January 1, 2016, “Decision on state of war and general or partial mobilization; declaration or cancellation of state of emergency:

1. In case the National Assembly cannot meet, the Standing Committee of the National Assembly shall decide on a state of war at the proposal of the National Defense and Security Council and report such to the National Assembly at the next session; and decide on general or partial mobilization at the proposal of the National Defense and Security Council or the Prime Minister.

2. The Standing Committee of the National Assembly shall, at the proposal of the Prime Minister, declare a state of emergency nationwide or in each locality when the whole country or one or more than one locality suffer(s) a serious disaster caused by nature or humans or a widespread dangerous epidemic which poses a serious threat to property of the State or organizations, life, health or property of the People or is in a situation which poses a serious threat to national security and social order and safety. When the state of emergency no longer exists, the Standing Committee of the National Assembly shall decide to cancel such state at the proposal of the Prime Minister.”, *available at* <https://www.economica.vn/Portals/0/Documents/572014QH13267269.pdf> (accessed April 1, 2019).

⁶⁵¹ Law on National Defence No. 22/2018/QH14, *available at* <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Law-22-2018-QH14-national-defence-389481.aspx> (in Vietnamese) (accessed April 1, 2019)

⁶⁵² Article 2(10) of Law on National Defence No. 22/2018/QH14, “Interpretation: 10. *State of emergency* means a social state of the country where there is a risk of a direct invasion, or an armed aggression or violence occurs but not to the extent of being declared the state of war.”, *available at* <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Law-22-2018-QH14-national-defence-389481.aspx> (accessed April 1, 2019)

several localities are so seriously violated that their competent authorities have no longer taken control of the situation, the State President shall issue the martial law order upon the request of the Government.⁶⁵³

Martial law is a definite-term special state management measure implemented by the Army. The commanders of the army units assigned to manage the areas placed under martial regime have the power to order the application of necessary measures so as to enforce the martial regime. During the time of martial law, the state management exercised at the locality subject to the martial law shall be assigned to military units. The commanders of military units assigned to manage the locality subject to the martial law may order the application of special measures prescribed in this law and other necessary measures, and bear the responsibility for the application of such measures. The commander of the military unit authorized to manage the provincial-level locality subject to the martial law shall be entitled to purchase and requisition any property in accordance with the law.⁶⁵⁴

The Law on National Defense further defines curfew as a measure to prohibit or restrict people and means of transport from travelling or moving at certain specific hours in certain areas,

⁶⁵³ Article 21 (2) of Law on National Defence No. 22/2018/QH14, “Martial Law: 2. When the political security, social order and safety in one or several localities are so seriously violated that their competent authorities have no longer taken control of the situation, the State President shall issue the martial law order upon the request of the Government.”, *available at* <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Law-22-2018-QH14-national-defence-389481.aspx> (accessed April 1, 2019).

⁶⁵⁴ Article 21 (5) of Law on National Defence No. 22/2018/QH14, “Martial Law: 5. During the time of martial law, the state management exercised at the locality subject to the martial law shall be assigned to military units. The commanders of military units assigned to manage the locality subject to the martial law may order the application of special measures prescribed in Clause 6 of this Article and other necessary measures to execute martial law orders, and bear the responsibility for the application of such measures. The commander of the military unit authorized to manage the provincial-level locality subject to the martial law shall be entitled to purchase and requisition any property. Purchase and requisitioning of property shall be subject to provisions set forth in the Law on Purchase and Requisitioning of Property.”, *available at* <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Law-22-2018-QH14-national-defence-389481.aspx> (accessed April 1, 2019).

unless otherwise permitted by the person mandated to organize the implementation of a curfew. A curfew shall be promulgated in the event that the situation of political security, social order and safety in one or a number of localities is complicated and threatens to cause serious instability and is published continuously on the mass media.⁶⁵⁵ A curfew order must clearly identify the curfew zones and in-charge unit and duties to execute the curfew order and effective period from commencement to termination of a curfew which shall not exceed 24 hours. Upon expiry of a curfew order, if it is necessary to continue, a new curfew order shall be issued. Tasks and powers of agencies, organizations and individuals in curfew zones, including necessary social order rules to be observed at curfew zones shall also be defined.⁶⁵⁶

Curfew measures shall include prohibition of large crowds; ban on travelling of people, movement of vehicles at certain specific time and in specified areas; suspension or restriction of activities at public places at certain specified time; installation of sentry boxes for watchstanding and control of a curfew zone, inspection of items, luggage, vehicles and travel documents of

⁶⁵⁵ Article 22 of Law on National Defence No. 22/2018/QH14, “Curfew:

1. Curfew is a measure to prohibit or restrict people and means of transport from travelling or moving at certain specific hours in certain areas, unless otherwise permitted by the person mandated to organize the implementation of a curfew.

2. A curfew shall be promulgated in the event that the situation of political security, social order and safety in one or a number of localities is complicated and threatens to cause serious instability and is published continuously on the mass media.”, *available at* <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Law-22-2018-QH14-national-defence-389481.aspx> (accessed April 1, 2019).

⁶⁵⁶ Article 22 of Law on National Defence No. 22/2018/QH14, “Curfew: 4. The curfew order must define the followings: a) Curfew zones; b) In-charge unit and duties to execute the curfew order; c) Effective period from commencement to termination of a curfew which shall not exceed 24 hours; Upon expiry of a curfew order, if it is necessary to continue, a new curfew order shall be issued; d) Tasks and powers of agencies, organizations and individuals in curfew zones; dd) Necessary social order rules to be observed at curfew zones., *available at* <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Law-22-2018-QH14-national-defence-389481.aspx> (accessed April 1, 2019).

passengers across these boxes, including prompt arrest and handling of persons and means that violate the curfew order and other provisions of law.⁶⁵⁷

4.4.2 Laws Concerning National Security and Public Demonstration

a) Laws Concerning National Security

Major legislations regarding national security include the Law on National Security (2004), the Anti-Terrorism Law (2013) and Penal Code (2015, amended in 2017). The Law on National Security defines national security as the stability and sustainable development of the socialist regime and the State of the Socialist Republic of Vietnam, the inalienability of the independence, sovereignty, unity and territorial integrity of the Fatherland. Activities of infringing upon the national security mean acts of infringing upon the political regime, the economic regime, culture, security, national defense, external relations, independence, sovereignty, unity, territorial integrity of the Socialist Republic of Vietnam.⁶⁵⁸ National security protection is the cause of the People; all

⁶⁵⁷ Article 22 of Law on National Defence No. 22/2018/QH14, "Curfew: 5. Measures applied during the effective period of a curfew shall include: a) Prohibition of large crowds; b) Ban on travelling of people, movement of vehicles at certain specific time and in specified areas; c) Suspension or restriction of activities at public places at certain specified time; d) Installation of sentry boxes for watchstanding and control of a curfew zone, inspection of items, luggage, vehicles and travel documents of passengers across these boxes; dd) Prompt arrest and handling of persons and means that violate the curfew order and other provisions of law., *available at* <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Law-22-2018-QH14-national-defence-389481.aspx> (accessed April 1, 2019).

⁶⁵⁸ Article 3 of the Law on National Security (2004) No. 31/2004/QH11, "Term interpretation in this Law: In this Law, the following terms and phrases shall be construed as follows: 1. National security means the stability and sustainable development of the socialist regime and the State of the Socialist Republic of Vietnam, the inalienability of the independence, sovereignty, unity and territorial integrity of the Fatherland.", *available at* <https://www.icj.org/wp-content/uploads/2013/03/VietNam-Law-on-National-Security-2004-eng.pdf> (accessed April 1, 2019).

agencies, organizations and citizens have the responsibility and obligation to protect national security.⁶⁵⁹

The following acts are prohibited: (1) organizing, operating, colluding with, instigating, controlling, inciting, buying off, deceiving or dragging other persons to oppose the administration, to abolish the leadership role of the Communist Party of Vietnam, to divide the country, to disrupt the national unity bloc; (2) undertaking the tasks of organizations, individuals to conduct activities of infringing upon the national security or participating in, assisting, providing finance, weapons and means for, organizations and/or individuals to conduct activities of infringing upon the national security; (3) illegally gathering, storing, transporting, trading in, using, disclosing, supplying or distributing information, documents and articles classified as State secrets; (4) infringing upon important national security targets; (5) opposing or hindering agencies, organizations and/or individuals from performing the tasks of national security protection; (6) abusing the performance of national security protection tasks to infringe upon the interests of the State, the legitimate rights and interests of organizations, individuals.⁶⁶⁰

⁶⁵⁹ Article 8 of the Law on National Security (2004) No. 31/2004/QH11, “National security protection responsibilities and obligations: National security protection constitutes the cause of the entire population. The agencies, organizations and citizens have the responsibility and obligation to protect the national security according to law provisions.”, *available at* <https://www.icj.org/wp-content/uploads/2013/03/VietNam-Law-on-National-Security-2004-eng.pdf> (accessed April 1, 2019).

⁶⁶⁰ Article 13 of the Law on National Security (2004) No. 31/2004/QH11, “Prohibited acts:

1. Organizing, operating, colluding with, instigating, controlling, inciting, buying off, deceiving or dragging other persons to oppose the people’s administration, to abolish the leadership role of the Communist Party of Vietnam, to divide the country, to disrupt the national unity bloc.
2. Undertaking the tasks of organizations, individuals to conduct activities of infringing upon the national security or participating in, assisting, providing finance, weapons and means for, organizations and/or individuals to conduct activities of infringing upon the national security.
3. Illegally gathering, storing, transporting, trading in, using, disclosing, supplying or distributing information, documents and articles classified as State secrets.
4. Infringing upon important national security targets.

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The basic measures for national security protection include mass mobilization, law, diplomatic, economic, technical-scientific, professional, and arms measures.⁶⁶¹

Upon the appearance of a threat against the national security, which is, however, not serious enough for declaration of the state of emergency, the Prime Minister may decide to apply some following measures: (1) intensifying the protection of important targets; (2) organizing guarding posts to limit or control people and means operating at certain hours in certain areas; (3) conducting special control at border gates of shipments by air, by sea, inland water, railways and land; (4) limiting or temporarily ceasing the transportation, use of inflammables, explosives, toxins, toxic chemicals, radioactive substances under the lawful use rights of agencies, organizations or individuals; strictly controlling the transportation and use of assorted weapons, support tools; (5) banning, disbanding or restricting big rallies and activities of individuals, organizations, which are deemed harmful to the national security; (6) restricting or suspending operations of theatres, cinemas and/or other public-activity places; (7) controlling the use of communications means in a locality or a certain area; (8) forcing the persons who commit acts harmful to the national security to leave important political, economic, security or defense areas

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5. Opposing or hindering agencies, organizations and/or individuals from performing the tasks of national security protection.

6. Abusing the performance of national security protection tasks to infringe upon the interests of the State, the legitimate rights and interests of organizations, individuals.

7. Other acts of infringing upon the national security, prescribed in the Penal Code and relevant legal documents.”, *available at* <https://www.icj.org/wp-content/uploads/2013/03/VietNam-Law-on-National-Security-2004-eng.pdf> (accessed April 1, 2019).

⁶⁶¹ Article 15 of the Law on National Security (2004) No. 31/2004/QH11, “Basic measures to protect the national security: 1. The basic measures for national security protection include mass agitation, legislation, diplomatic, economic, technical-scientific, professional and arms measures.”, *available at* <https://www.icj.org/wp-content/uploads/2013/03/VietNam-Law-on-National-Security-2004-eng.pdf> (accessed April 1, 2019).

or not to get out of their residence places; (9) mobilizing human and material resources for the performance of national security protection tasks.⁶⁶²

The Anti-Terrorism Law provides for specific measures to prevent and fight against terrorism and terrorism financing. Measures for terrorism prevention include: information, propagation and education on anti- terrorism; administrative control over security and order; control of transport activities; control over money and asset transactions; control of vehicles and goods upon import, export, or transit; control of publication, press, post, telecommunications activities and other forms of communication; control of activities regarding assurance of food

⁶⁶² Article 21 of the Law on National Security (2004) No. 31/2004/QH11, “Application of a number of necessary measures upon the appearance of dangers threatening the national security but not to the extent of proclaiming the state of emergency:

1. Upon the appearance of a threat against the national security, which is, however, not serious enough for promulgation of the state of emergency, the Prime Minister may decide to apply some following measures:

- a) Intensifying the protection of important targets;
- b) Organizing sentry posts to limit or control people and means operating at certain hours in certain areas;
- c) Conducting special control at border gates of shipments by air, by sea, inland water, railways and land;
- d) Limiting or temporarily ceasing the transportation, use of inflammables, explosives, toxins, toxic chemicals, radioactive substances under the lawful use rights of agencies, organizations or individuals; strictly controlling the transportation and use of assorted weapons, support tools;
- e) Banning, disbanding or restricting big rallies and activities of individuals, organizations, which are deemed harmful to the national security;
- f) Restricting or suspending operations of theatres, cinemas and/or other public-activity places;
- g) Controlling the use of communications means in a locality or a certain area;
- h) Forcing the persons who commit acts harmful to the national security to leave important political, economic, security or defense areas or not to get out of their residence places;
- i) Mobilizing human and material resources for the performance of national security protection tasks.

2. Agencies, organizations and individuals must obey the orders and/or decisions of agencies and/or persons that apply measures prescribed in Clause 1 of this Article., *available at* <https://www.icj.org/wp-content/uploads/2013/03/VietNam-Law-on-National-Security-2004-eng.pdf> (accessed April 1, 2019).

hygiene and safety and medicines for disease prevention and treatment; elaboration and implementation of anti-terrorism plans.⁶⁶³

Anti- terrorism is carried out with measures as prescribed in the Anti-Terrorism Law and the law on protecting national security and keeping social order and safety. The Anti-Terrorism Law provides for urgent anti-terrorism measures, which are applied as soon as terrorism has happened or is happening or when there are grounds to assume that terrorism will happen, so as to timely prevent terrorism, and eliminate or limit harms caused by terrorism. Urgent anti-terrorism measures include: encircling and blockading the zone happening terrorism; rescuing hostages, giving first aid to victims, isolating people, removing vehicles and assets out of the dangerous terrorist zone; negotiating with terrorists; encircling, tracing, controlling and arresting terrorists; invalidating weapons, instruments and means used for terrorism; attacking and annihilating terrorists, destroying weapons, instruments and means used for terrorism; temporarily stopping means of transport and means of information and communications which are misused for terrorism; dismantling houses and construction works, removing obstacles for anti-terrorism activities; placing obstacles to obstruct terrorist activities; protecting, moving, hiding and camouflaging the works and targets subject to terrorists' attack; mobilizing forces and means for anti-terrorism; checking and blockading accounts or financial sources; stopping transactions in money and assets; temporarily seizing money and assets involving terrorism; opening, checking and seizing mails, telegraphs, postal matters, postal parcels and goods packages or bales involving terrorism; collecting documents and evidence involving terrorism.⁶⁶⁴

⁶⁶³ Articles 20-27 of the Law on Anti-Terrorism (2013) No. 28/2013/QH13, *available at* <https://vanbanphapluat.co/law-no-28-2013-qh13-on-the-anti-terrorism> (accessed April 1, 2019).

⁶⁶⁴ Article 30 of the Law on Anti-Terrorism (2013) No. 28/2013/QH13, "Anti-terrorism measures:

1. Anti- terrorism is carried out with measures as prescribed in this Law and the law on protecting national security and keeping social order and safety.
2. Urgent anti-terrorism measures are those applied as soon as terrorism has happened or is happening or when there are grounds to assume that terrorism will happen, so as to timely prevent terrorism, and eliminate

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The Penal Code contains a separate chapter on offences against national security. These crimes include: high treason; activities against the people's government; espionage; infringement upon territory; rebellion; terrorism to oppose the people's government; sabotaging facilities of Socialist Republic of Vietnam; sabotaging implementation of socio-economic policies; making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam; disruption of security; disruption of detention facilities; organizing, coercing, instigating illegal emigration for the purpose of opposing the people's government; and illegal emigration for the purpose of opposing the people's government. These crimes are severely punished under the Penal Code such as death penalty or life imprisonment.⁶⁶⁵

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or limit harms caused by terrorism. Urgent anti-terrorism measures include: a) Encircling and blockading the zone happening terrorism; b) Rescuing hostages, giving first aid to victims, isolating people, removing vehicles and assets out of the dangerous terrorist zone; c) Negotiating with terrorists; d) Encircling, tracing, controlling and arresting terrorists; invalidating weapons, instruments and means used for terrorism; dd) Attacking and annihilating terrorists, destroying weapons, instruments and means used for terrorism; e) Temporarily stopping means of transport and means of information and communications which are misused for terrorism; g) Dismantling houses and construction works, removing obstacles for anti-terrorism activities; placing obstacles to obstruct terrorist activities; h) Protecting, moving, hiding and camouflaging the works and targets subject to terrorists' attack; i) Mobilizing forces and means for anti-terrorism; k) Checking and blockading accounts or financial sources; stopping transactions in money and assets; temporarily seizing money and assets involving terrorism; l) Opening, checking and seizing mails, telegraphs, postal matters, postal parcels and goods packages or bales involving terrorism; m) Collecting documents and evidence involving terrorism.

3. The Government shall specify the competence, conditions, order of and procedures for application of the urgent anti-terrorism measures specified in Clause 2 of this Article.", *available at* <https://vanbanphapluat.co/law-no-28-2013-qh13-on-the-anti-terrorism> (accessed April 1, 2019).

⁶⁶⁵ Chapter XIII, articles 108-122 of the Penal Code No. 100/2015/QH13 dated November 27, 2015, *available at* <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>, as amended by Law No. 12/2017/QH14, *available at* <https://vanbanphapluat.co/law-12-2017-qh14-amendments-100-2015-qh13> (accessed June 23, 2019).

b) Laws Concerning Public Demonstration

Currently, the Law on Public Demonstration is being drafted. Public demonstration is now governed by the Government's Decree 38/2005/ND-CP dated March 18, 2005 on a number of measures to ensure public order ("Decree 38"). With the stated objective of ensuring public order, Decree 38 requires any gathering of persons in a public place to be registered in advance with the People's Committee where such gathering will take place, but this requirement does not apply to gathering activities organized by the Party's agencies, the State agencies, the Vietnam Fatherland Front and mass organizations.⁶⁶⁶

A public gathering is defined as a gathering consisting of five people or more at public places such as pavements, roads, squares, business or cultural establishments, community places, areas where head-offices of government agencies or mass organizations are located, or other public places, with the purpose of presenting requests or proposals on issues relating to legal rights and interests of individuals, families, organizations or on general issues relating to the political-social life or rights and interests of other organizations and individuals. These gatherings are only allowed to take place during the period from 8 A.M. to 5 P.M. daily.⁶⁶⁷

⁶⁶⁶ Article 7 of the Government's Decree 38/2005/ND-CP, *available at* <https://thuvienphapluat.vn/van-ban/van-hoa-xa-hoi/Nghi-dinh-38-2005-ND-CP-bien-phap-bao-dam-trat-tu-cong-cong-52936.aspx> (in Vietnamese) (accessed June 23, 2019).

⁶⁶⁷ Section 4 of Circular 09/2005/TT-BCA, "Provisions on mass rallies at public places:

4.1. Mass rallies at public places under the provisions of Decree No. 38 and the guidance in this Circular mean the assembly of five persons or more at public-service areas or places such as pavements, roadbeds, squares, economic or cultural establishments, places of communal activities; within premises of offices of state agencies, socio-economic organizations or at other public places in order to put forward proposals or petitions on matters related to legitimate rights and interests of individuals, households or organizations, or on common issues related to socio-political life and/or legitimate rights and interests of organizations or other individuals.

4.2. All mass rallies at public places under the provisions of Decree No. 38 and the guidance in this Circular must be registered in advance with district-level or provincial-level People's Committees under the guidance at Point 6 of this Circular. Such activities shall only be permitted to take place from 8 hrs. to 17 hrs. everyday, unless otherwise provided for by law.", *available at* <http://vbpl.vn/bocongan/Pages/vbpqen-toanvan.aspx?ItemID=6710> (accessed June 23, 2019).

Registration must be carried out by the organization or persons organizing the public gathering or public activities. The following matters must be indicated clearly in the registration: name of the individual or organization which registers the gathering; the content and purpose of the public gathering; the time where the public activities will take place; the place and route of gathering; the names of organizations and the number of persons expected to participate in the public activities; flags, photos, means that will be carried, content of banners or mottos (if any); and a written commitment to comply with the registered scope and content of the gathering and with the law on ensuring public order. The competent People's Committee at the provincial or district level is required to reply within 7 working days.⁶⁶⁸

Decree 38 prohibits any person or organization from taking advantage of the democratic freedom right of citizens to gather in public in order to incite unrest. Decree 38 also prohibits public gatherings from obstructing roads and pavements and from congregating in front of offices and organizations or in areas where international conferences, National Assembly Sessions, People's Council Sessions and other important political activities are occurring.⁶⁶⁹

A public gathering is not allowed to take place if (1) it involves one or more acts prohibited under Decree 38; or (2) the person who registers the gathering is not qualified, such as persons who have committed crimes or who are serving a criminal sentence or an administrative sanctions; or (3) there is a false statement in the registration dossier; or the public gathering may seriously affect public security and order, the environment, the fine customs and cultural traditions

⁶⁶⁸ Article 8 of the Government's Decree 38/2005/ND-CP, *available at* <https://thuvienphapluat.vn/van-ban/van-hoa-xa-hoi/Nghi-dinh-38-2005-ND-CP-bien-phap-bao-dam-trat-tu-cong-cong-52936.aspx> (in Vietnamese) (accessed June 23, 2019).

⁶⁶⁹ Article 5 of the Government's Decree 38/2005/ND-CP, *available at* <https://thuvienphapluat.vn/van-ban/van-hoa-xa-hoi/Nghi-dinh-38-2005-ND-CP-bien-phap-bao-dam-trat-tu-cong-cong-52936.aspx> (in Vietnamese) (accessed June 23, 2019).

of the nation; or undermine the solidarity and unity of the people and among ethnic groups or religious groups; or negatively affect the implementation of the State's social policies.⁶⁷⁰

The Chairman of the competent People's Committee who has granted permission to carry out a public gathering or the Chairman of the directly superior People's Committee has the power to suspend or cancel the public gathering if the gathering falls under one of the circumstances stated above, or if the gathering does not comply with the registered content, or if the participants in the gathering commit unlawful acts such as infringing on others' life, health, or dignity, damaging property of the State or other individuals and organizations, opposing law enforcement officers, or other serious illegal acts.⁶⁷¹

⁶⁷⁰ Section 7 of Circular 09/2005/TT-BCA, "7. Cases where mass rallies at public places are not allowed: District-level or provincial-level People's Committees shall not allow mass rallies at public places to be conducted in one of the following cases:

7.1. One of the prohibited acts specified in Article 5 of Decree No. 38 and guided at Point 2 of this Circular is taken.

7.2. Registrants or representatives of organizations registering mass rallies at public places fall into one of the cases specified at Point 5.1 of this Circular.

7.3. There exist false declarations in dossiers of registration of mass rallies at public places;

7.4. Such mass rallies at public places, once conducted, may seriously affect public security and order, the environment, fine customs and cultural traditions of the nation; adversely impact the unity of the entire population, nationalities and religions and the realization of other social policies of the Party and the State.", *available at* <http://vbpl.vn/bocongan/Pages/vbpqen-toanvan.aspx?ItemID=6710> (accessed June 23, 2019).

⁶⁷¹ Section 8 Circular 09/2005/TT-BCA Suspension, termination of, or cancellation of allowance for, mass rallies at public places: 8.1. Presidents of People's Committees which have allowed mass rallies at public places or presidents of immediate higher-level People's Committees may issue decisions on suspension, termination of, or cancellation of allowance for, mass rallies at public places in one of the following cases:

a/ Such activities violate the provisions of Point 7 of this Circular;

b/ Contents of written registrations of mass rallies at public places are not strictly complied with;

c/ Such mass rallies at public places have or would have seriously affected public security and order, or the environment; adversely impacted the unity of the entire population, nationalities and religions; or run counter to the fine customs and cultural traditions of the nation.

d/ Participants in mass rallies at public places commit acts of infringing upon life, health, honor or dignity of other persons; causing damage to assets of the State, organizations or individuals; resisting officials on duty or
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Where an illegal public gathering takes place, the chairmen of the People's Committees at all levels must direct relevant agencies to promptly employ necessary measures to maintain public order.⁶⁷² For a public gathering with the purpose of presenting a request or proposal on a particular issue which takes place illegally but orderly, the local authorities and public security forces must explain to the participants so that they will dissolve the gathering and comply with the laws on complaints and denunciations and the laws on maintaining public order. In case the participants fail to dissolve the gathering after being explained and persuaded, or commit acts disturbing public order, the competent agencies will employ necessary measures to handle violations and maintain public order.⁶⁷³

For illegal public gathering involving the use of weapons, explosive materials or other dangerous devices with a view to opposing to the people's administration, attacking government officers, disturbing public order, or committing other serious violations concerning public order, the competent forces, depending on each situation, must promptly employ necessary measures and supporting devices in accordance with the law, such as: erecting barriers, temporarily suspending or prohibiting travel via certain routes, temporarily suspending or prohibiting entry

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other serious law-breaking acts.", *available at* <http://vbpl.vn/bocongan/Pages/vbpqen-toanvan.aspx?ItemID=6710> (accessed June 23, 2019).

⁶⁷² Section 9.2 of Circular 09/2005/TT-BCA, "When illegal mass rallies at public places take place, presidents of People's Committees at all levels shall have to direct functional agencies in applying timely handling measures to ensure public order and handle violators. In case of necessity, they must promptly report thereon to their immediate superiors for direction.", *available at* <http://vbpl.vn/bocongan/Pages/vbpqen-toanvan.aspx?ItemID=6710> (accessed June 23, 2019).

⁶⁷³ Section 9.3 of Circular 09/2005/TT-BCA, "For cases where illegal mass rallies at public places for purpose of putting forward proposals or petitions on certain matters are organized in an orderly manner, representatives of local administrations or relevant functional agencies or forces tasked to protect public order shall have to give explanations and instructions to participants so that they voluntarily disperse and strictly abide by provisions of law on complaints, denunciations and assurance of public order.", *available at* <http://vbpl.vn/bocongan/Pages/vbpqen-toanvan.aspx?ItemID=6710> (accessed June 23, 2019).

and exit in certain areas, using supporting devices and other means for self-defense and timely preventing and controlling opposing acts.⁶⁷⁴

⁶⁷⁴ Section 9.4 of Circular 09/2005/TT-BCA, “For illegal mass rallies where weapons, explosive materials or other dangerous things are used for purpose of opposing people's authority, resisting or attacking officials on duty, disturbing public order or committing other particularly serious violations of regulations on assurance of public order, functional forces shall, on a case-by-case basis, take initiative in promptly applying measures and using necessary means and support tools as provided for by law, such as: putting up barricades, temporarily suspending or prohibiting persons or means of transport from traveling on some routes or entering or leaving certain areas, using support tools and other tools and means for legitimate self-defense or for promptly preventing or neutralizing resisting acts of violators.”, *available at* <http://vbpl.vn/bocongan/Pages/vbpqen-toanvan.aspx?ItemID=6710> (accessed June 23, 2019).

Chapter 5: Summary of Government Agencies and Private Sectors Concerning Society, Culture, Politics and National Security

5.1 Government Agencies Concerning Society

5.1.1 Structure

The government agencies in charge of different fields of society such as education, science and technology, labor and social welfare, public health, natural resources and environment are organized into three levels:

At the central level, a ministry is in charge of state management in a particular field of society, specifically, Ministry of Education and Training, Ministry of Science and Technology, Ministry of Labor, War Invalids and Social Affairs, Ministry of Health, Ministry of Natural Resources and Environment.

At the provincial level, a department, which is a specialized agency under the People's Committee of a province or a centrally-run city, assists the People's Committee in managing the respective field of society within such province or city, specifically, Department of Education and Training, Department of Science and Technology, Department of Labor, War Invalids and Social Affairs, Department of Health, Department of Natural Resources and Environment.

At the district level, a bureau, which is a specialized agency under the People's Committee of a district, assists the People's Committee in managing the respective field of society within such district, specifically, Bureau of Education and Training, Bureau of Economic Affairs or Bureau of Industry and Commerce (in charge of managing science and technology in a district), Bureau of Labor, War Invalids and Social Affairs, Bureau of Health, Bureau of Natural Resources and Environment.

5.1.2 Authority and Functions

The ministries at the central level are in charge of state management in their respective fields nationwide. Their general functions are (1) to draft laws, regulations, guidelines and policies in their respective fields and submit to the competent level for promulgation or approval; (2) to

promulgate, within their authority, circulars, decisions, directives, regulations, national standards and norms in their respective fields; (3) to direct, guide, examine and organize the implementation of laws and regulations in the respective fields; (4) to submit to the Government for approval long-term, five-year and annual development strategies, master plans and plans and important national projects and works in their respective fields; to organize and direct the implementation of approved strategies, master plans and plans; (5) to appraise the contents of pre-feasibility study and feasibility study reports on programs, projects and schemes in their respective fields; to approve and decide on investment projects falling under the ministries' jurisdiction; (6) to negotiate and conclude treaties and organize the implementation of plans on international cooperation and treaties to which Vietnam is a contracting party within their respective fields; to accede to international organizations as assigned by the Government; to conclude, and organize the implementation of, international agreements in the name of the ministries.⁶⁷⁵

The Ministry of Education and Training is in charge of state management of education and training in the national education system and other education institutions, including education and training targets, programs, contents, plans and quality; standards for teachers and education administrators; regulations on examination and enrollment; the system of diplomas and certificates; school facilities and equipment.⁶⁷⁶ In addition to the general functions of a ministry, the Ministry of Education and Training has other specific functions in the field of education and training, such as: to promulgate curriculums for pre-school education, general education and continuing education, framework curriculums for professional secondary, collegial and undergraduate programs, and framework curriculums and knowledge requirements for master and doctoral programs; to promulgate lists of majors for professional high schools, colleges,

⁶⁷⁵ Articles. 6-8 of the Government's Decree No. 123/2016/ND-CP, *available at* <https://vanbanphapluat.co/decree-123-2016-nd-cp-functions-tasks-powers-organizational-structures-of-ministries-level-agencies> (accessed June 23, 2019).

⁶⁷⁶ Article 1 of the Government's Decree No. 69/2017/ND-CP, *available at* <https://thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Nghi-dinh-69-2017-ND-CP-chuc-nang-nhiem-vu-quyen-han-co-cau-to-chuc-Bo-Giao-duc-va-Dao-tao-350206.aspx>. (in Vietnamese) (accessed June 23, 2019).

universities and academies; to prescribe the requirements and procedures for universities and academies to open new majors and new master and doctoral programs; to regulate the compilation, appraisal, approval, publication, printing and distribution of textbooks and training materials; to direct the compilation of electronic training materials and the formation of electronic libraries and a national-level database; to organize the compilation and approval of common training materials for professional high schools, colleges and universities, etc.⁶⁷⁷

The Ministry of Science and Technology is in charge of state management of science and technology nationwide, including: science and technology activities; development of science and technology potentials; intellectual property; standardization, measurement and quality; atomic energy; radiation and nuclear safety.⁶⁷⁸ In addition to the general functions of a ministry, the Ministry of Science and Technology has other specific functions in the field of science and technology, such as: to guide and support the establishment and development of science and technology enterprises; to support organizations and individuals in promoting and applying their technical innovations in production, support enterprises in renewing technologies; to provide and guide organizations and individuals in conducting activities of technology incubation and science and technology enterprise incubation; to guide the determination, order placement, selection, assignment and assessment of science and technology projects; transfer of the ownership and use right of the results of science and technology projects funded by the state budget; to transfer ownership of and the right to use the results of national-level science and technology projects to

⁶⁷⁷ Article 2 of the Government's Decree No. 69/2017/ND-CP, *available at* <https://thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Nghi-dinh-69-2017-ND-CP-chuc-nang-nhiem-vu-quyen-han-co-cau-to-chuc-Bo-Giao-duc-va-Dao-tao-350206.aspx>. (in Vietnamese) (accessed June 23, 2019).

⁶⁷⁸ Article 1 of the Government's Decree No. 95/2017/ND-CP, "Position and functions: The Ministry of Science and Technology is a governmental agency which performs functions of State management on science and technology, including scientific research, technology development and innovation activities; development of science and technology potentials; intellectual property; standards, metrology and quality control; atomic energy, radiation and nuclear safety; and State management on public services in fields under the Ministry's management as stipulated by law.", *available at* <https://www.most.gov.vn/en/Pages/Detaildocument.aspx?vID=42> (accessed June 23, 2019).

organizations and individuals; to administer national-level science and technology projects in the fields under its management; to formulate, guide and organize the performance of national-level key science and technology projects set in the national science and technology programs and schemes already approved by the Prime Minister; to guide and register the operation of research and development organizations and science and technology service providers, science and technology development funds, technology renewal funds and hi-tech venture investment funds; to provide technology transfer activities and technology transfer services; to guide the assessment, valuation, appraisal and verification of technologies; to grant license for technology transfer and certify the registration of technology transfer contracts; to provide the process and procedures for registration of intellectual property rights, rights to use and transfer intellectual property of organizations and individuals; to protect legitimate interests of the State, organizations and individuals in the field of industrial property, etc.⁶⁷⁹

The Ministry of Labor, War Invalids and Social Affairs is in charge of state management in the fields of employment, vocational training, labor, salaries, wages, social insurance, labor safety, meritorious people, social protection, children protection and care, gender equality, and social issues.⁶⁸⁰ In addition to the general functions of a ministry, the Ministry of Labor, War Invalids and Social Affairs has other specific functions in its field, such as: to organize the system of labor market information; to collect and provide database on the labor market to organizations and individuals that have demand; to develop the overseas labor markets; to decide on grant,

⁶⁷⁹ Article 2 of the Government's Decree No. 95/2017/ND-CP, *available at* <https://www.most.gov.vn/en/Pages/Detaildocument.aspx?VID=42> (accessed June 23, 2019).

⁶⁸⁰ Article 1 of the Government's Decree No. 14/2017/ND-CP, "Position and functions: The Ministry of Labor, War Invalids and Social Affairs is an authority of the Government performing the roles of regulatory agencies in the fields of: labor, wages; employment; vocational education; social insurance; occupational safety and hygiene; meritorious people; social protection; children, gender equality; prevention and combating of social issues (hereinafter referred to as the fields of labor, meritorious people and social affairs) nationwide; and performing the roles of regulatory agencies in public administration services in the sectors and fields under its scope of management.", *available at* <https://vanbanphapluat.co/decreed-14-2017-nd-cp-functions-tasks-organizational-structure-ministry-labor-war-invalids-social-affairs> (accessed June 23, 2019).

change, and withdrawal of the operation permits of service sending laborers abroad for working; to organize and guide the contract registration of enterprises and laborers going abroad for working under individual contracts; to supervise the contract performance of enterprises; to provide for a list of training occupations; framework programs for training at qualifications of vocational college and vocational secondary school; regulations on enrolment, examination, test, recognition of graduation and grant of vocational diplomas and certificates; forms of vocational diplomas and certificates; to provide for principles, processes and organize the formulation of national vocational skill standards; to manage the assessment and grant of national vocational skill certificates; to set forth standards and processes on accreditation of vocational quality; to decide on the establishment of vocational colleges; to recognize principals of private vocational colleges under its competence; to guide the implementation of labor contracts, dialogues in the workplaces, collective negotiation, collective labor agreements, labor disciplines, material liabilities, settlement of labor disputes and strikes; to promulgate a system of national technical regulations on labor safety, etc.⁶⁸¹

The Ministry of Health performs the state management of health, covering preventive medicine; medical diagnosis and treatment, rehabilitation; medical examination, forensic examination and forensic psychiatric assessment; traditional medicine; reproductive health; medical equipment; pharmaceutical products & cosmetics; food safety; health insurance and population.⁶⁸² In addition to the general functions of a ministry, the Ministry of Health has other

⁶⁸¹ Article 2 of the Government's Decree No. 14/2017/ND-CP, *available at* <https://vanbanphapluat.co/decree-14-2017-nd-cp-functions-tasks-organizational-structure-ministry-labor-war-invalids-social-affairs> (accessed June 23, 2019).

⁶⁸² Article 1 of the Government's Decree No. 75/2017/ND-CP, Position and functions: Ministry of Health is a governmental agency performing the state management of healthcare services, including the following fields and sectors: Preventive medicine; medical diagnosis and treatment, rehabilitation; medical examination, forensic examination and forensic psychiatric assessment; traditional medicine; reproductive health; medical equipment; pharmaceutical products & cosmetics; food safety; health insurance; population; state management of public services within the scope of its management.", *available at* <https://vanbanphapluat.co/decree-75-2017-nd-cp-defining-functions-tasks-powers-organizational-structure-of-ministry-of-health> (accessed June 23, 2019).

specific functions in its field, such as: to monitor diseases, announce epidemics and the termination of epidemics, promulgate list of contagious diseases for which vaccine must be used; grant operational permits for vaccination establishments, certificate of biochemical standards for labs; issue the list of occupational diseases that are entitled to policies/benefits; to conduct health quarantine at border gates; to appraise and decide on the permission to apply new techniques, new methods first introduced in Vietnam; to grant, suspend and revoke different kinds of certificates and licenses in the field of health, such as medical practice licenses for medical examination and treatment; operational permits of medical examination and treatment establishments; certificates of traditional medicine practice; pharmaceutical practice licenses; certificates of eligibility for food safe; to appraise the specialized contents registering for advertisement relating to health and medicine; to appraise strategic assessment report on environment and report on environmental impact assessment with regard to the projects under the approval power of the Ministry of Health, etc.⁶⁸³

The Ministry of Natural Resources and Environment performs the state management of land; water resources; minerals and geology; environment; hydrometeorology; climate change; survey and cartography; sea areas and islands.⁶⁸⁴ In addition to the general functions of a ministry, the Ministry of Natural Resources and Environment has other specific functions in its field, such as: to appraise strategic environmental assessment reports, appraise and approve environmental impact assessment reports and environmental protection schemes and certify the

⁶⁸³ Article 2 of the Government's Decree No. 75/2017/ND-CP dated June 20, 2017, *available at* <https://vanbanphapluat.co/decreed-75-2017-nd-cp-defining-functions-tasks-powers-organizational-structure-of-ministry-of-health> (accessed June 23, 2019).

⁶⁸⁴ Article 1 of the Government's Decree No. 36/2017/ND-CP dated April 4, 2017, "Position and functions: The Ministry of Natural Resources and Environment is a governmental agency performing the function of state management of land; water resources; minerals and geology; environment; hydrometeorology; climate change; survey and cartography; integrated management of marine and island resources and protection of the marine and island environment; remote sensing; and state management of public services in the fields under its management., *available at* <https://vanbanphapluat.co/decreed-36-2017-nd-cp-functions-tasks-powers-organizational-structure-ministry-of-natural-resources> (accessed June 23, 2019).

implementation of environmental protection facilities or measures to serve the projects' operation as stated in approved environmental impact assessment reports and environmental protection schemes in accordance with law; make, edit, publish and distribute map products; conduct survey, draw and update maps and dossiers of administrative boundaries; supervise and assess climate change and its impacts on natural conditions, humans and socio-economic development; build and operate the system for measurement, reporting and verification (MRV) of greenhouse gas emission mitigation activities in the country and abroad; conduct national greenhouse gas inventory; propose Vietnam's policies and measures for mitigating greenhouse gas emissions in line with the socioeconomic development in each period; build, update, publicize and uniformly manage the national database on climate change, climate change scenarios and sea level rise; taking approaches and using information on climate change, etc.⁶⁸⁵

5.2 Government Agencies Concerning Culture

5.2.1 Structure

At the central level, the Ministry of Culture, Sports and Tourism is in charge of state management in the field of culture.

At the provincial level, each province has the Department of Culture, Sports and Tourism, which is a specialized agency under the People's Committee of a province or a centrally-run city, assisting the People's Committee in managing culture within such province or city.

At the district level, each district has the Bureau of Culture and Information, which is a specialized agency under the People's Committee of the district, assisting the People's Committee in managing culture within such district.

⁶⁸⁵ Article 2 of the Government's Decree No. 36/2017/ND-CP, *available at* <https://vanbanphapluat.co/decrees/36-2017-nd-cp-functions-tasks-powers-organizational-structure-ministry-of-natural-resources> (accessed June 23, 2019).

5.2.2 Authority and Functions

The Ministry of Culture, Sports and Tourism performs the state management in the fields of culture, family affairs, physical training and sports and tourism nationwide.⁶⁸⁶ In addition to the general functions of a ministry, the Ministry has other specific functions in its fields, such as:

(1) to submit to the Prime Minister for decision or approval: plans on the protection and promotion of values of cultural heritages; the establishment of national museums and specialized museums; the classification and adjustment of protection zones for special national relics; proposals to UNESCO to recognize Vietnam's major cultural and natural heritages as world heritages; permission to carry national treasures abroad;

(2) to decide within the scope of its authority: the classification of national relics and class-I museums, the adjustment of protection zones for national relics, the allocation of relics, antiques and national treasures to state-owned museums, the approval of plans and projects on preservation and restoration of national relics and special national relics; the approval of or agreement on the construction of works in protection zones of national relics and special national relics; the appraisal of projects on renovation and construction of works outside protection zones of national relics and special national relics if considering that they may adversely affect the relics; the grant of permits for archaeological exploration and excavation; the taking of relics, antiques and national treasures abroad; the duplication of relics, antiques and national treasures at national museums and specialized museums; the management of the grant of permits for overseas Vietnamese and foreign organizations and individuals to study and collect intangible cultural heritages in Vietnam;

(3) to guide the grant of practice licenses and permits for professional art performances; to provide for the evaluation and permission of programs and plays to be performed overseas by

⁶⁸⁶ Article 1 of the Government's Decree No. 79/2017/ND-CP, "Position and functions: The Ministry of Culture, Sports and Tourism is a governmental agency performing the state management of culture, family affairs, physical training, sports and tourism nationwide, and public services in sectors and fields under its management.", *available at* <https://vanbanphapluat.co/decree-79-2017-nd-cp-defining-functions-powers-and-organizational-structure-of-the-ministry-of-culture> (accessed June 23, 2019).

Vietnamese organizations or individuals or to be performed in Vietnam by foreign organizations or individuals;

(4) to manage deposited films and archive documentary films and motion pictures produced at home and abroad;

(5) to protect lawful rights and interests of the State, organizations and individuals in the domains of copyright and related rights to literary and artistic works.⁶⁸⁷

5.3 Government Agencies Concerning Politics and National Security

5.3.1 Structure

a) Government Agencies Concerning State Management of Cadres, Civil Servants, Local Administration, and Administrative Reforms

At the central level, the Ministry of Home Affairs is in charge of state management nationwide in the following fields: state administrative and non-business organizations; local administrations, administrative boundaries; cadres, civil servants, public employees; training and retraining in administration and state management; associations, non-governmental organizations; emulation and commendation; religion; state records and archives and the youth.⁶⁸⁸

At the provincial level, each province has the Department of Home Affairs, which is a specialized agency under the People's Committee of a province or a centrally-run city, assisting

⁶⁸⁷ Article 2 of the Government's Decree No. 79/2017/ND-CP, *available at* <https://vanbanphapluat.co/decreed-79-2017-nd-cp-defining-functions-powers-and-organizational-structure-of-the-ministry-of-culture> (accessed June 23, 2019).

⁶⁸⁸ Article 1 of Decree No. 34/2017/ND-CP, "Position and functions: The Ministry of Home Affairs is a governmental agency performing the function of state management of the following sectors and fields: state administrative and non-business organizations; local administrations, administrative boundaries; cadres, civil servants, public employees; training and retraining in administration and state management; associations, non-governmental organizations; emulation and commendation; religion; state records and archives; the youth, and state management of public services in the fields under its management as prescribed by law.", *available at* <https://vanbanphapluat.co/decreed-34-2017-nd-cp-functions-tasks-powers-organizational-structure-of-the-ministry-of-home-affairs> (accessed June 23, 2019).

the People's Committee in performing state management of home affairs as stated in the preceding paragraph within such province or city. At the district level, each district has the Bureau of Home Affairs, which is a specialized agency under the People's Committee of the district, assisting the People's Committee in performing state management of home affairs within such district.⁶⁸⁹

b) Government Agencies Concerning Good Governance and Anti-Corruption

The Government at both central and local levels has a specialized system to perform the state inspection function, which plays a major role in the fight against corruption. The Law on Inspection provides that state inspection agencies include the following:

- (1) The Government Inspectorate;
- (2) Inspectorates of ministries and ministerial-level agencies (collectively “ministerial inspectorates”)
- (3) Inspectorates of provinces and centrally run cities (collectively “provincial inspectorates”);
- (4) Inspectorates of provincial-level departments;
- (5) Inspectorates of rural districts, urban districts, towns and provincial cities (collectively “district inspectorates”).⁶⁹⁰

⁶⁸⁹ Circular No. 15/2014/TT-BNV, available at <https://thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Thong-tu-15-2014-TT-BNV-huong-dan-nhiem-vu-quyen-han-co-cau-to-chuc-So-Phong-Noi-vu-thuoc-Uy-ban-nhan-dan-257238.aspx> (in Vietnamese) (accessed June 23, 2019).

⁶⁹⁰ Article 4 of the Law on Inspection (2010) No. 56/2010/QH12, “Agencies performing the inspection function:

1. State inspection agencies, including: a/The Government Inspectorate; b/ Inspectorates of ministries and ministerial-level agencies (below collectively referred to as ministerial inspectorates); c/ Inspectorates of provinces and centrally run cities (below collectively referred to as provincial inspectorates); d/ Inspectorates of provincial-level departments; e/ Inspectorates of rural districts, urban districts, towns and provincial cities (below collectively referred to as district inspectorates).
2. Agencies assigned to perform the specialized inspection function.”, available at <https://vanbanphapluat.co/law-no-56-2010-qh12-on-inspection> (accessed June 23, 2019).

In addition, the State Audit system also plays a significant role in preventing and detecting corruption. The State Audit is the agency established by the National Assembly, specializing in auditing the State finance and acting independently.⁶⁹¹ The State Audit is organized and managed in a centralized manner, consisting of governing organ, units of the administrative apparatus, specialized state audit offices, regional state audit offices, and public non-business units.⁶⁹² Specialized state audit offices are unit under the State Audit offices which audit audited entities at the central level and perform tasks as assigned by the State Auditor General.⁶⁹³ The Regional State Audit offices are directly under the State Audit Office and perform audits of agencies and organizations at the local levels within their geographical area.⁶⁹⁴ The State Auditor General is the

⁶⁹¹ Article 15 of Law on State Audit No. 81/2015/QH13, “Principles of audit activities of the State Audit Office of Vietnam:

1. Independence and compliance with law only.

2. Honesty, objectivity, openness and transparency.”, *available at* https://www.economica.vn/Content/files/LAW%20%26%20REG/81_2015_QH13%20Law%20on%20State%20Audit.pdf (accessed June 23, 2019).

⁶⁹² Article 16 of Law on State Audit No. 81/2015/QH13, “Organization of the State Audit Office of Vietnam: 1. The State Audit Office of Vietnam shall be organized and managed in a centralized manner, consisting of the Office of the State Audit Office of Vietnam, units of the administrative apparatus, specialized state audit offices, regional state audit offices, and public non-business units.”, *available at* https://www.economica.vn/Content/files/LAW%20%26%20REG/81_2015_QH13%20Law%20on%20State%20Audit.pdf (accessed June 23, 2019).

⁶⁹³ Article 3 of Law on State Audit No. 81/2015/QH13, “Interpretation of terms: 6. Specialized state audit offices are units attached to the State Audit Office of Vietnam which audit audited entities at the central level and perform tasks as assigned by the State Auditor General.”, *available at* https://www.economica.vn/Content/files/LAW%20%26%20REG/81_2015_QH13%20Law%20on%20State%20Audit.pdf (accessed June 23, 2019).

⁶⁹⁴ Article 3 of Law on State Audit No. 81/2015/QH13, “Interpretation of terms: 7. Regional state audit offices are units attached to the State Audit Office of Vietnam which audit audited entities in localities and perform tasks as assigned by the State Auditor General.”, *available at* https://www.economica.vn/Content/files/LAW%20%26%20REG/81_2015_QH13%20Law%20on%20State%20Audit.pdf (accessed June 23, 2019).

head of the State Audit and accountable to the National Assembly and the National Assembly Standing Committee.⁶⁹⁵

c) Government Agencies Concerning National Security

The National Defense and Security Council is the highest body concerning national security, which is authorized by the National Assembly to make decision regarding national security. The Council is chaired by the President.⁶⁹⁶ The National Defense and Security Council is composed of the Chairperson, Vice Chairperson and Members. The list of members of Council must be submitted by the President to the National Assembly for approval. The Council works on a collegial basis and makes its decisions by a vote of the majority.⁶⁹⁷

⁶⁹⁵ Article 12 of Law on State Audit No. 81/2015/QH13, “State Auditor General: 1. The State Auditor General is the head of the State Audit Office of Vietnam, who takes responsibility for the organization and operation of the State Audit Office of Vietnam before the National Assembly and the National Assembly Standing Committee”, *available at* https://www.economica.vn/Content/files/LAW%20%26%20REG/81_2015_QH13%20Law%20on%20State%20Audit.pdf (accessed June 23, 2019).

⁶⁹⁶ Article 88(5) of The Constitution of the Socialist Republic of Vietnam (2013), “The State President has the following duties and powers: 5. To have overall command of the armed forces and hold the office of Chairman of the National Defence and Security Council; to decide on conferment, promotion, demotion, and deprivation of army rank of general, commander-in-chief, vice- commander-in-chief, and naval commander-in-chief; to appoint, to release from duty, and to remove from office, chief of the general staff, and Chairman of Political Head Office of Vietnamese People’s Army; on the basis of resolutions of the National Assembly or of the National Assembly’s Standing Committee, to proclaim or remove the decision on the state of war; on the basis of resolutions of the National Assembly’s Standing Committee, to issue order on general mobilization or limited mobilization, to declare or remove the state of emergency; in cases where the National Assembly Standing Committee cannot meet, to declare the state of emergency nationwide or in a locality;”, *available at* <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94490/114946/F114201808/VNM94490%20Eng.pdf> (accessed April 1, 2019).

⁶⁹⁷ Article 89(1) of The Constitution of the Socialist Republic of Vietnam (2013).” The National Defence and Security Council consists of a Chairman, Vice Chairmen and other members who are approved by the National Assembly under the nomination of the State President. *available at* <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94490/114946/F114201808/VNM94490%20Eng.pdf> (accessed April 1, 2019).

The national security protection agencies include:⁶⁹⁸ (1) the directing and commanding agencies and security, intelligence or guard units of the People's Public Security Forces; (2) the directing and commanding agencies and army security protection, army intelligence units of the People's Army; (3) the border guards, the coast guards, which are agencies specialized in protection of national security in land border and sea border regions. The People's Public Security Forces constitute the core of the people's armed forces in performing duties to protect national security and maintain social order and safety, and fight for prevention and control of crimes or violations of law on national security, order or social safety.⁶⁹⁹

5.3.2 Authority and Functions

a) Government Agencies Concerning State Management of Cadres, Civil Servants, Local Administration, and Administrative Reforms

The Ministry of Home Affairs performs state management with respect to state administrative structures and state non-business organizations, local administrations and administrative boundaries, cadres, civil servants and public employees; associations and non-

⁶⁹⁸ Article 22 of the Law on National Security (2004) No. 32/2004/QH11, "National security protection agencies: 1. The national security protection agencies include:

a) The directing and commanding agencies and security, intelligence or guard units of the People's Police; b) The directing and commanding agencies and army security protection, army intelligence units of the People's Army; c) The border guards, the coast guards are agencies specialized in protection of national security in land border and sea border regions.", *available at* icj.org/wp-content/uploads/2013/03/VietNam-Law-on-National-Security-2004-eng.pdf (accessed April 1, 2019).

⁶⁹⁹ Article 3 of Law on People's Public Security Forces (2018) No. 37/2018/QH14, "Position of the People's Public Security Force: The People's Public Security Force shall be designated as the core of the people's armed forces in performing duties to protect national security and maintain social order and safety, and fight for prevention and control of crimes or violations of law on national security, order or social safety.", *available at* <https://luatvietnam.vn/an-ninh-quoc-gia/luat-cong-an-nhan-dan-2018-so-37-2018-qh14-169349-d1.html> (in Vietnamese) (accessed April 1, 2019).

governmental organizations; religion; state records and archives. In addition to the general functions of a ministry, the Ministry has other specific functions in its fields, such as:

(1) To submit to the Government plans on the Government's organizational structure in each National Assembly's term; the Government's plans and draft decrees on the establishment, merger, consolidation, division, split or dissolution of ministries and ministerial-level agencies; draft decrees on the organization of specialized agencies of People's Committees;

(2) To submit to the Government for promulgation regulations on the classification of administrative units at all levels; establishment, merger, division, split or adjustment of administrative boundaries or renaming of administrative units at all levels; establishment, renaming, merger, division, split or dissolution of centrally run special economic-administrative units; and policies towards commune-level cadres and employees;

(3) To review and submit to the Prime Minister for approval the results of election of provincial-level People's Committee members;

(4) To assist the Government and the Prime Minister in guiding and inspecting the operation of provincial-level People's Councils; to attend regular meetings of provincial-level People's Councils and, when necessary, meetings of provincial-level People's Committees which discuss administration building, management of administrative boundaries as well as work programs of provincial-level People's Committees;

(5) To assist the Government and Prime Minister in directing related agencies to perform job related to the election of deputies to the National Assembly and People's Councils;

(6) To guide and inspect People's Committees at all levels in modes of operation and the implementation of laws and policies concerning commune-level cadres and employees;

(7) To review and submit to the Government plans on the establishment, merger, division, split or adjustment of administrative boundaries or renaming of administrative units at all levels; to submit to the Prime Minister for decision the classification of provincial-level administrative units; to decide on the classification of district-level administrative units; to guide provincial-level People's Committees in classifying commune-level administrative units;

(8) To guide and inspect the implementation of the Government's or the Prime Minister's regulations on recruitment, employment, rank promotion, rank appointment or rank transfer, assessment, appointment, re-appointment, transfer, shift, resignation, relief from office, disciplining, job severance, retirement, as well as other policies concerning cadres, public employees and civil servants;

(9) To build and manage a national database on state cadres, employees and civil servants, commune-level cadres and employees, and officials falling under the Prime Minister's deciding competence; to manage dossiers of cadres, public employees and civil servants.⁷⁰⁰

b) Government Agencies Concerning Good Governance and Anti-Corruption

State inspection agencies perform and assist competent state agencies in performing the state management of inspection work, settlement of complaints and denunciations and prevention and combat against corruption; and directly inspect and settle complaints and denunciations and prevent and combat corruption in accordance with law.⁷⁰¹ State inspection means the examination, assessment and handling by competent state agencies of the implementation of policies and laws, and the performance of tasks and exercise of powers by agencies, organizations and individuals according to the order and procedures specified by law.⁷⁰²

⁷⁰⁰ Article 2 of Decree No. 34/2017/ND-CP, *available at* <https://vanbanphapluat.co/decreed-34-2017-nd-cp-functions-tasks-powers-organizational-structure-of-the-ministry-of-home-affairs> (accessed June 23, 2019).

⁷⁰¹ Article 5 of the Law on Inspection (2010) No. 56/2010/QH12, "Functions of state inspection agencies: State inspection agencies shall, within the ambit of their tasks and powers, perform and assist competent state agencies in performing the state management of inspection work, settlement of complaints and denunciations and prevention and combat of corruption; and inspect and settle complaints and denunciations and prevent and combat corruption under law.", *available at* <https://vanbanphapluat.co/law-no-56-2010-qh12-on-inspection> (accessed June 23, 2019).

⁷⁰² Article 3(1) of the Law on Inspection (2010) No. 56/2010/QH12, "1. State inspection means the examination, assessment and handling by competent state agencies of the implementation of policies and laws, and the performance of tasks and exercise of powers by agencies, organizations and individuals according to
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The State Audit Office of Vietnam shall function to evaluate, verify, conclude on and make proposals regarding the management and use of public finance and public assets.⁷⁰³ Audit activities of the State Audit means evaluation and verification of the accuracy and truthfulness of information on public finance and public assets or financial statements in relation to the management and use of public finance and public assets; the compliance with law and the effectiveness in the management and use of public finance and public assets.⁷⁰⁴

c) Government Agencies Concerning National Security

The National Defense and Security Council has the following general tasks and powers: to propose the National Assembly, or, when the National Assembly cannot meet, the Standing Committee of the National Assembly, to decide on a state of war; mobilize all forces and capacity of the country to defend the Fatherland; to perform special tasks and exercise special powers assigned to and vested in it by the National Assembly in case of war; and to decide on the

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the order and procedures specified by law. State inspection includes administrative inspection and specialized inspection.”, *available at* <https://vanbanphapluat.co/law-no-56-2010-qh12-on-inspection> (accessed June 23, 2019).

⁷⁰³ Article 9 of Law on State Audit Law on State Audit No. 81/2015/QH13, “Functions of the State Audit Office of Vietnam: The State Audit Office of Vietnam shall function to evaluate, verify, conclude on and make proposals regarding the management and use of public finance and public assets.”, *available at* https://www.economica.vn/Content/files/LAW%20%26%20REG/81_2015_QH13%20Law%20on%20State%20Audit.pdf (accessed June 23, 2019).

⁷⁰⁴ Article 3 of Law on State Audit Law on State Audit No. 81/2015/QH13, “5. *Audit activities of the State Audit Office of Vietnam* means evaluation and verification of the accuracy and truthfulness of information on public finance and public assets or financial statements in relation to the management and use of public finance and public assets; the compliance with law and the effectiveness in the management and use of public finance and public assets.”, *available at* https://www.economica.vn/Content/files/LAW%20%26%20REG/81_2015_QH13%20Law%20on%20State%20Audit.pdf (accessed June 23, 2019).

participation of the people's armed forces in peacekeeping operations in the region and around the world.⁷⁰⁵

The people's armed forces may function in the following cases: (1) in a state of war or state of defense emergency; (2) executing martial law or curfew orders; (3) in a state of emergency due to disasters, dangerous epidemics or circumstances detrimental to national security and social order and safety; (4) when emerges a threat to national security and social order and safety; (5) when participating in the protection of peace in the region and the world under decisions of the National Defense and Security Council; and (6) when occurs a complicated situation related to national security or social order and safety, combat of crime, or prevention, control and remediation of incidents, natural disasters or epidemics.⁷⁰⁶

⁷⁰⁵ Article 89 of The Constitution of the Socialist Republic of Vietnam (2013), "3. The National Defence and Security Council proposes to the National Assembly to decide on the state of war, and in case the National Assembly cannot meet, proposes to the National Assembly's Standing to decide on that; mobilizes all forces and potentialities of the country for national defence; exercises special duties and powers entrusted by the National Assembly in case of war; decides on the participation of the armed forces in activities contributing to the protections of peace in the region and in the world.", *available at* <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94490/114946/F114201808/VNM94490%20Eng.pdf> (accessed April 1, 2019).

⁷⁰⁶ Article 24 of Law on National Defence (2018) No. 22/2018/QH14, "2. Cases in which the people's armed force is used shall be prescribed as follows: a) In the state of war or the state of national defense emergency, the order of the State President and other relevant provisions of law shall be observed; b) Upon exercising the martial law or curfew order, provisions of this Law and other relevant provisions of law shall prevail; c) In the state of emergency due to disasters, dangerous epidemics or serious threats to national security and social order and safety, the provisions of laws on emergency state and other relevant provisions of law shall prevail; d) Where there is a threat to national security or social order and safety which is not so serious that the state of emergency is promulgated, the provisions of laws on national security and other relevant provisions of law shall prevail; dd) On participating in activities contributing to the protection of peace in the region and the world, the decisions of the National Defense and Security Council shall be obeyed; e) In case of complicated situations of national security, social order and safety; fighting against crime; participation in the prevention, combat and mitigation of consequences of incidents, natural disasters, epidemics, the use of the armed force shall be regulated by the Government.", *available at* <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Law-22-2018-QH14-national-defence-389481.aspx> (in Vietnamese) (accessed June 23, 2019).

The national security protection specialized agencies have the following tasks: (1) to organize the gathering of information, analyze, assess and forecast the situation and propose national security protection policies, solutions and plans; (2) to guide and inspect agencies, organizations and individuals in exercising the rights and performing the obligations and responsibility to protect the national security, protecting the State secrets, building safe agencies and units, building the national security protection movement; (3) to organize and direct the prevention, detection and stoppage of and combat against, activities of infringing upon the national security; (4) to research into, and apply science and technology to, the work of national security protection; (5) to effect cooperation with countries, international organizations under international treaties which the Socialist Republic of Vietnam has signed or acceded to in prevention and fight against activities of infringing upon the national security.⁷⁰⁷

The national security protection agencies have the following powers and responsibilities: (1) to employ professional measures according to law; (2) to request agencies, organizations and/or individuals to supply information, documents and/or things when there are grounds to determine that they are involved in activities of infringing upon the national security; (3) to request financial institutions, treasuries, or banks to inspect and block accounts and/or financial sources related to activities of infringing upon the national security; (4) to request post, telecommunications

⁷⁰⁷ Article 23 of Law on National Security (2004) No. 32/2004/QH11, “Tasks of national security protection specialized agencies: 2. The specific tasks of the national security protection agencies: a) To organize the gathering of information, analyze, assess and forecast the situation and propose national security protection policies, solutions and plans; b) To guide and inspect agencies, organizations and individuals in exercising the rights and performing the obligations and responsibility to protect the national security, protecting the State secrets, building safe agencies and units, building the national security protection movement; c) To organize and direct the prevention, detection and stoppage of, struggle against, activities of infringing upon the national security; d) To research into, and apply sciences and technologies to, the work of national security protection; e) To effect cooperation with countries, international organizations under international treaties which the Socialist Republic of Vietnam has signed or acceded to in prevention and fight against activities of infringing upon the national security.”, *available at* <https://www.icj.org/wp-content/uploads/2013/03/VietNam-Law-on-National-Security-2004-eng.pdf> (accessed June 23, 2019).

agencies or organizations, customs offices to open or hand over mails, telegraphs, postal matters, parcels, commodities for inspection when there are grounds to determine that they contain information, documents, explosives, weapons or other articles harmful to national security; (5) to check traffic vehicles, communications means, computers, computer networks, objects, documents, commodities, residences, working places or other establishments of agencies, organizations or individuals when there are grounds to determine that they are related to activities of infringing upon the national security; (6) to requisition communications means, traffic vehicles or other means and the users or operators thereof in emergency cases for the performance of national security protection tasks or the stoppage of consequences harmful to the society, which are occurring or threaten to occur; (7) to suspend or stop the use of communications means or other activities in the Vietnamese territory when there are grounds to determine that such activities cause harms to the national security; to demand the cessation of transportation by Vietnamese traffic vehicles or foreign traffic vehicles in the Vietnamese territory in order to protect the national security and ensure safety for such means; (8) to apply necessary measures to protect collaborators, denouncers, witnesses, victims in cases of infringing upon the national security.⁷⁰⁸

⁷⁰⁸ Article 24 of Law on National Security (2004) No. 32/2004/QH11, "Powers and responsibilities of national security protection agencies: 1. The national security protection agencies shall have the powers:

- a) To resort to professional measures according to law provisions;
- b) To request agencies, organizations and/or individuals to supply information, documents and/or things when there are grounds to determine that they are involved in activities of infringing upon the national security;
- c) To request finance bodies or organizations, treasuries, banks to inspect and block accounts and/or financial sources related to activities of infringing upon the national security;
- d) To request post, telecommunications agencies or organizations, customs offices to open or hand over mails, telegraphs, postal matters, parcels, commodities for inspection when there are grounds to determine that they contain information, documents, explosives, weapons or other articles harmful to national security;
- e) To check traffic means, communication means, computers, computer networks, objects, documents, commodities, residences, working places or other establishments of agencies, organizations or individuals when there are grounds to determine that they are related to activities of infringing upon the national security;
- f) To requisition according to law provisions communications means, traffic means or other means and the users

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The People's Public Security Force shall function to advise the Party and the State on national security protection, social order and safety maintenance and crime prevention and fighting; carry out the state management of protection of national security, maintenance of social order and safety, combat against, prevention and control of crimes and violations of laws on national security, social order and safety; prevent and combat plots and activities of hostile forces, crimes and violations of law related to national security, social order and safety.⁷⁰⁹

5.4 Relevant Private Sectors

The rapid growth of the past three decades (1986 – 2019) has transformed Vietnam economically and socially, raising living standards and lifting millions out of poverty. This growth has generated new and more complex development challenges, from environmental degradation to rising income inequality. Basic public services such as health, education, and clean water are under serious stress, and the government is struggling to maintain adequate standards and ease

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or operators thereof in emergency cases for the performance of national security protection tasks or the stoppage of consequences harmful to the society, which are occurring or threaten to occur;

g) To suspend or stop the use of communications means or other activities in the Vietnamese territory when there are grounds to determine that such activities cause harms to the national security; to demand the cessation of transportation by Vietnamese traffic means or foreign traffic means in the Vietnamese territory in order to protect the national security and ensure safety for such means;

h) To apply necessary measures to protect collaborators, denouncers, witnesses, victims in cases of infringing upon the national security.”, *available at* <https://www.icj.org/wp-content/uploads/2013/03/VietNam-Law-on-National-Security-2004-eng.pdf> (accessed June 23, 2019).

⁷⁰⁹ Article 15 of Law on People's Public Security Forces (2018) No. 37/2018/QH14, “Functions of the People's Public Security force: The People's Public Security Force shall function to advise the Party and the State on national security protection, social order and safety maintenance and crime prevention and fighting; carry out the state management of protection of national security, maintenance of social order and safety, combat against, prevention and control of crimes and violations of laws on national security, social order and safety; prevent and combat plots and activities of hostile forces, crimes and violations of law related to national security, social order and safety.”, *available at* <https://luatvietnam.vn/an-ninh-quoc-gia/luat-cong-an-nhan-dan-2018-so-37-2018-qh14-169349-d1.html> (in Vietnamese) (accessed June 23, 2019).

of access for all citizens. More and more Vietnamese civil society organizations (CSOs) are emerging, responding to the country's needs through a variety of approaches, from independent research and policy advocacy to charity work.⁷¹⁰

Based on studies, CSOs in Vietnam are classified into four categories: (1) mass organizations (including the Women's Union, the Farmers' Association, the Youth Organization, the War Veterans Association, and the Labor Trade Union); (2) professional associations and umbrella organizations (such as Red Cross, Vietnam Union for Science and Technology Associations, Cooperative Alliance); (3) Vietnamese non-governmental organizations (such as charitable organizations, health NGOs, education NGOs, research NGOs, consultancy NGOs); and (4) community-based organizations (such as faith-based organizations, family clans, neighborhood groups).⁷¹¹ Although mass organizations continue to dominate the space for civil society, the Renovation (Doi Moi) reforms since 1986 have helped to catalyze greater diversity of civic life. There has been an increase in public awareness of the contribution of non-government actors, as many new civil society organizations have emerged to engage in a wide range of issues, from environmental protection to gender equality and disaster relief.⁷¹²

5.4.1 Private Sectors Concerning Society

The number of CSOs concerning society in Vietnam has grown rapidly in recent years. With respect to associations, unions and organizations established under Decree No.

⁷¹⁰ Civil Society in Vietnam: A Comparative Study of Civil Society Organizations in Hanoi and Ho Chi Minh City, Hanoi, October 2012, *available at* <https://asiafoundation.org/resources/pdfs/CivilSocietyReportFINALweb.pdf> (accessed June 23, 2019).

⁷¹¹ Civil Society in Vietnam: A Comparative Study of Civil Society Organizations in Hanoi and Ho Chi Minh City, Hanoi, October 2012, *available at* <https://asiafoundation.org/resources/pdfs/CivilSocietyReportFINALweb.pdf> (accessed June 23, 2019).

⁷¹² Civil Society in Vietnam: A Comparative Study of Civil Society Organizations in Hanoi and Ho Chi Minh City, Hanoi, October 2012, *available at* <https://asiafoundation.org/resources/pdfs/CivilSocietyReportFINALweb.pdf> (accessed June 23, 2019).

45/2010/ND-CP dated April 21, 2010 of the Government on the organization, operation and management of associations, as of early 2014, there were over 490 national associations, about 2,900 provincial associations, 5,194 district-level organizations and 28,372 commune-level organizations. In addition, there were about 800 research and development organizations and non-profit science and technology organizations established under Decree No. 81/2002/ND-CP dated October 17, 2002; over 200 social funds and charitable funds established under Decree No. 30/2012/ND-CP dated April 12, 2012; and hundreds of legal aid organizations, microfinance institutions, non-public social assistance establishments which have been set up under relevant laws relating to charity, health, education, environmental protection, etc.⁷¹³

For example, the Vietnam Union for Science and Technology Associations (VUSTA) is one of the largest associations for research and professional associations. VUSTA has about 1.5 million individual members across the country. It has 56 central associations in different disciplines, and 37 local VUSTA associations with 540 membership associations.⁷¹⁴ In the education sector, the Vietnam Association for Promoting Education (VAPE) is an active organization gathering Vietnamese organizations and individuals who are dedicated to the education cause to contribute to the improvement of the people's knowledge, the training of human resources, the fostering of talents of the country and the building of a "learning society." VAPE functions as the core force to link and coordinate social forces to participate in the promotion of education and talents, to encourage and support the teaching and learning in schools; to encourage people, especially the disadvantaged groups, to learn throughout their life;

⁷¹³ State Management of Non-Governmental Organizations in Vietnam Today, Journal of State Organization, Vol. 3, 2014, *available at* <http://bacninh.gov.vn/sobannganh/SoNoiVu/Trang/Tin%20chi%20ti%E1%BA%BFt.aspx?newsid=740&cid=8&dt=2014-04-25> (accessed April 1, 2019).

⁷¹⁴ Civil Society Briefs, Vietnam, *available at* <http://www.adb.org/publications/civil-society-briefs-vietnam> (accessed April 1, 2019).

to provide financial assistance and support to education; to provide consultancy and comments on educational policies, etc.⁷¹⁵

5.4.2 Private Sector Concerning Culture

One of the most active associations in the field of culture is the Cultural Heritage Association of Vietnam (CHAV). CHAV is a social-professional organization gathering organizations and individuals of Vietnam who perform professional cultural work or who are dedicated to cultural heritages, in order to make contribution to the protection and promotion of the values of cultural heritages, to meet the cultural need of the people, to build and develop the Vietnamese culture, and to improve the people's awareness and responsibility in protecting and promoting the values of cultural heritages.⁷¹⁶

Another active organization is the Vietnam Federation of UNESCO Associations (VFUA). The function of VFUA is to provide training and information and to implement UNESCO's activities in Vietnam in accordance with the programs of UNESCO as well as the Vietnam National UNESCO Committee.⁷¹⁷

5.4.3 Private Sector Concerning Politics and National Security

Mass organizations and umbrella organizations sit under the Vietnam Fatherland Front. The organization is described as the political base of people's power. It is intended to have a significant role in society, promoting national solidarity and unity of mind in political and spiritual matters. Many government social programs are conducted through the Fatherland Front, which is intended to supervise the activity of government organizations. Because it is based around

⁷¹⁵ Article 2 of Charter of the Vietnam Association for Promoting Education, *available at* <http://www.hoikhuyenhoc.vn/modules.php?name=News&op=viewst&sid=2280> (in Vietnamese) (accessed April 1, 2019).

⁷¹⁶ Article 2 of Charter of the Cultural Heritage Association of Vietnam, *available at* http://hoidisan.vn/index.php?option=com_content&view=article&id=107&Itemid=70 (in Vietnamese) (accessed April 1, 2019).

⁷¹⁷ See Vietnam Federation of UNESCO Associations, *available at* http://unescovietnam.vn/vnf/index.php?option=com_content&view=article&id=248&Itemid=275 (accessed April 1, 2019).

mass participation and popular mobilization, the Fatherland Front is seen as a representative of the people.⁷¹⁸ However, these mass organizations receive funding from the State and thus do not truly belong to the private sector.

In the field of national security, there is no involvement of the private sector.

⁷¹⁸ See Civil Society Briefs: Vietnam, *available at* <http://www.adb.org/publications/civil-society-briefs-viet-nam> (accessed April 1, 2019).

Chapter 6: Epilogue

The previous chapters have provided a concise but comprehensive overview of the laws concerning society, culture, politics and national security of Vietnam. For more detailed information, it is necessary to look at the legislations, regulations and other materials as cited in the footnotes.

The research shows that in recent years, Vietnam has paid greater attention to law-making with respect to society, culture, politics and national security, as evidenced in the large amount of legislations and implementing regulations promulgated in these areas during the first two decades of the 21st century. This indicates the rapid development and improvement of the Vietnamese legal system, and also demonstrates the government's efforts to strike a balance between economic growth, social justice and equality, and sustainable development, as well as between international economic integration and national security protection.

Latest development of the laws concerning society and culture of Vietnam shows that together with the transition from a centrally-planned economy into a market-based economy with a socialist orientation, Vietnam has also witnessed a transition in different fields of the society such as education, labor, science and technology, social welfare, natural resources and environmental protection, and culture. The trends which can be seen in different bodies of laws governing society and culture are: adhering to the fundamental principles of a market-based economy, lessening the controlling role of the government, enhancing the role and the autonomy of the society, and strengthening international cooperation.

The laws on politics and national security have also been reinforced in recent years in order to respond to new demands and challenges in the 21st century, for example, the demand for an efficient, dynamic, transparent, and effective administrative system, good governance and effective anti-corruption, and new challenges in national security protection in the Internet era and escalated threat of terrorism.

Rapid development of the laws concerning society, culture, politics and national security of Vietnam in recent years has also been driven by the process of formulating the ASEAN

Community. Improving legal and institutional frameworks in the fields of society, culture, politics and security is among Vietnam's numerous efforts to implement the ASEAN Political-Security Community (APSC) Blueprint and ASEAN Socio-Cultural Community (ASCC) Blueprint in order to successfully build the ASEAN Community in 2015. In 2009, the Vietnamese Government issued Resolution No. 51/NQ-CP dated October 12, 2009 promulgating the Government's Action Program on the participation in ASEAN cooperation to 2015. The Prime Minister issued Decision No. 142/QD-TTg dated January 31, 2009 promulgating the Regulation on the work and coordination among Vietnam's agencies participating in ASEAN cooperation and Decision No. 1536/QD-TTg dated August 30, 2013 approving the Government's Action Program on raising public awareness about ASEAN.

With respect to politics and security, Resolution No. 51/NQ-CP specifies that Vietnam will proactively participate in the areas that it has concerned interest, including some sensitive areas, but Vietnam will not let ASEAN become a military alliance or a common defense block and will not form any military alliance with any country; Vietnam will actively participate in cooperation in political development, shaping and sharing of norms, and preventing conflicts, and gradually and selectively participate in activities relating to conflict resolution and post-conflict peace-building.

With respect to society and culture, Resolution No. 51/NQ-CP outlines that Vietnam will actively implement the ASCC Blueprint and promote cooperation towards the four common goals of ASEAN, including: a strong social security system to ensure that economic growth is in parallel with social equality and fairness, a sustainable environment and sustainable management of natural resources, control of impacts of economic integration on the society, and maintenance and promotion of cultural heritages and cultural identity. Vietnam will focus on training human resources, strengthening national capacity and financial-technical resources; pay attention to cooperation activities in social development, culture, science and technology, education, youth, women, etc.; actively promote cooperation among ASEAN members and between ASEAN and outside partners to cope with transnational challenges, such as preventing and combating diseases, natural disasters, environmental pollution and climate changes. For sensitive issues

such as migrant workers, rights of women and children, Vietnam will have a flexible approach in accordance with Vietnamese laws, ensuring Vietnam's fundamental interests and position.

Given the above-mentioned directions set forth in Resolution No. 51/NQ-CP, Vietnamese laws concerning society, culture, politics and security, as summarized in the preceding chapters, are essentially in line with ASEAN's norms. The report on the mid-term review of the ASCC implementation highlights that the purpose, objectives and action lines of the ASCC Blueprint were basically designed and implemented in accordance with the national priorities of Vietnam concerning the field of socio-culture, technology and environment. The report also shows that Vietnam has implemented the majority of activities in the ASCC Blueprint through various methods, particularly incorporating the contents of the ASCC Blueprint into Vietnam's national target programs and national/ministerial action programs.

However, there are still many areas that need improvements of the legal frameworks. For example, current law concerning the rights of migrant workers is superficial and not sufficient to protect migrant workers. In some areas, even though the laws have been in existence, the enforcement of such laws remains ineffective and unable to meet the requirements of the society; for example, the law on environmental protection, the law on food safety, the law on drugs, the law on prevention and fight against narcotics, the law on prevention and fight against corruption, etc. In addition to improving the law itself, strengthening law enforcement and raising public awareness are very important. It is incomplete to evaluate Vietnamese laws concerning society, culture, politics and security merely based on legislations and regulations since there is always a gap between the law on paper and law in practice.

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Appendix A

THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM (2013)*

(Unofficial Translation)

THE NATIONAL ASSEMBLY

The Socialist Republic of Vietnam

Independence- Freedom- Happiness

THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM (AMENDED)

PREAMBLE

In the course of their millennia old history, the Vietnamese people, working diligently, creatively, and fighting courageously to construct and defend their country, have forged a tradition of patriotism, solidarity, humaneness, righteousness, perseverance, and indomitableness that has created Vietnamese civilisation and culture of today.

Starting in 1930, under the leadership of the Communist Party of Vietnam, formed and trained by President Ho Chi Minh, our people waged a protracted revolutionary struggle full of hardships and sacrifices for independence, freedom of the nation and happiness of the People. In the wake of the triumph of the August Revolution, on 2 September 1945, President Ho Chi Minh announced the Declaration of Independence, declaring the birth of the Democratic Republic of Vietnam which is now the Socialist Republic of Vietnam. With the will and the power of the entire nation as well as with the assistance of friends across the world, our People have gained great victories in national liberation wars, unified the country, defended the Fatherland and fulfilled international duties, attained great achievements of historical significance in the cause of restructuring, leading the nation to socialism.

* from the website of International Institute for Democracy and Electoral Assistance, *available at* http://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf (accessed August 10, 2015).

Institutionalising the Platform of national construction during the transitional period towards socialism, inheriting the 1946 Constitution, 1959 Constitution, 1980 Constitution, and 1992 Constitution, the Vietnamese People frame, implement, and protect this Constitution for the objectives of prosperous people and a powerful nation, democracy, justice and civilisation.

CHAPTER I POLITICAL SYSTEM

Article 1

The Socialist Republic of Vietnam is an independent, sovereign and united country, which in its territorial integrity comprises its mainland, islands, territorial waters and air space.

Article 2

1. The Socialist Republic of Vietnam is a socialist rule of law State of the People, by the People and for the People.
2. The people are the masters of the Socialist Republic of Vietnam; all state powers belong to the people whose foundation is the alliance between the working class, the peasantry and the intelligentsia.
3. The State powers are unified and delegated to state bodies, which shall coordinate with and control one another in the exercise of the legislative, executive and judiciary powers.

Article 3

The State guarantees and promotes the People's mastery; acknowledges, respects, protects and guarantees human rights and citizens' rights; implements the objectives of prosperous people, state powers, democracy, justice, civilisation, and all that people enjoy that is abundant and free for a happy life with conditions for all-round development.

Article 4

1. The Communist Party of Vietnam - the Vanguard of the Vietnamese working class, simultaneously the vanguard of labourers and of the Vietnamese nation, the faithful representative of the interests of the working class, labourers and the whole nation, acting

upon the Marxist-Leninist doctrine and Ho Chi Minh's thought, is the leading force of the State and society.

2. The Communist Party of Vietnam maintains close ties with the People, serves the People, submits to People's supervision and is accountable to the People in its decisions.
3. All organisations and members of the Communist Party of Vietnam operate within the framework of the Constitution and the law.

Article 5

1. The Socialist Republic of Vietnam is the unified State of all nationalities living together in the country of Vietnam.
2. All the ethnicities are equal, unified and respect and assist one another for mutual development; all acts of national discrimination and division are strictly forbidden.
3. The national language is Vietnamese. Every ethnic group has the right to use its own language and system of writing, to preserve its national identity, to promote its fine customs, habits, traditions and culture.
4. The State implements a policy of comprehensive development, and provides conditions for the ethnic minorities to promote their physical and spiritual abilities and to develop together with the nation.

Article 6

The people exercise the State power under the forms of direct democracy and of representative democracy through the National Assembly, the People's Councils and other State agencies.

Article 7

1. Elections of representatives of the National Assembly and representatives of the People's Councils are held in accordance with the principles of universal, equal, direct and secret suffrage.
2. A representative of the National Assembly and a representative of a People's Council shall be revoked from office by the electors or the National Assembly or the People's Council, when he or she is no longer worthy of the confidence of the people.

Article 8

1. The State is organised and operates in concordance with the Constitution and the law, manages society by the Constitution and the law and practices the principle of democratic centralism.
2. All state agencies, cadres, officials and employees must show respect for the People, devotedly serve the People, maintain close contact with the People, listen to their opinions and submit to their supervision; resolutely struggle against corruption, wastefulness and all manifestations of bureaucracy, arrogance and authoritarianism.

Article 9

1. The Vietnam Fatherland Front is a political alliance and a voluntary union of political organisations, socio-political organisations, social organisations and individuals representing their social classes and strata, ethnicities, religions, and overseas Vietnamese.
The Vietnam Fatherland Front constitutes the political base of the people's government; represents and protects legal and legitimate rights and interests of the People; gathers and promotes the power of great national solidarity, practices democracy and enhances social consensus; practices social supervision and criticism; participates in the building of the Party, the State and people's activities of foreign relations, contributing to building and defending the Fatherland.
2. The Vietnam Trade Union, the Vietnam Peasant Society, the Ho Chi Minh Communist Youth Union, the Vietnam Women's' Society and the Vietnam Veteran Society are socio-political organisations established on a voluntary basis that represent and protect the legal and legitimate rights and interests of their members; cooperate with others members of the Fatherland Front and unify the activities of the Fatherland Front.
3. The Vietnam Fatherland Front, its member organisations and other social organisations operate in accordance with the framework of the Constitution and the law. The State provides favourable conditions for the activities of the Vietnam Fatherland Front, its member organisations and other social organisations.

Article 10

The Trade Union is the socio-political organisation of the working class and labourers, established on a voluntary basis that represents the workers, looks after and protects the legitimate and legal

rights and interests of the workers; participates in state administration and socio-economic management; participates in the control, inspection, and supervision of the activity of State bodies, organisations, units and enterprises with respects to the matters concerning the rights and duties of the workers; propagandises, mobilises learning, development of abilities and professional skills, conformity of law, and construction and defence of the Fatherland among the workers.

Article 11

1. The Vietnamese Fatherland is sacred and inviolable.
2. All acts against the independence, sovereignty, unity and territorial integrity against the course of building and defence of the Fatherland, must be strictly punished.

Article 12

The Socialist Republic of Vietnam consistently carries out a diplomatic policy of independence, autonomy, peace, friendship, cooperation and development; seeks multilateral and diversified relations and actively seeks international integration and cooperation on the basis of respect for each other's independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual interest; conforms to the Charter of the United Nations and international treaties in which the Socialist Republic of Vietnam is a member; a friend, reliable partner and responsible member in the international community for the sake of national interests and contributes to the cause of peace, national independence, democracy and social progress in the world.

Article 13

1. The national flag of the Socialist Republic of Vietnam is rectangular in shape, with its width being equal to two-thirds of its length and in the middle of a red background is a five-pointed gold star.
2. The national emblem of the Socialist Republic of Vietnam is circular in shape; in the middle of a red background is a five-pointed gold star framed by rice ears, below which are half a cogwheel and the inscription "The Socialist Republic of Vietnam".

3. The national anthem of the Socialist Republic of Vietnam is the music and lyrics of the song “Tien quan ca” (“March to the Front”).
4. The National Day of the Socialist Republic of Vietnam is the day of the Declaration of Independence, 2 September 1945.
5. The capital of the Socialist Republic of Vietnam is Hanoi.

CHAPTER II

HUMAN RIGHTS AND CITIZENS’ FUNDAMENTAL RIGHTS AND DUTIES

Article 14

1. In the Socialist Republic of Vietnam, human rights and citizens’ rights in the political, civic, economic, cultural and social fields are recognised, respected, protected and guaranteed in concordance with the Constitution and the law.
2. Human rights and citizens’ rights shall only be restricted when prescribed by law in imperative circumstances for the reasons of national defence, national security, social order and security, social morality and community well-being.

Article 15

1. Citizens' rights are inseparable from citizens' duties.
2. Everyone has the duty to respect the rights of others.
3. Citizens are responsible to practice their duties to the State and society.
4. The practice of human rights and citizens’ rights cannot infringe national interests and legal and legitimate rights and interests of others.

Article 16

1. All citizens are equal before the law.
2. No one shall be discriminated against based on his or her political, civic, economic, cultural or social life.

Article 17

1. A citizen of the Socialist Republic of Vietnam is a person with Vietnamese nationality.
2. A Vietnamese citizen shall not be expelled or extradited to other nations.

3. A Vietnamese citizen residing abroad shall be protected by the Socialist Republic of Vietnam.

Article 18

1. Vietnamese living abroad make up an inseparable part of the Vietnamese national community.
2. The Socialist Republic of Vietnam encourages and creates conditions for Vietnamese living abroad to preserve the Vietnamese cultural identity, maintain close ties with their families and native land and to contribute to the construction of the native land and the nation.

Article 19

Everyone has the right to live. Human life is protected by the law. No one shall be illegally deprived of his or her life.

Article 20

1. Everyone shall enjoy the inviolability of the individual and the legal protection of his or her life, health, honour and dignity and is protected against torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health and offence against honour and dignity.
2. No one shall be arrested in the absence of a decision by the People's Court, a decision or sanction of the People's Procuracy except in cases of flagrant offences. Taking a person into, or holding him in custody shall be decreed by statute.
3. Everyone has the right to donate human tissue and organs and to donate a corpse in concordance with the law. Medical, pharmaceutical and scientific experimentation or any other forms of experimentation on the human body must have the permission of the human subject.

Article 21

Everyone is entitled to the inviolability of personal privacy, personal secrecy and familial secrecy and has the right to protect his or her honour and prestige. Information regarding personal privacy, personal secrecy and familial secrecy is safely protected by the law.

Everyone enjoys the secrecy of correspondence, telephone conversations, telegrams, and other forms of exchange of personal information.

No one is illegally allowed to open, control, and confiscate others' correspondence, telephone conversations, telegrams, and other forms of exchange of personal information.

Article 22

1. The citizen has the right to have a legal domicile.
2. Everyone is entitled to the inviolability of his or her domicile. No one is allowed to enter the domicile of another person without his or her consent.
3. Domiciliary searches shall be provided by the statute.

Article 23

The citizen shall enjoy freedom of movement and of residence within the country; and can freely travel abroad and return home from abroad. The exercise of these rights shall be provided by the law.

Article 24

1. Everyone shall enjoy freedom of belief and religion; he or she can follow any religion or follow none. All religions are equal before the law.
2. The State respects and protects freedom of belief and of religion.
3. No one has the right to infringe on the freedom of belief and religion or to take advantage of belief and religion to violate the laws.

Article 25

The citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, of access to information, to assemble, form associations and hold demonstrations. The practice of these rights shall be provided by the law.

Article 26

1. Male and female citizens have equal rights in all fields. The State has a policy to guarantee equal gender rights and opportunities.
2. The State, society, and family create conditions for the comprehensive development of women and promotion of their role in society.

3. Sex discrimination is strictly prohibited.

Article 27

Citizens shall, upon reaching the age of eighteen, have the right to vote and, upon reaching the age of twenty-one, have the right to stand for election to the National Assembly and the People's Councils. The practice of these rights is provided by the statute.

Article 28

1. Citizens have the right to participate in the administration of the state and management of society and to participate in discussion and recommendation to the state bodies on the issues of the community, the region and the whole country.
2. The State shall create conditions for the citizen to participate in the administration of the State and management of society and the receipt and response to citizens' opinions and recommendations shall be public and transparent.

Article 29

Citizens shall, upon reaching the age of eighteen, have the right to vote when the State holds a referendum.

Article 30

1. Everyone has the right to lodge complaints and denunciations about the illegal acts of State bodies, organisations, and individuals with the relevant State bodies, organisations and individuals.
2. The relevant State bodies, organisations, and individuals must receive and handle the complaints and denunciations. The person who has suffered damages shall be entitled to material and psychological compensation and restoration of honour in accordance with law.
3. It is strictly forbidden to take vengeance on the person making complaints or denunciations, or to misuse the right to make complaints or denunciations with the aim of slandering and causing harm to another person.

Article 31

1. A defendant shall be regarded as innocent until the crime is proved in accordance with legal procedure and the sentence of the Court has acquired full legal effect.
2. A defendant must be tried timely, equally and publicly by courts within the time provided by law. If the case is heard in a secret trial in accordance with the law, the verdict must be pronounced in public.
3. No one shall be tried twice for the same offence.
4. Any person who has been arrested, held in custody, prosecuted, investigated, charged or brought to trial in violation of the law has the right to self-defend or to seek the assistance of defence from lawyers or other people.
5. Any person who has been arrested, held in custody, prosecuted, investigated, charged or brought to trial in violation of the law shall be entitled to compensation for material and psychological damages and restoration of honour. Anybody who contravenes the law in arresting, holding in custody, prosecuting, investigating, charging, bringing to trial or enforcing judgment that causes damages to others shall be dealt with in accordance to the law.

Article 32

1. Everyone enjoys the right of ownership with regard to his lawful income, savings, housing, private possession, capital and assets in enterprises or other economic organisations.
2. The right of private ownership and the right of inheritance are protected by the law.
3. In cases made absolutely necessary by reason of national defence, security or national interest, in case of emergency and for protection against natural calamity, the State can make a forcible purchase of or can requisition pieces of property of individuals or organisations against compensation, taking into account current market prices.

Article 33

Everyone enjoys freedom of enterprise in industries and trades not banned by the law.

Article 34

Citizens have the right to social security.

Article 35

1. Citizens have the right to work and to select career, job and workplace.
2. Workers shall be provided equal and safe conditions of work and shall be paid a salary and enjoy leave according to policy.
3. Discrimination, forced labour and employment of workers under minimum age of labour are strictly prohibited.

Article 36

1. Males and females have the right to marry and divorce. Marriage shall conform to the principles of free consent, progressive orientation, monogamy and equality between husband and wife and mutual respect.
2. The State protects marriage and family and protects the interests of mothers and children.

Article 37

1. Children enjoy protection, care and education by the State, family and society and are allowed to participate in children's affairs. Infringement, persecution, maltreatment, abandonment, abuse and exploitation of labour and other forms of violating children's rights are strictly prohibited.
2. The State, family, and society shall create favourable conditions for young people to study, work, relax, develop bodies and minds and shall educate them in morality, national tradition and civic consciousness for them to be in the vanguard of creative labour and national defence.
3. The State, family and society shall respect and take care of old people, and promote their role in the course of national construction and defence.

Article 38

1. Everyone is entitled to health care and protection, is equally entitled to medical services and has the duty to comply with regulations with regard to prophylaxis, medical examination and treatment.
2. Any acts threatening the life or health of other people and the community are strictly prohibited.

Article 39

Citizens have the right and the duty to learn.

Article 40

Everyone has the right to carry out scientific and industrial research, engage in literary and artistic creation and enjoy benefits from those activities.

Article 41

Everyone has the right to enjoy and access cultural heritage, participate in cultural life and make use of cultural facilities.

Article 42

A citizen has the right to determine his or her nationality, use his or her mother language and select his or her language of exchange.

Article 43

Everyone has the right to live in a clean environment and has the duty to protect the environment.

Article 44

Citizens must show loyalty to their Fatherland.

Treason is the most serious crime.

Article 45

1. It is the sacred duty and the noble right of citizens to defend their Fatherland.
2. Citizens must fulfil their military obligation and join in building a national defence of all the people.

Article 46

Citizens have the duty to obey the Constitution and the law; join in the safeguarding of national security, social order and safety and conform to the established rules of public life.

Article 47

Citizens have the duty to pay taxes according to the provisions of the statute.

Article 48

Foreigners residing in Vietnam must obey the Constitution and law of Vietnam; they shall receive State protection with regard to their lives, possessions and legitimate interests in accordance with the provisions of Vietnamese law.

Article 49

The Socialist Republic of Vietnam shall consider granting asylum to foreigners who are at risk because of their struggle for freedom, national independence, socialism, democracy and peace or scientific work.

CHAPTER III

ECONOMY, SOCIETY, CULTURE, EDUCATION, SCIENCE, TECHNOLOGY, AND ENVIRONMENT

Article 50

The Socialist Republic of Vietnam builds an independent and self-reliant economy which shall promote its internal resources, international integration and cooperation and closely connects with cultural development, practices social progressiveness and equality, protects the environment and exercises industrialisation and modernisation of the country

Article 51

1. The Vietnamese economy is a socialist-oriented market economy with multi-forms of ownership and multi-sectors of economic structure; the state economic sector plays the leading role.
2. All economic sectors are important constituents of the national economy. Participants in different economic sectors are equal, cooperate and compete in accordance with the law.
3. The State encourages and provides favourable conditions for entrepreneurs, enterprises and individuals and other organisations to invest, produce and do business; contribute to the stable development of the economic sectors and national construction. Legal possessions of

individuals, organisations of investment, production and business are protected by the law and are not subjected to nationalisation.

Article 52

The State constructs and perfects economic institutions, coordinate the economy on the basis of respecting market rules; exercises delegation, decentralisation and separation of authorities in state management; promotes the connection of regional economies and guarantee the unity of the national economy.

Article 53

The land, water resources, mineral resources, resources in the sea and airspace, other natural resources and property invested and managed by the State are public properties, coming under ownership of the entire people represented and uniformly managed by the State.

Article 54

1. Land is a special resource of the nation, an important resource of national development and is managed in concordance with the law.
2. Organisations and individuals are entitled to land assignment, land lease, and recognition of the land use right by the State. Land users have the right to transfer the land use right, and practice related rights and duties in concordance with the law. The land use right is protected by the law.
3. The State shall recover land used by organisations and individuals in imperative cases provided by the law for the purposes of national defence, national security and socio-economic development in the national and public interests. The recovery of land must be public, transparent and compensations must be provided in concordance to the law.
4. The State shall effect acquisition of land, provided for in law, in cases of urgent demands and extreme necessity with respect to the implementation of the businesses of national defence, national security, or wars, emergency, prevention of and protection against natural calamities.

Article 55

1. The State budget, national reserves, State financial funds and other public financial sources are uniformly managed by the State and must be used effectively, equally, publicly, transparently and legally.
2. The State budget consists of a central budget and local budgets, in which the central budget plays the leading role, guaranteeing national expenditure. All items of income and expenditure of the State budget must be estimated and must be provided for by the law.
3. The monetary unit of the nation is Vietnam Dong. The State shall guarantee the value of the national currency.

Article 56

State bodies, organisations and individuals must practice saving and combat waste, prevent and fight against corruption in socio-economic activities and State management.

Article 57

1. The State encourages and provides favourable conditions for organisations and individuals to create jobs for workers.
2. The State shall protect the legal rights and interests of the workers and employers and provide favourable conditions for building progressive, harmonious, and stable labour relationships.

Article 58

1. The State shall invest in the development of the protection and care of the People's health, provide health insurance for the entire people and exercise a priority policy of health care for ethnic minorities, highlanders, islanders and people living in extremely difficult socio-economic conditions.
2. It is the responsibility of the State, society and family to ensure care and protection for mothers and children and family planning implementation.

Article 59

1. The State and society shall honour, commend, reward and exercise a priority policy for people who offer meritorious service to the nation.

2. The State shall create equal opportunities for citizens to enjoy social welfare, develop a system of social security, and provide a policy assisting the elderly, the disabled, the poor and people with other difficult circumstances.
3. The State shall exercise a policy of housing development and create conditions so that everyone shall have housing.

Article 60

1. The State and society shall take care of the creation and development of the Vietnamese culture, which is modern, deeply imbued with national identity and reflects mankind's cultural quintessence.
2. The State and society shall develop literature and art so as to meet the diverse and healthy spiritual demands of the People and promote mass media so as to meet the People's demand for information, serving the course of construction and defence of the Fatherland.
3. The State and society shall provide a favourable environment for the growth of the Vietnamese family which is prosperous, progressive, and happy; create Vietnamese people who are healthy, cultured, profoundly patriotic, unified, independent and responsible.

Article 61

1. Development of education is a primary national policy for the purposes of elevating the people's intellectual standards, training human resources and fostering talents.
2. The State shall prioritise investment in and attraction of other investment sources for education; take care of pre-school education; guarantee compulsory primary education which is free of charge; gradually universalise secondary education; develop higher education and vocational education and provide an appropriate policy for scholarship and tuition.
3. The State shall prioritise the educational development in mountainous and island areas, (regions inhabited by ethnic minority people) and in regions that have extremely difficult socio-economic conditions; shall prioritise employment and development of the talented and provide favourable conditions for the disabled and the poor to access education and vocational learning.

Article 62

1. Development of science and technology is a primary national policy, playing a key role in the country's socio-economic development.
2. The State shall prioritise investment and encourage investment by organisations and individuals in scientific research, development, transfer and effective application of scientific and technological achievements; shall guarantee the right to conduct scientific and technological research and protect the right to intellectual property.
3. The State shall provide favourable conditions for everyone to participate in and enjoy benefits from scientific and technological activities.

Article 63

1. The State has a policy to protect the environment; to manage and effectively and stably use natural resources; to protect nature and biodiversity; to take initiative in prevention and resistance against natural calamities and respond to climate change.
2. The State encourages all acts of protection of the environment, development and use of new energy and recycled energy.
3. Organisations and individuals who cause environmental pollution, deplete natural resources and weaken biodiversity shall be strictly dealt with and must be responsible for remedy and compensation for damage.

CHAPTER IV

DEFENCE OF THE FATHERLAND

Article 64

To defend the socialist Vietnamese Fatherland is the responsibility of the entire people.

The State shall consolidate and strengthen national defence by the entire people and of the people's security, with the people's armed forces regarded as the core, shall develop to the full the aggregate strength of the country to defend the Fatherland and shall contribute to the protection of peace in the region and in the world.

All agencies, organisations and citizens shall fulfil all their national defence and security obligations.

Article 65

The people's armed forces must show absolute loyalty to the Fatherland, the People, the Party, and the State. Their duty is to protect national independence and sovereignty, the country's unity and territorial integrity, national security and social order; to protect the People, the Party, the State and the socialist regime and to join the entire people in national construction and fulfilment of international duties.

Article 66

The State shall build a revolutionary people's Army which shall be a well-trained regular army to be gradually modernised, have proper permanent forces, powerful reserves, strong and comprehensive self-defence militia and serves as the core of the business of national defence.

Article 67

The State shall build a revolutionary people's Police Force which shall be a well-trained regular army to be gradually modernised and serves as the core of the business of national security and social order, preventing and fighting against crimes.

Article 68

The State shall develop to the full the People's patriotism and revolutionary heroism, educate the entire people in matters of national defence and security, build up the national defence industry to ensure proper equipment for the armed forces; harmonise national defence with the economy and vice versa, enforce an appropriate policy with regard to soldiers' families and seek to ensure proper material and spiritual living conditions for officers and soldiers, national defence workers and employees in consistence with the nature of the People's Army and People's Public Security activities and build powerful people's armed forces and unceasingly reinforce the country's national defence potential.

CHAPTER V

THE NATIONAL ASSEMBLY

Article 69

The National Assembly is the highest representative body of the People and the highest body of State power of the Socialist Republic of Vietnam.

The National Assembly exercises constitutional and legislative powers, decides significant national affairs and exercises supreme control over all activities of the State.

Article 70

The National Assembly has the following duties and powers:

1. To draw up and amend the Constitution; to make and amend laws;
2. To exercise supreme control over conformity to the Constitution, the law and the resolutions of the National Assembly; to examine the reports of the State President, the Standing Committee of the National Assembly, the Government, the Supreme People's Court, the Supreme People's Procuracy, the National Commission of Election, the State Audit and other bodies created by the National Assembly;
3. To decide on the major objectives, targets, policies and duties of national socio- economic development.
4. To decide on the fundamental national financial and monetary policies; to set, change, or abolish taxes; to decide on the separation of items of incomes and expenditure between central budget and local budgets; to decide on the safety limit of national debts, public debts, and government debts; to decide on planning of the State budget and allocation of the central State budget; to approve the accounts of the State budget.
5. To decide on the State's policies on ethnic minorities and religions;
6. To regulate the organisation and operation of the National Assembly, the State President, the Government, the People's Courts, the People's Procuracy, the National Council of Election, the State Audit, local administrations, and other bodies created by the National Assembly.
7. To elect, suspend and revoke the State President and Vice-President, the Chairman of the National Assembly, the Vice-Chairmen of the National Assembly, members of the Standing

Committees of the National Assembly, Chairman of the Ethnic Council, Chairmen of the Committees of the National Assembly, the Prime Minister, the Chief Justice of the Supreme People's Court, the Head of the Supreme People's Procuracy, the President of the National Council of Election, the Head of the State Audit, and the heads of other bodies created by the National Assembly; to sanction the recommendations of appointment, suspension and revocation of the Deputy Prime Minister, Ministers and other members of the Government, Judges of the People's Supreme Court; sanction the list of members of the Defence and Security Council and of the National Council of Election.

Upon election, the State President, the Chairman of the National Assembly, the Prime Minister, and the President of the Supreme People's Court must declare an oath of allegiance to the Fatherland, the People and the Constitution;

8. To cast a vote of confidence on persons holding positions elected or approved by the National Assembly;
9. To set up or dissolve government ministries and other agencies at the same level; to establish, merge, divide or adjust the boundaries of provinces and cities under direct central rule; to set up or disband special administrative economic units; to set up or disband other bodies in concordance with the Constitution and the law;
10. To abrogate all formal written documents issued by the State President, the Standing Committee of the National Assembly, the Government, the Prime Minister, the Supreme People's Court, and the Supreme People's Procuracy that are inconsistent with the Constitution, laws and resolutions taken by the National Assembly.
11. To grant amnesty;
12. To determine titles and ranks in the people's armed forces, in the diplomatic service and other State titles and ranks; to institute medals, badges and State honours and distinctions;
13. To decide issues of war and peace; to proclaim a state of emergency and other special measures aimed at ensuring national defence and security;
14. To decide on fundamental policies in external relations; to ratify or nullify international treaties with respect to war and peace; national sovereignty; membership of the Socialist Republic of Vietnam in important international and regional organisations; international treaties on human rights, citizens' fundamental rights and duties and other international treaties inconsistent with the laws and resolutions taken by the National Assembly

15. To hold a referendum.

Article 71

1. The duration of each term of the National Assembly is five years.
2. Sixty days before the end of its tenure, a new National Assembly shall have been elected.
3. In special cases, with the approval of at least two-thirds of its members, the National Assembly can either reduce or extend its period of tenure according to the recommendations by the National Assembly's Standing Committee. The extension of a term of the National Assembly cannot exceed twelve months, except in the case of war.

Article 72

The Chairman of the National Assembly shall preside over its sessions; authenticate through his signature the Constitution, laws and resolutions of the National Assembly; give leadership to the activities of its Standing Committee; organise the carrying out of its external relations and maintain relationships with the Assembly delegates.

The Vice Chairmen of the National Assembly shall assist the Chairman in the fulfilment of his duties as required by him.

Article 73

1. The National Assembly's Standing Committee is its permanent Committee.
2. The National Assembly's Standing Committee is composed of the Chairman of the National Assembly, the Vice Chairmen of the National Assembly and the members.
3. The Number of members of the Standing Committee shall be determined by the National Assembly. A member of the Standing Committee cannot simultaneously be a member of the Government.
4. The Standing Committee of each legislature shall fulfil its tasks and exercise its powers until the election by the new legislature of a new Standing Committee.

Article 74

The Standing Committee of the National Assembly has the following duties and powers:

1. To prepare for, to convene and preside over the sessions of the National Assembly;

2. To enact ordinances on matters entrusted to it by the National Assembly; to interpret the Constitution, the law, and decree-laws;
3. To supervise the implementation of the Constitution, the law, the resolutions of the National Assembly, decree-laws, the resolutions of the Standing Committee; to supervise the activities of the Government, the Supreme People's Court, the Supreme People's Procuracy, State Audit and other bodies created by the National Assembly;
4. To suspend the execution of the formal written orders of the Government, the Prime Minister, the Supreme People's Court, the Supreme People's Procuracy that contravene the Constitution, the law, the resolutions of the National Assembly; to report the matter to the National Assembly for it to decide on the abrogation of such orders in its next session; to repeal the written orders of the Government, Prime Minister, the Supreme People's Court, the Supreme People's Procuracy that contravene the decree-laws and resolutions of the Standing Committee;
5. To direct, harmonise, and co-ordinate the activities of the Ethnic Council and the Committees of the National Assembly, to give guidance to and to ensure good working conditions for the Assembly delegates;
6. To advise the National Assembly on election, suspension, or revocation of the State President, the Chairman of the National Assembly, the Vice Chairmen of the National Assembly, and members of the Standing Committee of the National Assembly, Chairman of Ethnic Council, Chairmen of the Committees of the National Assembly, President of the National Council of Election and Head of the State Audit;
7. To exercise supervision and control over and to give guidance to the activities of the People's Councils; to repeal improper resolutions by the People's Councils of provinces and cities under direct central rule; to disband the People's Councils of provinces and cities under direct central rule whenever such Councils cause serious harm to the interests of the People;
8. To decide on the establishment, merging, division, or adjustment of the boundaries of administrative units below the level of provinces and cities under direct central rule;
9. In cases where the National Assembly cannot meet, to decide on proclaiming a state of war and report it to the National Assembly for decision at its next session;
10. To proclaim general or partial mobilization; to proclaim a state of emergency throughout the country or in a particular region;

11. To carry out the National Assembly's external relations;
12. To approve the recommendations of appointment and release of ambassador extraordinary and plenipotentiary of the Socialist Republic of Vietnam.
13. To organise a referendum as decided by the National Assembly.

Article 75

1. The Ethnic Council comprises the Chairman, Vice Chairmen and members. The Chairman of the Ethnic Council is elected by the National Assembly; Vice-Chairmen and the members of Ethnic Council are approved by the National Assembly's Standing Committee.
2. The Ethnic Council studies and makes recommendations to the National Assembly on issues concerning the ethnic groups; supervises and controls the implementation of policies on ethnic groups and the execution of programmes and plans for socio-economic development of the highlands and regions inhabited by ethnic minorities.
3. The Chairman of the Ethnic Council shall be invited to sit in on the Government's meetings at which are discussed ways of putting into effect policies on ethnic groups. In promulgation of decisions related to ethnic policies, the Government must consult with the Ethnic Council.
4. The Ethnic Council also has other duties and powers as assigned to the Committees of the National Assembly in clause 2 of Article 76.

Article 76

1. A Committee of the National Assembly comprises a Chairman, Vice Chairmen and members. The Chairman is elected by the National Assembly; The Vice Chairmen and the members are approved by the National Assembly's Standing Committee.
2. The Committees of the National Assembly check draft laws, make recommendations concerning laws, draft decree-laws and other drafts and reports entrusted to them by the National Assembly or its Standing Committee; supervise within the bounds determined by law and make recommendations concerning issues within their fields of activity.
3. The establishment and dissolution of the Committees are decided by the National Assembly.

Article 77

1. The Ethnic Council and the Committees of the National Assembly can request members of the Government, the President of the Supreme People's Court, the Head of the Supreme People's Procuracy, Head of State Audit and related individuals to report or supply documents on certain necessary matters. Those to whom such requests are made are obliged to comply.
2. It is the responsibility of State bodies to examine and respond to the recommendations made by the Ethnic Council and the Committees of the National Assembly.

Article 78

When necessary, the National Assembly creates provisional committees to examine or verify a recommendation or investigate a certain problem.

Article 79

1. The representatives in the National Assembly represent the will and aspirations of the People of his/her constituency and of the People of the whole country.
2. National Assembly representatives must maintain close ties with the voters; submit to their control; collect and faithfully reflect their views and aspirations for the consideration of the National Assembly and the State bodies and organisations concerned; maintain regular contact with and give feedback to the voters on his or her activities and those of the National Assembly; answer the requests and petitions of voters; examine, activate and keep track of the way citizens' complaints and denunciations are dealt with and give guidance and assistance to citizens seeking to exercise their right of complaints and denunciations.
3. National Assembly representatives shall familiarise the People with the contents of the Constitution and the law and mobilise them towards implementing thereof.

Article 80

1. National Assembly representatives have the right to interpellate the State President, the Chairman of the National Assembly, the Prime Minister, Cabinet Ministers and other members of the Government, the President of the Supreme People's Court, the Head of the Supreme People's Procuracy and the Head of the State Audit.

2. The interpellated officials must respond at the current session; in case an inquiry is needed, the National Assembly may decide that the replies should be given to its Standing Committee or at one of its own subsequent sessions, or may allow the reply to be given in writing.
3. National Assembly representatives have the right to request State bodies, organisations and individuals to answer questions on matters concerning their duties. The heads of these bodies, organisations or individuals have the responsibility to answer questions put by the representative within the time limit set by the law.

Article 81

A member of the National Assembly cannot be arrested or prosecuted without the consent of the National Assembly and, in the intervals between its sessions, without the consent of its Standing Committee; in case of a flagrant offence and if the representative is taken into temporary custody, the body effecting his/her arrest must immediately report the case to the National Assembly or its Standing Committee for consideration and decision.

Article 82

1. A National Assembly representative is responsible to discharge the duties of a representative and is entitled to membership of the Ethnic Council and Committees of the National Assembly.
2. It is the responsibility of the Standing Committee of the National Assembly, the Prime Minister, the Ministers, the other members of the Government and the other State bodies to create the necessary conditions for representatives to the National Assembly to fulfil their duties.
3. The State shall ensure the expenditure for the activities of representatives to the National Assembly.

Article 83

1. The sessions of the National Assembly are open to the public. When necessary, according to the recommendations of the State President, the National Assembly's Standing Committee, the Prime Minister or at least two-thirds of its members, the National Assembly can decide on a secret meeting.
2. The National Assembly shall hold two sessions each year. When required by the State President, the Prime Minister or at least one-third of the total membership of the National

Assembly, National Assembly shall hold extraordinary sessions. The Standing Committee convenes the session of the National Assembly.

3. The first session of the newly-elected National Assembly shall be convened sixty days after its election at the latest; it shall be opened and presided over by the chairman of the outgoing Assembly until the election of the new chairman by the incoming Assembly.

Article 84

1. The State President, the Standing Committee of the National Assembly, the Ethnic Council and Committees of the National Assembly, the Government, the Supreme People's Court, the Supreme People's Procuracy, the State Audit, The Central Committee of the Vietnam Fatherland Front and the central bodies of its member organisations have the right to submit draft laws to the National Assembly and draft ordinances to the National Assembly's Standing Committee.
2. Members of the National Assembly may present motions concerning laws, ordinances, draft laws and draft ordinances to the National Assembly and the National Assembly's Standing Committee.

Article 85

1. Laws and resolutions of the National Assembly must be approved by the majority of its members; the drafting or amendment of the Constitution and decisions on extending and reducing its tenure and revoking one of its members must be approved by at least two-thirds of its total membership.

The ordinances and resolutions of the Standing Committee of the National Assembly must be approved by more than half of its membership.
2. Laws and ordinances must be made public fifteen days following their adoption at the latest, except in case where the decree-laws are presented by the State President for review.

CHAPTER VI THE STATE PRESIDENT

Article 86

The State President is the Head of State and represents the Socialist Republic of Vietnam both in domestic and foreign affairs.

Article 87

The State President shall be elected by the National Assembly from among its members.

The State President is responsible and accountable to the National Assembly for his or her work.

His or her term of office follows that of the National Assembly. At the end of the latter's tenure he shall continue in office until a new President of the State is elected by the new legislature.

Article 88

The State President has the following duties and powers:

1. To promulgate the Constitution, laws and ordinances; to recommend to the National Assembly Standing Committee to revise its ordinances within ten days from the date these ordinances were passed; if such ordinances are still voted for by the National Assembly Standing Committee despite the State President's recommendation, the State President can submit it to the National Assembly for decision at its next session;
2. To recommend to the National Assembly to elect, suspend or revoke the Vice President of the State or the Prime Minister; on the basis of resolutions of the National Assembly, to appoint, suspend or revoke Deputy Prime Ministers, Ministers and other members of the Government;
3. To recommend to the National Assembly to elect, suspend or revoke the President of the Supreme People's Court and the Head of the Supreme People's Procuracy; on the basis of resolutions of the National Assembly, to appoint, to suspend or revoke Judges of the Supreme People's Court; to appoint, suspend or revoke Judges of other courts and Chief Justices of the Supreme People's Procuracy, Deputy Procurators General and Procurators of the Supreme People's Procuracy; to grant pardons and on the basis of resolutions of the National Assembly, to proclaim an amnesty;

4. To decide on the award of medals, badges, State prizes and State honours and distinctions; to grant Vietnamese nationality, release from Vietnamese nationality, restore Vietnamese nationality, or deprive of Vietnamese nationality.
5. To have overall command of the armed forces and hold the office of Chairman of the National Defence and Security Council; to decide on conferment, promotion, demotion and deprivation of army rank of general, commander-in-chief, vice commander-in-chief and naval commander-in-chief; to appoint, suspend or revoke Chief of the general staff and Chairman of the Political Head Office of Vietnamese People's Army; on the basis of resolutions of the National Assembly or of the National Assembly's Standing Committee, to proclaim or retract the decision on the state of war; on the basis of resolutions of the National Assembly's Standing Committee, to issue orders on general mobilisation or limited mobilisation, to declare or lift a state of emergency and in cases where the National Assembly Standing Committee cannot meet, to declare a state of emergency nationwide or in a particular locality;
6. To accept foreign ambassadors extraordinary and plenipotentiary; on the basis of resolutions of the National Assembly's Standing Committee, to appoint and recall ambassadors extraordinary and plenipotentiary of the Socialist Republic of Vietnam; to decide on the conferment of titles and ranks on the ambassadorial title; to decide on negotiation and conclusion of international treaties in the name of the State; to submit to the National Assembly international treaties for ratification and termination as provided by clause 14 of Article 70; to decide on ratification, accession to or termination of other international treaties in the name of the State.

Article 89

1. The National Defence and Security Council consists of a Chairman, Vice Chairmen and other members who are approved by the National Assembly under the nomination of the State President.

The National Defence and Security Council shall operate as a collegium and take its decisions by a vote of the majority.
2. The National Defence and Security Council proposes to the National Assembly to decide on a state of war and in case the National Assembly cannot meet, proposes to the National Assembly's Standing Committee to decide on a state of war; mobilises all forces and

potentialities of the country for national defence; exercises special duties and powers entrusted by the National Assembly in case of war and decides on the participation of the armed forces in activities contributing to the protection of peace in the region and in the world.

Article 90

The State President is entitled to attend sessions of the Standing Committee of the National Assembly and sessions of the Government.

The State President has the right to request the Government to hold meetings to discuss issues which the State President considers necessary to exercise his duties and authorities.

Article 91

The State President shall issue orders and decisions for the accomplishment of his duties and the exercise of his powers.

Article 92

The Vice President of the State shall be elected by the National Assembly from among its members.

He shall assist the State President in the performance of his duties and may be delegated by him to perform certain tasks.

Article 93

When the State President is incapacitated for work over a long period of time, the Vice President shall act as President.

In case of vacancy of the State Presidency, the Vice President shall be acting President until the election of a new President by the National Assembly.

CHAPTER VII THE GOVERNMENT

Article 94

The Government is the highest administrative body of the Socialist Republic of Vietnam, exercises the executive power and is the executive body of the National Assembly.

The Government is accountable to the National Assembly and shall report to the National Assembly, its Standing Committee and the State President.

Article 95

1. The Government shall be composed of the Prime Minister, the Deputy Prime Ministers, the Ministers and heads of ministerial-level agencies.

The structure and numbers of members of the Government are decided by the National Assembly.

The Government shall operate as a collegium and take its decisions by a vote of the majority.

2. The Prime Minister as the head of the Government is accountable to the National Assembly for the activities of the Government and its assigned duties and shall report to the National Assembly, the National Assembly's Standing Committee and the State President on the activities of the Government and the Prime Minister
3. The Deputy Prime Ministers shall assist the Prime Minister in the performance of his duties, as required by him, and are accountable to the Prime Minister. In the absence of the Prime Minister, one of his Deputies shall be delegated by him to direct the work of the Government.
4. The Ministers and Heads of ministerial-level agencies shall be personally accountable to the Prime Minister, the Government and the National Assembly for their respective fields and branches, and shall be, together with other members of the Government, collectively accountable for the activities of the Government.

Article 96

The Government has the following tasks and powers:

1. To organise the implementation of the Constitution, laws and resolutions of the National Assembly, ordinances and resolutions of the Standing Committee of the National Assembly, and orders and decisions of the President;
2. To organise the implementation of the Constitution, the laws, resolutions of the National Assembly, the ordinances and resolutions of the National Assembly's Standing Committee and decrees and decisions of the State President; To initiate and draft policies and to submit them to the National Assembly and the National Assembly's Standing Committee for decision or to decide on these policies according to its jurisdiction in the exercise of its duties and jurisdiction as provided by this Article; to recommend draft laws draft state budgets and other projects to the National Assembly; to propose the draft ordinances to the National Assembly's Standing Committee;
3. To exercise uniform management of the economy, culture, society, education, medicine, science, technology, environment, information, media, international relations, national defence, national security and social order and security; to exercise the decisions on mobilisation and the state of emergency and carry out all other necessary measures to protect the country and to safeguard the lives and the property of the People;
4. To recommend to the National Assembly to create or dissolve ministries and ministerial-level agencies and to establish, merge, divide or adjust the boundaries of provinces and cities under direct central rule and to set up or disband special administrative economic units; to recommend to the National Assembly's Standing Committee to establish, merge, divide or adjust the administrative boundaries below the level of provinces and cities under direct central rule;
5. To exercise the uniform management of the national bureaucracy; exercise the management of cadres, civil servants, officials and public service in state bodies; to exercise the work of inspection and examination and handling of citizen's complaint and denouncements; to fight against authoritativeness and corruption in the state apparatus; to direct the work of the ministries, the ministerial-level agencies and the bodies of the Government, the People's Committees at all levels and to guide and control the People's Councils in their implementation of their legal duties and authorities;
6. To protect the rights and interests of the State and society, human rights and citizen's rights and to ensure social order and security;

7. To negotiate and conclude international treaties in the name of the State as delegated by the State President; to negotiate, sign, ratify and accede to international treaties in the name of the Government, except the international treaties proposed to the National Assembly for approval as provided by clause 14 of Article 70 and to protect the interests of the State, the legitimate interests of Vietnamese organisations and citizens in foreign countries;
8. To coordinate with the Central Committee of the Vietnamese Fatherland Front and the central bodies of socio-political organisations in the exercise of its duties and authorities.

Article 97

The tenure of the Government is the same as that of the National Assembly. When the latter's tenure ends, the Government shall continue in office until the new legislature establishes a new Government.

Article 98

The Prime Minister is elected by the National Assembly among its members. The Prime Minister has the following duties and powers:

1. To direct the work of the Government; to direct the construction of policies and the organisation of implementation of the laws;
2. To direct and to be accountable for the activities of the national administration from the central to local level and to ensure the unity and thoroughness of the national administration;
3. To submit to the National Assembly for approval recommendations on appointment, suspension or dismissal of Deputy Prime Ministers, Ministers and heads of ministerial-level agencies; to appoint, suspend or dismiss Vice Ministers and officials of equal rank of ministries and ministerial-level agencies; to approve the election, suspension, secondment and dismissal of Chairmen and Deputy Chairmen of the People's Committees of provinces and cities under direct central rule;
4. To suspend or annul decisions, directives and circulars of Cabinet Ministers and other Government members, decisions and directives of the People's Councils and Chairmen of the People's Committees of provinces and cities under direct central rule that contravene the Constitution, the law and other formal written documents of superior State bodies; to suspend the execution of resolutions of the People's Councils of provinces and cities under direct

- central rule that contravene the Constitution, the law and formal written orders of superior State bodies and at the same time, to propose to the Standing Committee of the National Assembly to annul them;
5. To decide and direct the negotiation of and to direct the conclusion and joining of international treaties within the duties and authorities of the Government; to organise the implementation of international treaties in which the Socialist Republic of Vietnam is a member;
 6. To submit regular reports to the people through the mass media on major issues to be settled by the Government and the Prime Minister.

Article 99

1. Ministers and heads of ministerial-level agencies are members of the Government, preside over ministries and bodies of ministerial-level agencies, direct the work of ministries and ministerial-level agencies; shall be responsible for State administration in the fields and branches under their respective authority to organise and monitor the implementation of the laws in their respective fields and branches throughout the country.
2. Ministers and heads of ministerial-level agencies shall report to the Government and the Prime Minister and exercise a regime of reporting to the People on issues under their respective management.

Article 100

The Government, the Prime Minister, Ministers and heads of ministerial-level agencies shall issue legal documents to exercise their duties and authorities, review the implementation of these documents and handle illegal documents in concordance with the law.

Article 101

The Chairman of the Central Committee of the Vietnamese Fatherland Front and the heads of socio-political organisations shall be invited to attend sessions of the Government when relevant problems come up for discussion.

CHAPTER VIII
THE PEOPLE'S COURT AND THE PEOPLE'S PROCURACY

Article 102

1. The People's Courts are the judicial bodies of the Socialist Republic of Vietnam, exercising the judicial power.
2. The People's Courts comprise the Supreme People's Court and other courts established by law.
3. The People's Courts are responsible for the protection of justice, human rights, citizen's rights, socialist regime, interests of the State and legal rights and interests of organisations and individuals.

Article 103

1. Trials before the People's Courts shall be attended by People's Assessors, except in the case of trials in lower courts
2. The Judges and Assessors are independent and shall only obey the law; interference with the trials of the Judges and Assessors by bodies, organisations, and individuals is strictly prohibited.
3. The People's Courts shall hold their hearings in public. In special cases, which require the protection of state secrecy, fine customs and beautiful habits of the nation, the protection of youths and the protection of privacy according to the legitimate requirement of the persons concerned, the People's Courts can hold their hearings in secret.
4. The People's Courts shall try their cases collegially and their decisions shall be in conformity with the will of the majority, except the cases of the trials with reduced procedure.
5. The principle of institute legal proceeding against is guaranteed in trials.
6. The regime of hearing in first instance and appeal is guaranteed.
7. The right of the accused or the defendants to be defended is guaranteed; the right of the persons concerned to defend their legitimate interests is guaranteed.

Article 104

1. The Supreme People's Court is the highest judicial body of the Socialist Republic of Vietnam.

2. The Supreme People's Court supervises and directs the judicial work of other courts, except the cases provided by the law.
3. The Supreme People's Court exercises the summarisation of the practice of trials, and ensures the uniform application of law in trials.

Article 105

1. The term of the President of the Supreme People's Court is consistent with the term of the National Assembly. The appointment, suspension and revocation of presidents of other courts are provided by the law.
2. The President of the Supreme People's Court is accountable to and reports to the National Assembly and, when the latter is not in session, to its Standing Committee and to the State President. The lines of reporting of presidents of other courts are provided by the law.
3. The appointment, approval, suspension and revocation, term of judges and the election and term of assessors are provided by the law.

Article 106

The sentences and decisions of the People's Court which have acquired legal effect must be respected by bodies, organisations, and individuals; they must be fully complied with by the bodies, organisations and individuals concerned.

Article 107

1. The People's Procuracies shall exercise the power to prosecution and control judicial activities.
2. The People's Procuracies comprise the Supreme People's Procuracy and other Procuracies provided by the law.
3. The People's Procuracies are responsible for the protection of law, human rights, citizen's rights, the socialist regime, interests of the State and legal rights and interests of organisations and individuals, thus contributing to ensuring that laws are strictly and uniformly observed.

Article 108

1. The term of the Head of the Supreme People's Procuracy is consistent with the term of the National Assembly. The appointment, suspension and revocation of heads of other Procuracies and Procurators are provided by the law.
2. The Head of the Supreme People's Procuracy is accountable to and reports to the National Assembly and, when the latter is not in session, to its Standing Committee and to the State President. The line of reporting of heads of other procuracies is provided by the law.

Article 109

1. A People's Procuracy is directed by its Head. The Heads of inferior Procuracies are subject to the leadership of the Heads of superior Procuracies. The Heads of Procuracies at all levels are subject to the overall leadership of the Head of the Supreme People's Procuracy.
2. When exercising the power to prosecution and controlling judicial activities, Procurators shall obey the law and are subject to the leadership of the Head of the People's Procuracy.

CHAPTER IX THE LOCAL GOVERNMENT

Article 110

1. The administrative units of the Socialist Republic of Vietnam are distributed as follows:

The country is divided into provinces and cities under direct central rule;

A province is divided into districts, provincial cities and towns; a city under direct central rule is divided into urban districts, rural districts, towns and units of similar level;

A district is divided into communes and townlets; a provincial city and a town are divided into wards and communes and an urban district is divided into wards.

Special administrative economic units are created by the National Assembly.
2. The establishment, removal, merging, division or adjustment of the boundaries of administrative units must be consulted with the local people in concordance with the process and procedure provided by the law.

Article 111

1. Local governments are organised in administrative units of the Socialist Republic of Vietnam.
2. Local governments consist of the People's Council and the People's Committee which shall be organised consistent with the features of rural areas, cities, islands and special administrative economic units provided by the law.

Article 112

1. Local governments organise and ensure the implementation of the Constitution and the laws at local level; deal with local issues provided for by the law and are subject to the examination and supervision of superior state bodies.
2. The duties and authorities of local governments shall be determined on the basis of differentiation of powers between central state bodies and local state bodies and between different ranks of local governments.
3. When necessary, local governments are delegated to exercise some duties of superior state bodies with the conditions deemed necessary to exercise those duties.

Article 113

1. The People's Council is the local body of State power; it represents the will, aspirations and mastery of the local People; it is elected by the local People and is accountable to them and to the superior State bodies.
2. The People's Council shall decide on local issues provided by the law; supervise conformity to the Constitution and the laws at local level and the implementation of the resolutions of the People's Council.

Article 114

1. The People's Committee elected by the People's Council is the latter's executive body, the body of local State administration and is accountable to the People's Council and superior state bodies.
2. It is the responsibility of the People's Committee to implement the Constitution and the laws at local level, to organise the implementation of the resolutions of the People's Council and to exercise duties assigned by the superior state bodies.

Article 115

1. A representative of the People's Council represents the will and aspirations of the local People; he must maintain close ties with the electors, submit himself to their control, keep regular contact with them, regularly report to them on his activities and those of the People's Council, answer their requests and petitions and look into and activate the resolution of the People's complaints and denunciations. It is the duty of the representative of the People's Council to urge the People to abide by the law and State policies, the resolutions of the People's Council and to encourage them to join in State administration.
2. The representative of the People's Council has the right to interpellate the Chairman of the People's Council, the Chairman and other members of the People's Committee, the President of the People's Court, the Head of the People's Procuracy and the heads of bodies under the People's Committee. The interpellated officials must respond to this interpellation within the time determined by law. The representative of the People's Council has the right to make recommendations to local State bodies. The officials in charge of these bodies have the responsibility to receive him and to examine and settle the issues raised in his or her recommendations.

Article 116

1. The People's Council and the People's Committee shall submit regular reports on the local situation in all fields to the Front and the mass organisations; shall listen to their opinions and recommendations on local power building and socio-economic development; shall cooperate with them in urging the people to work together with the State for the implementation of socio-economic, national defence and security tasks in the locality.
2. The Chairmen of the Vietnam Fatherland Front committee and the heads of socio-political organisations in the locality shall be invited to attend sessions of the People's Council and to attend meetings of the People's Committee of the same level when relevant problems are discussed.

CHAPTER X

THE NATIONAL ELECTION COUNCIL AND THE STATE AUDIT

Article 117

1. The National Election Council is a body created by the National Assembly, responsible for the organisation of election of the National Assembly. It shall direct and coordinate the election of the People's Councils at all levels.
2. The National Election Council comprises a President, Vice Presidents and members
3. The details of organisation, duties and authorities of the National Election Council and the number of its members shall be provided by the law.

Article 118

1. The State Audit is a body created by the National Assembly, shall act independently and obey the law only. It exercises the audit of the management and use of public finance and property.
2. The State Auditor General presides over the State Audit, elected by the National Assembly. The term of the State Auditor General shall be provided by the law.

The State Auditor General is accountable and reports the results of audits to the National Assembly; when the latter is not in session, to its Standing Committee.
3. The details of the organisation, duties, and authorities of the State Audit shall be provided by the law.

CHAPTER XI

THE EFFECT OF THE CONSTITUTION AND THE AMENDMENT OF THE CONSTITUTION

Article 119

1. The Constitution is the fundamental law of the Socialist Republic of Vietnam, and has the highest legal effect.

All other legal documents must conform to the Constitution. All actions violating the Constitution shall be dealt with.
2. The National Assembly, its bodies, The State President, the Government, the People's Courts, the People's Procuracies, other State organs and the entire People are responsible to protect the Constitution. The mechanism of constitutional protection shall be provided by the law.

Article 120

1. The State President, the National Assembly's Standing Committee, or at least two-thirds of the entire number of National Assembly representatives have the right to propose the drafting of a Constitution and amendment of the Constitution. The National Assembly shall decide on the drafting of constitution and amendment of the Constitution upon the approval of two-thirds of the entire number of National Assembly representatives.
2. The National Assembly shall create the Committee of Constitutional Drafting. The components, the number of members, duties and authorities of the Committee of Constitutional Drafting shall be decided by the National Assembly according to the recommendation of the National Assembly's Standing Committee.
3. The Committee of Constitutional Drafting drafts, organises the collection of People's opinions and submits to the National Assembly the draft Constitution.
4. The Constitution shall be enacted with the approval of at least two-thirds of the entire number of National Assembly representatives. The referendum on the Constitution shall be decided by The National Assembly.
5. The time limit for the promulgation and effective date of the Constitution shall be decided by the National Assembly.

This Constitution was approved by the National Assembly of the Socialist Republic of Vietnam, term XIII, at its sixth session on 28 November 2013.

PRESIDENT OF THE NATIONAL ASSEMBLY

Nguyễn Sinh Hùng

Appendix B

SCHEDULE OF FEES AND CHARGES FOR ISSUANCE OF LICENSE FOR TELECOMMUNICATIONS OPERATIONS*

1. Charges for Issuance of License for Telecommunications Operations

No.	Name of license	Amount (VND/license)
1	First or new license	1,000,000
	<ul style="list-style-type: none"> - Provision of telecommunications services with radio frequencies; - Establishment of public telecommunications network using radio frequencies; - Installation of submarine telecommunications cables (except for maintenance of submarine telecommunications cable lines); - Testing of telecommunications services and networks using radio frequencies; - Provision of telecommunications services without radio frequencies; - Establishment of public telecommunications network without using radio frequencies; - Establishment of exclusive-use telecommunications network; and - Testing of telecommunications services and networks without using radio frequencies; 	
2	Extension, adjustment and reissuance of license prescribed in the abovementioned Point 1.	500,000

* Circular No. 03/2018/TT-BTC dated January 12, 2018 of the Minister of Finance.

2. Fees for Telecommunications Operations

(a) Fees for provision of telecommunications services

Annually, the organization or enterprise issued with the license for provision of telecommunications services shall pay the fee according to the rate in 0.5% calculated according to the turnover from telecommunications services, but the fee shall not be smaller than the minimum amount provided in the following Schedule:

No.	Provision of telecommunications services	Minimum amount (million VND)
1	Provision of terrestrial mobile telecommunications services with radio frequencies	2,000
2	Provision of terrestrial stationary telecommunications services with radio frequencies	1,000
3	<ul style="list-style-type: none">- Provision of satellite stationary telecommunications services;- Provision of maritime mobile telecommunications services;- Provision of aviation mobile telecommunications services;	50
4	Provision of satellite mobile telecommunications services;	100
5	<ul style="list-style-type: none">- Provision of terrestrial stationary telecommunications services without radio frequencies- Provision of terrestrial mobile telecommunications services without radio frequencies	250

2.2 Fees for establishment of exclusive-use public telecommunications network, fees for testing of telecommunications services and networks, and fees for installation of submarine telecommunications cables

No.	Telecommunications operations	Amount
1	Establishment of public telecommunications network (annually paid)	
1.1	Establishment of terrestrial stationary public telecommunications network without using radio frequencies and number of subscribers	
a	Within 01 province	VND 100 million
b	In 02 - 30 provinces	VND 300 million
c	In over 30 provinces	VND 600 million
1.2	Establishment of terrestrial stationary public telecommunications network using radio frequencies and number of subscribers	
a	In 02 - 30 provinces	VND 800 million
b	In over 30 provinces	VND 2,000 million
1.3	Establishment of terrestrial mobile public telecommunications network using radio frequency channel	VND 200 million
1.4	Establishment of terrestrial mobile public telecommunications network without using radio frequencies (MVNO)	VND 2,000 million
1.5	Establishment of terrestrial mobile public telecommunications network using radio frequency band	VND 5,000 million
1.6	Establishment of satellite stationary public telecommunications network	VND 100 million
1.7	Establishment of satellite mobile public telecommunications network	VND 100 million

2	Testing of telecommunications services and networks (lump-sum payment for the total duration of the license, including duration of extension of the license)	
2.1	Testing of telecommunications services and networks using radio frequencies	
a	Within 01 province	VND 200 million
b	In 02 - 30 provinces	VND 300 million
c	In over 30 provinces	VND 400 million
2.2	Testing of telecommunications services and networks without using radio frequencies	
a	Within 01 province	VND 300 million
b	In 02 - 30 provinces	VND 400 million
c	In over 30 provinces	VND 500 million
3	Establishment of exclusive-use telecommunications network (lump-sum payment for the total duration of the license, including duration of extension of the license)	VND 100 million
4	Installation of submarine telecommunications cable lines	
a	Installation of submarine telecommunications cable lines, including survey and installation of submarine telecommunications cable lines (lump-sum payment for the total duration of the license, including the duration of extension of license)	01 million US dollars
b	Repair and maintenance of submarine telecommunications cable lines (payment for each time of repair and maintenance of cable lines)	50,000 US dollars