

# U.S. INTERNATIONAL GRANTMAKING

## Country Information

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### Vietnam

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#### I. Summary

The first laws on NPOs in Vietnam date back to the post-independence period: Decree-Law 52/SL (1946) and Decree-Law 102/SL (1957). The Civil Code (2005) and two Government decrees: Decree 88 (2003) and Decree 148 (2007) (which replaced Decree 177 (1999)) currently constitute the primary legislative basis for NPOs in Vietnam. This situation is pending the enactment of a Law on Associations, under debate since the 1990s and yet to be passed by the Vietnamese legislature, the National Assembly. The Civil Code contains a number of provisions which provide “juridical person” status for NPOs and establish a basic NPO legal framework.

Decree 148 (2007) spells out details concerning the establishment, structure, organization and governance of social funds and charitable funds. Decree 88 (2003) deals with the formation, operation, and state management of associations and currently constitutes the legal basis for registering and operating most Vietnamese social organizations and their subordinate foundations. In October 2007, Decree 151 on the Organization and Activities of Collaborative Groups was promulgated by the government to regulate this burgeoning sector. There is, however, some uncertainty surrounding the types of organizations covered by the Decree. [1]

It is difficult to estimate with precision the number of NPOs in Vietnam. According to the latest governmental report and research, there are about 3,500 associations at the national level; 2,500 associations at the provincial level; 1,500 foundations and funds; and tens of thousands of NPOs in various forms, including certain collaborative groups, clubs, local community-based groups and associations, water-user groups, and other forms of association at the grassroots levels. [2]

## **A. Types of Organizations**

Freedom of association is referenced in the [Constitution of the Socialist Republic of Vietnam](#) (Article 69). The revised Civil Code (2005) provides for a clearer and more substantial legal framework for NPOs. It describes and defines several types of “juridical persons” that generally comport with the understanding of the term “not-for-profit organization.” The names vary according to the organization’s functions. Article 102 references political organizations and socio-political organizations. Article 104 references professional socio-political organizations, social organizations and socio-professional organizations - which are essentially associations. Article 105 references “social funds or charitable funds” (Article 105) - which are essentially foundations.

Decree 148 (2007) provides additional guidance regarding social funds and charitable funds (quỹ). The decree refers to property assigned or raised to accomplish select social or charitable purposes through granting and/or programming during a particular period of time (it applies to both types of funds). Other types of foundations (created, for example, in the name of an institution or center, etc.) may come into existence pursuant to Decree 81 (2002) (which replaced Decree 35 (1992)) on scientific and technological activities, or pursuant to other decrees relevant to specific foundation types (Decree 65 (2003) on legal consultancy activities; Decree 25 (2001) on social protection foundations). Alternatively, many organizations find themselves a host association or organization. Many of these foundations refer to themselves as ‘Vietnamese NGOs’ (VNGOs), which further complicates the conceptualization of NPOs in Vietnam.

Over the past several years, as the nonprofit and charitable sector has grown, there has been considerably more discussion of “civil society”. Today there is more or less a common understanding of the following types of civil society organizations:

"Associations"

- Mass organizations [3] (there is a tendency to transform them into true NPOs);
- Associations (both national and local); and
- Community based organizations, collaborative groups, and other local organizations.

"Foundations"

- The so-called VNGOs;
- Funds (quỹ); and
- International NPOs.

Recent discussions on types of civil society organizations tend to refer also to political parties, mass organizations, religious organizations, foreign NPOs, economic interest associations (such as trade associations and chambers of commerce), labor unions, research institutions, academies and media. However, these Vietnamese organizations are outside the scope of this Note.

## **B. Tax Laws**

Newly adopted Decree 148 (2007) provides specifically that NPOs' donors/ donations are subject to tax preferences by the government. Additionally, in many cases, NPOs are afforded tax incentives and preferences detailed in provisions scattered in different tax documents, often under a theory that nonprofit revenues are not derived from business or commerce.

## **II. Applicable Laws (since 1990)**

- Law on Profit Tax passed by the VIII National Congress on June 30, 1990, promulgated by Resolution No. 270B/-NQ/HDNN8 dated August 8, 1990
- Decision 340/TTg dated May 24, 1996, of the Prime Minister Issuing Regulations on Activities of Foreign Nongovernmental Organizations in Vietnam
- Law of the Vietnam Fatherland Front, promulgated by the National Assembly on June 12, 1999
- Decision 56/2000/QD-BTC, April 19, 2000, of the Ministry of Finance Issuing Regulation on Financial Management of Social Funds and Charitable Funds
- Circular No. 122/2000/TT-BTC dated December 29, 2000, of Ministry of Finance Providing Guidance for the Implementation of Decree 79-2000-ND-CP of the Government, Making Detailed Provisions for Implementation of Law on Value Added Tax (VAT)
- Decision No. 64/2001/QD-TTg, April 26, 2001, of the Prime Minister Issuing Regulations on the Use and Management of Aid Given by Foreign Nongovernmental Organizations (replacing Decision No. 28/1999/QD-TTg)
- Decree 25/2001/ND-CP dated May 31, 2001 Promulgating Regulations on Organization and Operation of Social Protection Foundations
- Circular 04/2001/TT-BKH dated June 5, 2001 guiding the Implementation of Decision 340/TTg

- [Constitution of the Socialist Republic of Vietnam, promulgated by the National Assembly on April 15, 1992, as revised on December 25, 2001](#)
- Circular 10/2005/TT-BLDTBXH dated June 16, 2002 guiding on Establishment and Operation of Social Protection Foundations
- Decree 81/2002/ND-CP dated October 17, 2002 Promulgating Details about the Law on Science and Technology
- Law 09/2003/QH11 dated June 17, 2003 on Cooperation Income Tax (Article 19) ([Vietnamese, English](#))
- [Decree No. 88/2003/ND-CP \(“Decree 88”\), July 30, 2003, of the Government Promulgating the Regulations on Organization and Operation of Associations](#)
- Decree No. 158/2003/NĐ-CP dated December 10, 2003, on VAT Tax
- 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
- [Circular 01/2004/TT-BNV, January 28, 2004, of Ministry of Internal Affairs Providing Guidance for the Implementation of Decree 88/2003/ND-CP](#)
- [Civil Code of Vietnam, promulgated by the National Assembly on October 28, 1995, and effective July 1, 1996, as amended in May 2005, Part I, Chapter 4 on "Legal Persons" \(particularly Arts. 100, 104, 105\)](#)
- Law 45/2005/QH11 dated June 14, 2005 on Imported Tax and Exported Tax
- Circular 10/2005/TT-BKHCHN dated August 24, 2005 Guiding on Conditions for Establishment and Registration of Science and Technology Organizations
- Law on Value Added Tax No 07/2003/QH11 dated June 17, 2003, (revised November 29, 2005) ([Vietnamese](#))
- Law 57/2005/QH11 dated November 29, 2005 on Special Consumer Tax and VAT (revised) ([Vietnamese](#))
- Decree No. 149/2005/ND-CP dated December 8, 2005, on the Implementation of the Import Tax and Export Tax Law
- [Decree 53/2006/ND-CP dated May 25, 2006 on Policies to Encourage The Development of Non-State Public Services Providers](#)
- Circular 91/2006/TT-BTC dated October 2, 2006 to Guide on Implementation of Decree 53/2006/ND-CP
- Ordinance 34/2007/PL-UBTVQH11 dated April 20, 2007 on Implementation Of Democracy at The Commune Level ([Vietnamese](#))
- [Decree No. 148/2007/ND-CP \(“Decree 148”\), September 25, 2007, of the Government on Organization and Operation of Social Funds and Charitable Funds \(replacing Decree No. 177/1999/ND-CP\)](#)
- Decree 151/2007/ND-CP dated October 10, 2007 on the Organization and Activities of Collaborative Groups ([Vietnamese](#))
- Law on Individual Income Tax dated November 20, 2007

### **III. Relevant Legal Forms**

#### ***A. General Legal Forms***

The 2005 Civil Code contemplates several legal forms: political organizations, socio-political organizations, professional socio-political organizations, social organizations, and socio-professional organizations which are essentially associations; as well as social funds and charitable funds, which are essentially a type of foundation. Both associations and foundations must apply for official permission (Decree 88/2003 and Decree 148/2007) or notification (Decree 151/2007) to obtain “legal status.” The application process can be complicated and time-consuming, but has become simpler and easier: 7 months by Decree 88/2003; 2 months by Decree 148/2007; and 5 days by Decree 151/2007 from the date the application is submitted to relevant authority. The establishment and operation of associations and foundations are closely regulated and monitored by the government.

#### ***B. Public Benefit Status***

Associations: The term "Public Benefit Status" is a rather new concept for NPOs and relevant stakeholders in Vietnam. 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)) The term “public services” or “public benefit activities” has been introduced more frequently in a number of legal documents. The latest tax document (The Law on Individual Income Tax dated November 20, 2007), Art 20.2 states that in order to receive tax exempted income, a foundation must be permitted or recognized by the relevant authority for operating for charity, humanitarian or not-for-profit purposes.

Because of the interest in securing financial support from the state, donors and the public, and the elaborate process required to establish an association, it is likely that many NPOs will in fact carry out public benefit purposes that are tied to the State’s development objectives. [\[4\]](#)

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 105 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 148 employs a

slightly different formulation of permissible purposes; it states that foundations must be set up and operate[d] to promote cultural, sport, health, scientific, charitable, humanitarian, community development, and other not-for-profit activities. (Article 2) As a practical matter, however, both associations and foundations are encouraged to engage more actively in public service delivery. (Resolution 53 dated 25 May 2006)

Decree 148 further permits foundations to provide financial support for activities which conform to the fund's principles and purposes and provide services to generate funds. Thus, Vietnam allows both operating and grant-making foundations.

As mentioned above, Decree 148 permits different types of foundations, but its wording is not especially clear.

## **IV. Specific Questions Regarding Local Law**

### ***A. Inurement***

Regulations on both associations and foundations prohibit sharing of profit to members or individuals.

Associations: Decree 88 on associations does 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.

Foundations: Decree 148 on social funds and charitable funds states that "Funds are not for profit which means not seeking profit to be divided (Art. 3.2) and "taking advantage of the establishment of funds to gain profit is strictly prohibited (Art 7.1) ...."

### ***B. Proprietary Interest***

Associations: The Civil Code (Article 104) and Association regulations generally do not appear to permit an association's members to have a proprietary interest in its assets.

Foundations: Article 105 of the Civil Code states that social and charitable funds 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 charitable fund shall be managed, used and dispensed with in accordance with the provisions of law and in accordance with the purpose of the operation of the fund as stipulated by its charter." (Article 105)

### ***C. Dissolution***

Associations: Decree 88 provides 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)

Foundations: Article 105 of the revised 2005 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 29 of Decree 148 specifies to which government authority a dissolving foundation’s property and money shall be remitted.

## **D. Activities**

### **1. General Activities**

Under Decree 88 (2003), associations are required to perform only those activities authorized in the organization’s Charter (Articles 3, 23) or associated with the functions and tasks of the organization. However, Decree 148 (Article 4.3 and 22.1) allows a fund to operate in accordance with its Charter, with the Decree itself, and in accordance with Laws in general.

### **2. Public Benefit Activities**

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

Foundations: Social and charitable funds must, pursuant to Article 105 of the 2005 Civil Code, “operate for the purpose of promoting the development of cultural and/or scientific development, charity and other social and humanitarian purposes, which do not aim to gain profit.” Decree 148 employs a slightly different formulation of permissible purposes, stating that foundations must be set up and operated to promote cultural, sport, health, scientific, charitable, humanitarian, community development, and other not-for-profit activities. (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 148 states that funds can provides services or conduct other types of activities in accordance with Laws to maintain and increase the fund’s resources (Article 22.5).

## ***E. Political Activities***

Decree 88 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 regulations 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 may be controlled by an American grantor charity. In fact, Decree 88 does not authorize a foreign individual or a legal person to be an official member of an association. Recent practice has demonstrated specific cases where a foreigner has been precluded from becoming a member of a professional or economic association. This is one of a number of issues in the debates on the drafting of a new Law on Associations (Luật về Hội), now underway in Vietnam. However, Decree 148 allows foreigner actors (individuals and organizations) to join with Vietnamese to establish a fund. (Article 8.1.d)

## ***V. Tax Laws***

### ***A. Income or Profits Tax***

In fact, almost all NPOs and their economic entities enjoy special income tax incentives (Article 19, Corporation Income Law of 2003) and do not have to pay tax for income received from the State and from local or foreign contributions. The newly adopted Law on Individual Income Tax dated November 20, 2007 states specifically that contributions/donations to charitable and humanitarian activities shall be deducted from the taxable income generated from an individual’s business and salary. It is unclear at this juncture whether revisions to three tax laws in 2008 (VAT Law, Special Consumer Tax Law and Cooperation Income Tax Law) will provide the same preferences.

## ***B. Value Added Tax***

Goods imported as humanitarian aid, non-refundable aid, gifts, and presents that NPOs receive from foreign donors are exempted from VAT and other indirect taxes at the import stage. The same situation applies to monetary aid from foreign donors to buy goods for use in humanitarian activities, or goods and/or services not subject to VAT. (Article 4 of Decree 158/2003)

## ***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] Sections of the Decree focus on the issues of sharing profits among among members, but responsible authorities currently assert that not-for-profit groups are eligible to apply certain provisions of the Decree.

[2] The Government of Vietnam seeks to promote the growth of a development-oriented NPO sector in Vietnam that is cooperative with Party and government policy. The Tenth National Assembly resolved to “expand and diversify forms of assembling people to join unions, social organizations, professional, cultural and friendship associations, as well as those working in the charity and humanitarian fields.” (Resolution No. 51/2001/QH10 dated 25 December 2001 of the 10th session of the 10th Legislature of the National Assembly.) In addition, the Socio-Economic Development Plan 2006-2010, for the first time, encourages “all non-governmental organizations, social associations and unions to develop social security networks and provide effective assistance to the vulnerable” and “to engage in managing and monitoring some public fields.” (Social Economic Development Plan of Vietnam 2006-2010, pp. 91, 140.)

Yet the current legal framework is not sufficiently comprehensive or facilitating. Since 1992 a draft Law on Associations has been under consideration in Vietnam, most by a drafting committee convened by the Ministry of Home Affairs. The draft Law has been the subject of intense debate and was submitted to the National Assembly for discussion in May 2006. Significant differences between government agencies and associations, and within the government community, could not be overcome and the Law has been put off

for further discussion and drafting. Decree 148 on Social and Charitable funds was promulgated in September 2007 and Decree 151 on the Organization and Activities of Collaborative Groups was promulgated by the government in October 2007.

Among the issues that have divided drafters of the Law on Associations, government and Party agencies, and key national associations are procedures for the establishment of associations; permitted and prohibited activities; management of associational activities (“single” vs. “dual” ministerial management); foreign membership; the economic activities of nonprofits and other issues. There is a pressing need to strengthen capacity building for the rapidly growing Vietnamese NPO sector, strengthen dialogue between state and Party agencies and the nonprofit sector, and facilitate fundraising and other forms of resource mobilization.

[3] *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.

[4] 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; and to strengthen socio-economic infrastructure.”

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