

Enforcement

Generally, in Vietnam, an IPR infringing act, depending on the level and seriousness, can be handled in accordance with any of the administrative, civil, criminal or competitive procedures.

In practice, before taking legal actions in the form of administrative or civil actions against the alleged infringer, IPR holders are required to take an initial step of sending a Cease-and-Desist Letter to the alleged infringer requesting that the infringer ceases and desists infringing their IPR. If failing to settle the infringement amicably, the IPR owner shall take such legal action(s) against the alleged infringer.

8.1. ADMINISTRATIVE IPR ENFORCEMENT

Competent Authorities

The State bodies involved in the administrative IPR enforcement include:

- The People's Committees at the district and the provincial level;
- The Specialized Inspectorates on Science and Technology (under the supervision of the Ministry of Science and Technology);
- The Specialized Inspectorates on Culture and Information (under the supervision of the Ministry of Culture and Information);
- The Market Control Forces (under the supervision of the Ministry of Trade);
- The Economic Polices (under the supervision of the Ministry of Police).

Remedies

One of the following administrative remedies may be imposed on an IPR infringer:

- Warning order; or
- Monetary fine (under the IP Law 50/2005, the fine is set in the range from at least one to five times of the value of the discovered infringing goods).

Depending on the seriousness of the infringement, the following additional sanctions may be imposed on an IPR infringer:

- Confiscating IP counterfeit goods, implements and materials predominantly used for production or trade of such IP counterfeit goods;
- Revoking for a limited term the relevant business activities;
- Compelling destruction, distribution or use for non-commercial purposes of the IP counterfeit goods, materials and implements predominantly used for production or trade of such counterfeit goods;
- Compelling delivery out of the territory of Vietnam of the transiting goods, which involve infringement of IPR or re-export of the IP counterfeit goods, after having removed infringing elements.

Administrative preventive measures

In case there is a risk that infringement acts may cause serious damages to consumers or the public; or there is a risk that infringing articles may be dispersed or destroyed by infringers; or to ensure the enactment of administrative sanctions, IPR holders may request competent state enforcement authorities other than the Court to apply administrative preventive measures. These administrative preventive measures are quite similar to injunction/provisional measures applied by the Court.

Expert assessments

It is noted that in Vietnam, expert assessments are normally considered to be an important basics for enforcement bodies to

take appropriate measures. For the first time, the IP Law 50/2005 allows competent organizations or individuals to use their professional knowledge and expertise in particular arts to provide expert assessments and conclusions on matters related to IPR infringement.

Further, IP Law 50/2005 clearly states that not only competent enforcement bodies, but also IPR holders and other relevant organizations/individuals may request expert assessments and conclusions on requested subject-matters.

8.2. CIVIL IPR ENFORCEMENT

Competent Courts

First Instance

- The People's Courts at the district level (including the Civil Courts);
- The People's Courts at the provincial level (including the Civil Courts and the Economic Courts).

Appeal

- The People's Courts at the provincial level (including the Civil Courts and the Economic Courts);
- The Supreme People's Court (including the Civil Court and the Economic Court).

Remedies

- Compelling termination of the act of infringement of intellectual property rights;
- Compelling public rectification and apology;
- Compelling performance of civil obligations;
- Compelling compensation for damages;
- Compelling destruction or distribution or put to use for non-commercial purposes of goods, materials and implements predominantly used for production and trade of goods infringing IPR, provided that such distribution

and use does not influence the exploitation of rights of IPR holder.

Injunction/provisional Measures

The plaintiff may request the court to apply injunction/provisional measures that include:

- Seizing;
- Enumerating;
- Sealing; forbidding of changing the status quo; ban of moving;
- Forbidding of transfer of the ownership of rights.

In addition, other injunction measures stipulated by Law on Civil Procedure also may be applied by the court at request of the plaintiff when necessary and for the purpose of avoiding the dispersal of the infringing products by the defendant/infringer. In particular, one or a combination of the following forms of injunction measures may be taken:

- Blockading of accounts or assets;
- Forbidding the defendant/infringer from conducting a certain action or forcing the defendant/infringer to conduct a certain action.

To request for the application of the provisional measures, IPR holder shall be requested to (i) pay a deposit amounting 20% of the value of the articles being subject of the request or at least VND20 million (equivalent to US\$1,300) if it is impossible to determine the value of the articles being subject of the request; or (ii) provide with a bank guarantee.

Compensation

The plaintiff may request compensation for actual damage caused by infringing actions that shall be calculated basing on actual material damages and moral detriment caused by the infringer.

- estimated total monetary amount of actual material

damage of the plaintiff plus profit amount which the defendant gains from the infringing acts, if the plaintiff's profit loss has not been included in the plaintiff's estimated total material loss; or

- remuneration of trademark license granted by plaintiff, assuming that the plaintiff would have granted trademark license to the infringer within the period; or
- the amount of the material damages shall be decided by the court, in case the plaintiff's material damages is not able to be determined, but not exceed VND 500,000,000 (equal to US\$31,000.00); and

Apart from compensation of material damages, in case the plaintiff can prove their moral detriment caused by the intellectual property infringing actions, the amount of damage for moral detriment may be decided by the court in a range from VND5-50 millions (equal to US\$330-3,300).

In addition, the plaintiff may request the infringer to pay the reasonable lawyer fees.

8.3. CRIMINAL IPR ENFORCEMENT

Competent Authorities

Police Authorities

- The Economic Police Team at the district level (belonging to the District Police Unit);
- The Economic Police Division at the provincial level (belonging to the Provincial Police Department);
- The Economic Police Bureau (belonging to the Ministry of the Police).

Prosecutors

- The People's Prosecuting Institutes at the district level;
- The People's Prosecuting Institutes at the provincial level;

- The Supreme People's Prosecuting Institute.

Competent Courts

- The People's Courts at the district level (including the Criminal Courts);
- The People's Courts at the provincial level (including the Criminal Courts).
- The Supreme People's Court (including the Criminal Court).

Penalties

One of the following criminal penalties may be imposed on an IPR infringer

- Warning order, or;
- Monetary fine (the maximum is of 200 million VND; equivalent to US\$13,000), or;
- Non-detained re-education for up to 3 years, or;
- Imprisonment for a period of 6 months to 20 years or life imprisonment or death penalty;

Besides, the IPR holders may be subjected to the following additional sanctions:

- Confiscation of part or whole of assets;
- Prohibition from holding an official position or conducting a business within a certain period of 1 to 5 years.

8.4. UNFAIR COMPETITION PREVENTION

For the first time competition law of Vietnam provides the competition procedures to handle unfair competition practice. Apart from taking options of initiating procedures with enforcement authorities, the person and organization whose legitimate rights in their business activities, may now request the Competition Administration Department to settle the unfair competition cases based on competition proceedings stipulated by the law.

Unfair Competition procedures

Unfair competition cases shall go through the following main steps:

(i) Preliminary Investigation: When a request and evidence of unfair competition are lodged by interest related party, the Director of Competition Administration Department will issue a decision on whether to proceed with a preliminary investigation to discover signs of infringement under unfair competition law;

(ii) Official Investigation: The Director of the Competition Administration Department will issue a decision on official investigation when the preliminary investigation produces evidence that signs of unfair competition exist. The purpose of the official investigation is to determine the factual unfair competition case;

During the process of an official investigation, the alleged person/organization is given an opportunity, within a certain period of time, to present his/her view and to submit evidence in support thereof.

All the facts found from the official investigation shall be recorded by the investigator in an Official Investigation Report. The Report must be read before the alleged infringer and signed by them as an acknowledgement. The report together with the investigation documents and the investigator's recommendation of the application of law to the case are transferred to the Competition Administration Department.

(iii) Decision on unfair competition case: The Director of Competition Administration Department shall issue a decision on the settlement of unfair competition. The decision shall become effective within 30 days from the date of signing the decision;

(iv) Appeal against the decision on unfair competition: In case of disagreement with the decision of the Director of Competition Administration Department, parties may file an appeal against the decision to Minister of Ministry of Trade.

Within 15 days from the appeal, the Minister will issue a decision to revoke, modify, or uphold the issued decision;

(v) Filing a suit to quash a decision: In case of disagreement with the decision of Minister of Ministry of Trade, parties may file a suit to provincial or city court.

Remedies

The following remedies may be imposed on an IPR infringer:

- Warning order; or
- Monetary fine (the maximum is 70 million VND; equivalent to US\$4,400);

Depending on the seriousness of the offence, the following additional sanctions may be imposed on an IPR infringer:

- Withdrawal of business license, certificate or professional practicing certificate;
- Confiscation of the facilities used to committed the offence;
- Public rectification;

Administrative preventive measures

During the investigation stage as mentioned above, the Director of the Competition Administration Department may impose the following administrative preventive measures either on his/her own initiative, on the recommendation of the investigator, or at the request of the complainant:

- Temporary detention of persons;
- Temporary detention of the goods, means and implementations used for such infringement;
- Search of the relevant individual;
- Search of the place where infringing goods, means and implements are stored;
- Other administrative preventive measures.

Of note, where a complainant requests administrative

preventive measure, a security deposit is required.

8.5. BORDER MEASURES

Competent Authorities

- the Customs Branches;
- the Customs Bureaus;
- the General Department of Customs.

Border control measures

IPR holders may request the customs authorities to apply the following border measures:

- Inspection and supervision for the imports or the exports suspected of being the IPR infringing goods;
- Suspension of customs procedures upon the request of the IPR holder within 10 working days. The duration of suspension may be extended, but shall not exceed 20 working days in total, where legitimate reasons and another security are provided by the right holder.

For requesting the competent Customs Office to apply border measures, IPR holders shall be obligated to:

- prove that they are the IPR holders;
- provide full information to determine/discover the import-export articles allegedly infringing intellectual property rights;
- submit an application for requesting application of border measures and pay official fees prescribed by law;
- compensate for damages caused by applying border measures.

In addition, IPR holder shall be requested to (i) pay a deposit amounting to 20% of the value of the articles being subject of the request, or at least VND 20 million (equivalent to US\$1,300) if the value of the articles being subject of the request is not defined; or (ii) provide receipt of bank

guaranty.

Remedies

- Administrative remedies are generally applicable to the counterfeiting goods detected at the borders;
 - Compulsory re-exportation is applicable to the counterfeiting goods where such goods are eliminated from the infringement.
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Future Development

Since Vietnam joined the WTO in 2007, more and more foreign enterprises and businessmen are interested in doing business in Vietnam. Being a WTO member, Vietnam must accept common rules of international trade and investment in a level playing field. The foreign businesses will henceforth be on equal footing on Vietnamese ground, and other countries including the US shall no longer treat Vietnam's goods and products differently or less favorably in comparison with goods and products from other countries in their market. Cooperation in economic, legislative, health, education, and social welfare matters, as well as in cultural and scientific development, including cooperation in all aspects of IP protection, are expected to be further strengthened in the years to come.

Political and Legal

Environment

Political and Legislative System

The Constitution in general establishes the mastery of the people under the leadership of the Communist Party, of which the highest representation is the Politburo and the Party Secretary General. The power of the people is to be exercised through the National Assembly at the central level and the People's Councils at different local levels.

The National Assembly is the supreme representative and legislative body and determines both domestic and foreign policy. It is elected by universal suffrage. The National Assembly in turn elects and may remove from office the President, Vice-President, Chairman of the National Assembly, Vice-chairman of National Assembly, members of the Standing Committee of the National Assembly, the Prime Minister, the Chief Justice of the Supreme People's Court and the Head of the Supreme People's Procuracy. In addition, the National Assembly has the responsibility of sanctioning the Prime Minister's selection of Deputy Prime Ministers and Ministers.

The National Assembly is also responsible for approving the organization of the Government and its agencies, and is the supreme law making body. The duration of the National Assembly is 5 years and elections are held two months prior to the expiry of its term. The Standing Committee possesses the power to manage the day-to-day affairs of the National Assembly when it is not in session and during this time the Standing Committee assumes all its powers, including the law making power on matters entrusted to it by the National Assembly.

The Head of State is the President. He is elected by the National Assembly and represents the Nation internally and externally.

The highest executive body in Vietnam is the Government,

formerly known as the Council of Ministers. It is charged generally with the management of the economy and the state. It is made up of the Prime Minister, Deputy Prime Ministers, Ministers and the Chairmen of the various State Committees and the Governor of the State Bank. Individual ministries and organizations equivalent to ministries aid the Prime Minister in the administration of the Country within the specific fields in which they have jurisdiction. The deputy prime ministers and the ministers are selected by the Prime Minister but must be approved by the National Assembly. With the exception of the Prime Minister, the members of the Government do not have to be members of the National Assembly. Decisions on major issues must be taken on a majority basis.

Below the Government are People's Committees and People's Councils. The People's Councils are elected by the people and in turn elect the People's Committees. These bodies occur at the levels of city/province, district and commune. Each city/province, district and commune is governed by a People's Committee.

The court and prosecution systems in Vietnam have a structure similar to the administrative system. In the central level, the Supreme People's Court is the highest juridical body in Vietnam and the Chief Justice is elected by the National Assembly for the term of the National Assembly. The Supreme People's Procuracy has the highest power on prosecution in Vietnam and the Head is also elected by the National Assembly for the term of the National Assembly. In local levels, these bodies occur at the levels of city/province and district.

Legal System

In Vietnam, the legal system comprises of constitution, codes, laws, ordinances, decrees, decisions, circulars, directives, and official letters, to some extent. Although all have the force of law, only a law passed by the National Assembly is referred to as such.

Ordinances are issued by the Standing Committee of the National Assembly, commonly to regulate on an area where a law is not yet promulgated and/or regulated. On matters that the National Assembly entrusted to the Government, the Government issues decrees or decisions or directives to implement the issued laws or ordinances.

Circulars, decisions and regulations are normally issued by individual ministries and other State agencies including people's committees, with respect to subjects within their sphere of responsibility and the force of subordinate legislation.

It should be noted when using that while codes, laws and ordinances are referred to by the name, decrees, decisions, circulars and directives are usually referred to by the number, signing date, and the name of issuer.

Economic Environment

Gross Domestic Product (GDP) Growth

Economy and society development in the recent years took place in the context of global market turmoil, the world economy still faces a big risk with unpredictable factors. In such a context, Vietnam registered quite a high growth, with 2009 at 5.32%, 2010 at 6.78%, 2011 at 5.89%, 2012 at 5.25%, 2013 at 5.42%, 2014 at 5.98%, 2015 at 6.68%, and 2016 at 6.21%. Due to the impact of a prolonged global economic crisis combined with the difficulties and inherent inadequacies of Vietnam's economy, the growth rate of Vietnam sometimes decreased. However, in the last years, Vietnam's economy is undergoing stronger restoration and development. Growth rate of 2016 although being lower than that of 2015 and not achieving the

set target of 6.7%, is still higher than those of years from 2011 to 2014 in the context of unfavourable world economy, prices and global trade falling, the country coping with many difficulties due to complicated weather and sea environment, the achievement of such growth rate is a success, affirming the rightness, timeliness and efficiency of the measures and solutions enacted and directed by the Government to be drastically implemented in all branches and localities at different levels; and simultaneously reveals clear recovery of our country's economy.

Year	2009	2010	2011	2012	2013	2014	2015	2016
GDP Growth	5.32 %	6.78 %	5.89 %	5.25 %	5.42 %	5.98 %	6.68 %	6.21 %

Sectorial Growth

The structure of the Vietnam's economy, which is basically made up of three sectors: agriculture, industry and construction, and services, has been undergoing a considerable transformation over the last few years, with the agriculture sector declining its contribution while the industrial and service sectors increasing their shares.

Year	2009	2010	2011	2012	2013	2014	2015	2016
Agriculture, Forestry & Fishery	1.82 %	2.78%	3.08%	2.67%	2.63%	3.44%	2.41 %	1.36 %
Industry & Construction	5.52 %	7.7 %	6.49 %	5.43 %	5.08 %	6.42 %	9.64 %	7.57 %
Services	6.63 %	7.52%	6.12 %	6.56 %	6.72 %	6.16 %	6.33 %	6.98 %

Foreign Direct Investment (FDI) Flow

Up to 20 March 2017, as many as 23,071 foreign-invested projects from 116 countries and territories with a total

registered capital of over US\$300.074 billion, had been licensed in Vietnam. In the first three months of 2017, there were 493 new foreign-invested projects with a total capital registered of US\$2.917 billion were issued with Investment Registration Certificates (IRCs), or 6.5% compared to the same period of 2016. In addition, there are 223 projects adjusted their investment capital with a total increased capital registered of over US\$3.94 billion, up 206.4% compared to the same period in 2016; 1,077 capital contributions and equity acquisitions by foreign investors with the total value of US\$ 852,86 million, increasing by 171,5% compared to the same period of 2016. For the whole of new & additional funds and capital contribution & equity acquisition, in the first three months of 2017, investors have registered to invest US\$7.71 billion in Vietnam, equivalent to 171.5% compared to the same period in 2016. Total capital disbursed in the first three months in 2017 has reached US\$3.62 billion, increasing by 3.4% compared to the same period of 2016. This confirms Vietnam's FDI is recovering steadily after years affected by the global and domestic economic downturns.

By sectors, the Processing and Manufacturing sector absorbs the largest quantity of foreign capital into Vietnam, with registered capital of over US\$178.574 billion and 11,903 projects. The Property & Construction sector stands behind with the registered capital of over US\$63.509 billion and 2,008 projects; the Electricity, Gas & Water Production and Distribution with the registered capital of over US\$12.908 billion and 108 projects; the Accommodation & Food services with the registered capital of around US\$11.539 billion and 562 projects; and the Wholesale, Retail and Automobile & Motorcycles repair sector with the registered capital of around US\$5.6 billion and 2,357 projects.

By localities, all 63 cities and provinces of Vietnam have been fully covered by foreign investment. Nation-wide, foreign investment most focuses on the South, especially Ho Chi Minh

City, Binh Duong, Ba Ria-Vung Tau, Hanoi and Dong Nai. Among the principal cities and provinces, HCMC and Binh Duong are the most attractive ones, which accounted for about 15.1% and 9.2% of the total registered capital in Vietnam. Ba Ria-Vung Tau, Hanoi and Dong Nai stand behind, with the registered capital accounted for 9%, 8.6% and 8.5% of the total registered capital respectively.

By nationality, 116 different countries and territories have so far invested in Vietnam. The Republic of Korea now is the biggest foreign investor with 5,932 projects and registered capital of over US\$54.01 billion, followed by Japan, Singapore, Taiwan, British Virgin Islands, etc. These top five economies have invested in 14,396 projects (over 62.18% of the total licensed projects) with total registered capital of over US\$188.768 billion (around 62.77% of the total registered capital). Other countries and territories like Hong Kong, Malaysia, China, the United States and Thailand, which have given impetus to get a steady foothold in Vietnam, and are now among the top ten. The “top ten” investors account over 82.29% of the total licensed projects and over 82.3% of the total registered capital in Vietnam.

Official Development Aid (ODA) and Preferential Loan Commitments

Vietnam first received US\$1.8 billion of ODA from international donors in 1993. The figure has been increased year by year and during the period from 1993 to 2014, the total value of ODA commitments to Vietnam amounted to US\$89.5 billion, total capital of signed commitments reaching US\$73.68 billion, US\$3.5 billion/ year on average, has been provided by the community of 51 global donors (28 bilateral donors and 23 multilateral donors). Thanks to the positive economic development and the political stability, the ODA commitments by the international donor community to Vietnam although still being quite high follow the trend of being decreased from year to year. Particularly, US\$6.144 billion was agreed for 2009,

US\$8.063 billion for 2010, US\$7.88 billion for 2011, almost US\$7.4 billion for 2012, over US\$7 billion for 2013, about US\$5.6 billion for 2014, more than US\$2.75 billion for 2015, and around US\$5.38 billion for 2016 due to many countries stop or reduce provision of ODA to Vietnam when Vietnam became a lower middle-income country since 2010 in going line with the country's policy on mobilization of ODA and preferential loans focusing on the quality and efficiency of ODA capital and preferential loans to ensure public debt sustainability. In practice, thanks to Vietnam's capacity and experience on receiving funds, capital from this source was being disbursed progressively better from US\$3 billion in 2009, US\$3.5 billion in 2010, US\$3.65 billion in 2011, US\$3.9 billion in 2012, US\$5.1 billion in 2013, around US\$5.65 in 2014, US\$3.7 billion in 2015, and approximately US\$3.7 billion in 2016 increasing the total ODAs which have been disbursed so far to about US\$65.1 billion.

Global Integration

Thanks to the excellent preparations, Vietnam officially became the 150th member of the WTO from November 2007, and at the same time, achieved the Permanent Normal Trade Relations (PNTR) with the US in the same year. In addition to an ASEAN – China Free Trade Agreement as of 2004 and a Framework Agreement on Comprehensive Economic Cooperation among the ASEAN countries and the Republic of Korea of 2005, the coming into full effect of a Comprehensive Economic Partnership Agreement between ASEAN countries and Japan as well as the signing of another separated one between Vietnam and Japan in 2008 and the coming into force of an ASEAN-Australia-New Zealand FTA in 2010, added by the initial negotiations for a future FTA between Vietnam and the EU in June 2012, and in 2015 Vietnam ended basically negotiating a FTA with the European Union (officially signed at the end of 2015) to create conditions for Vietnam's products to penetrate more easily into five of the largest economy in the world, with

much lower tax rates. Concurrently, on 4 February 2016, 12 countries contracting the Trans-Pacific Partnership Agreement (TPP), including Vietnam, attended the signing ceremony for authentication of TPP wordings in Auckland, New Zealand. With the authorization of the Prime Minister, the Minister of Industry and Trade Vu Huy Hoang Vietnam on behalf of the Government signed authenticity of wordings of TPP and 35 bilateral agreements in domains related to financial services, textiles and garment, agriculture, intellectual property, etc. that Vietnam has agreed with the TPP countries. These bilateral agreements will take effect at the same time with TPP.