

U.S. INTERNATIONAL GRANTMAKING

Country Information

Vietnam

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I. Summary

Vietnam is a socialist civil law country with two legally recognized forms of not-for-profit, nongovernmental organizations (“NPOs”). Although called by slightly more complex names, these two forms are equivalent to the typical civil law forms of association and foundation.

The Civil Code and two Government decrees are the major legislation governing NPOs in Vietnam. The Civil Code contains a number of provisions that govern the legal framework for NPOs. The two decrees, one from 1999 and one from 2003, spell out details about the structure and governance of NPOs.

A. Types of Organizations

Freedom of association is referenced in the Constitution of the Socialist Republic of Vietnam (Article 69). The Civil Code provides a clearer and more substantial legal framework. It describes and defines two types of “juridical persons” that generally fit within the understanding of the term “not-for-profit organization”: “social and socio-professional organizations” (Article 110 (1)(d)), which are in essence associations, and “social and charity funds” (Article 110 (1)(e)), which are in essence foundations.

Other Vietnamese NPOs, which are outside the scope of this Note, include mass organizations related to political parties, socio-political organizations, religious organizations, and foreign NPOs, as well as political parties, trade unions, economic interest associations, and institutions. [\[1\]](#)

B. Tax Laws

At present, no special tax preferences are available to NPOs (except mass organizations related to political parties). There are no tax incentives for charitable giving. Donations and certain goods and services provided by NPOs, however, are not subject to VAT in Vietnam.

II. Applicable Laws

- [Constitution of the Socialist Republic of Vietnam, promulgated by the National Assembly on April 15, 1992, as revised on December 25, 2001](#)
- Civil Code of Vietnam, promulgated by the National Assembly on October 28, 1995, and effective July 1, 1996, as amended in May 2005, Chapter 3 on Juridical Persons.
- Law of the Vietnam Fatherland Front, promulgated by the National Assembly on June 12, 1999.
- Decree No. 88/2003/ND-CP (“Decree 88”), July 30, 2003, of the Government Promulgating the Regulations on Organization and Operation of Associations.
- Circular 01/2004/TT-BNV, January 28, 2004, of Ministry of Internal Affairs Providing Guidance for the Implementation of Decree 88/2003/ND-CP.
- Decree No. 177/1999/ND-CP (“Decree 177”), December 12, 1999, of the Government Promulgating Regulations on Organization and Operation of Social Funds and Charity Funds.
- Decision 56/2000/QD-BTC, April 19, 2000, of the Ministry of Finance Issuing Regulation on Financial Management of Social Funds and Charity Funds.
- Decision No. 28/1999/QD-TTg, February 23, 1999, of the Prime Minister Issuing Regulations on the Use and Management of Aid Given by Foreign Nongovernmental Organizations.
- Decision 340/TTg dated May 24, 1996 of the Prime Minister Issuing Regulations on Activities of Foreign Nongovernmental Organizations in Vietnam.
- [Law on Value Added Tax, promulgated by the National Assembly on May 10, 1997, as revised on June 17, 2003, Article 4.](#)

- Circular No. 120/2003/TT-BTC dated December 12, 2003, of Ministry of Finance Providing Guidance for the Implementation of Law on Value Added Tax, Section D .I.7.

III. Relevant Legal Forms

A. General Legal Forms

The Civil Code contemplates two legal forms: social and socio-professional organizations, which are essentially associations, and social funds and charity funds, which are essentially foundations. This Note adopts the more familiar terms, referring to social and socio-professional organizations as "associations," and to social funds and charity funds as "foundations." Both associations and foundations must have official permission to be established, and the application process can be arduous. The operations of associations and foundations are closely monitored by the government.

B. Public Benefit Status

Associations. Associations are not *required* to be established for public benefit, though it appears that they *can* be established for public benefit (e.g., an association of doctors providing medical services in an impoverished community). Although the Civil Code does not clearly address the issue, Decree 88 states that associations can be established for the purpose of contributing to the country's socio-economic development. (Article 2). Associations that engage in activities pursuant to such purposes may be linked to the Government's tasks and supported by the State Budget according to the Prime Minister's instructions. (Article 4 (2)).

Because of the elaborate process required to establish an association, it is likely that many will in fact carry out public benefit purposes that are tied to the State's development objectives. [\[2\]](#)

In general, other associations described in the Civil Code and the regulations (e.g., clubs, professional associations) tend not to be established for public benefit and thus tend not to attract gifts from U.S. donors. "Socio-professional" organizations, further, are closely linked to the state and political structures.

Foundations. Foundations must, pursuant to Article 115 of the Civil Code, "operate for the purpose of promoting the development of culture, science, charity and other social and humanitarian purposes, which are not for profit-making." Decree 177 employs a slightly different formulation of permissible purposes, stating that foundations must "be set up and operate[d] for humanitarian and charity purposes to promote cultural, sport, scientific and social development" (Article 2).

Decree 177 further permits such organizations to “provide financial support for activities which conform to the fund’s principles and purposes.” (Articles 8 and 14). Thus, Vietnam appears to allow both operating and grant-making foundations. Accordingly, U.S. donors may need to be alert to issues regarding the out-of-corpus rule for some grants.

IV. Specific Questions Regarding Local Law

A. Inurement

Associations. The regulations on associations do not specifically address the issue of inurement. Given that associations are subject to extensive public oversight, it is unlikely that such direct or indirect benefits to private persons would be permitted. A U.S. grantmaker conducting an equivalency determination, though, would be prudent to ensure that the association's governing documents specifically prohibit inurement.

Foundations. The Regulations on Social Funds and Charity Funds state that “Organizations and individuals are strictly prohibited to take advantage of the establishment and operation of the funds to gain profit...”(Article 4(4)). This rule appears to prohibit private inurement as it is understood in U.S. law.

B. Proprietary Interest

Associations. The Civil Code and the Association Regulations do not appear to permit an association's members to have a proprietary interest in its assets. For a U.S. grantmaker conducting an equivalency determination, though, it would be prudent to ensure that the association's governing documents specifically prohibit members or donors from having a proprietary interest in any of the organization's assets.

Foundations. Article 115(4) of the Civil Code states that foundations and their organizers “may not divide up the property of the fund in the course of the fund’s operation.” Moreover, “the property of the social fund or charity fund shall be managed, used and dispensed with in accordance with the provisions of law and in accordance with the purpose of the operation of the fund as stipulated by its charter.” (Article 115(2)). These rules would appear to prevent organizers of a foundation from retaining any proprietary interest in its assets. Nonetheless, a U.S. grantmaker conducting an equivalency determination would be prudent to ensure that the foundation's governing documents specifically prohibit donors from retaining a proprietary interest in donated assets.

C. Dissolution

Associations. The Association Regulations provide that “with regard to [the] assets, funds, and other property provided by domestic and foreign organizations and by the Government... the utilization [upon dissolution] shall be decided by the relevant Government Authority.” However, certain “self-generated funds and other property” may

be distributed in accordance with the association's governing documents--Article 30 (1)(a) and (b). Accordingly, a U.S. grantmaker making an equivalency determination would be prudent to consult the association's governing documents for provisions on the destination of assets upon the organization's dissolution.

Foundations. Article 115(4) of the Civil Code states that “the property of [a foundation] shall not be divided up among its founding members but must be settled in accordance with the provisions of law.” Article 21 of the Regulations on Funds requires that “all remaining properties and money of the fund [after payment of creditors] shall be remitted to the State budget of the [administrative] level that has permitted the fund establishment.”

D. Activities

1. General Activities

The laws and regulations governing both associations and foundations contemplate that an NPO will perform only those activities authorized by the unit of government that approves its establishment.

2. Public Benefit Activities

Associations. Under Decree 88, it appears that an association can be set up to conduct public benefit activities, as discussed in III-B, above.

Foundations. Foundations must, pursuant to Article 115 of the Civil Code, “operate for the purpose of promoting the development of culture, science, charity and other social and humanitarian purposes, which are not for profit-making.” The Fund Regulations employ a slightly different formulation of permissible purposes, stating that foundations must “be set up and operate[d] for humanitarian and charity purposes to promote cultural, sport, scientific and social development.” (Article 2).

3. Economic Activities

Associations. Decree 88 states specifically that associations may generate revenue from “business activities and services.” (Article 22 (9)). However, such activities will be taxed.

Foundations. Decree 177 does not authorize foundations to conduct business activities. (Article 4).

E. Political Activities

An NPO's political activities appear to be limited by both the Constitution (Article 10) and the Civil Code (Article 110, which distinguishes political and socio-political organizations from those discussed here).

Decree 88, however, allows associations to “provide comments on normative legal documents” related to their operations and to make “recommendations/proposals” to their oversight agency. Article 69 of the Constitution, further, appears to state that associations (as well as citizens) may “hold demonstrations in accordance with the law.”

The laws and regulations governing foundations do not specifically address political activities.

F. Discrimination

Article 52 of the Constitution states that “all citizens are equal before the law,” but nothing in any law or regulation affecting NPOs deals further with discrimination.

G. Control of Organization

As discussed above, the government of Vietnam exercises considerable control over the establishment, operation, and dissolution of NPOs. At present, it does not appear that an NPO could be controlled by a for-profit entity, and certainly not by an American grantor charity.

V. Tax Laws

A. Income or Profits Tax

At present, no special tax preferences are available to NPOs (other than party-related mass organizations) or their donors. There are no tax incentives for charitable giving.

B. Value Added Tax

Donations and certain supplies of goods and services provided by NPOs are not subject to VAT in Vietnam, including medical services, “non-profit-making cultural [and] artistic activities,” educational activities, and some books and other publishing activities. Nevertheless, VAT is important because it may be paid by NPOs on their inputs, which may affect the amount of the grant that will need to be made. Grantees will be entitled to file for VAT return later.

C. Double Tax Treaty

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

VI. Knowledgeable Contacts

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Footnotes

[1] *Mass organizations* (which are party organizations) are established pursuant to their own legislation. They are deemed “part of the political system of the Socialist Republic of Vietnam” (Law of the Vietnam Fatherland Front of 1999), and, as such, are not taxed. Examples include the Vietnam Women’s Union and the Vietnam Farmers Association. *Religious organizations* are governed by separate regulations. See <http://www.state.gov/g/drl/rls/irf/2002/13916.htm> for a discussion of the restrictions on freedom of religion in Vietnam. *Foreign NPOs*, finally, are subject to different regulations from those applying to local NPOs.

[2] The current Five Year Plan includes, among other goals, “ to bring about immense changes in education and training, science and technology and promote the human factor; to create more jobs; to basically eradicate hunger and reduce the number of poor households, to eliminate social vices; to strengthen socio-economic infrastructure.”

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