

+Legal framework and Ecommerce Country report:

Vietnam

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1. Consumer protection and trade practices

In recent years, since the transition from centrally controlled to market –oriented economics took place in Vietnam, consumer protection became a hot topic in both media and legal framework.

The Ordinance on Consumer Protection was promulgated by National Assembly in October, 1999. The ordinance is an important legal document in consumer protection, the role of the government, and responsibilities of manufacturers, traders and service providers in this area.

Viet Nam Association for Standardisation, Quality and Consumer Protection (Vinastas) is social association in consumer protection. The role of the association has become more and more important in the transition to open market where reinforcement of quality and trade mark control is still limited.

Unlike under the centrally planned system where trade and prices were tightly controlled by the government, domestic trade and prices are now partially liberalized and the government's control on external trade has been substantially reduced. Vietnam is now a member of AFTA and expected to become a member of APEC and WTO in the near future. Therefore trade liberalization is an inevitable step the country will have to undertake.

Vietnamese companies and individuals are now free to trade on the domestic market within the scope of registered business. Although external trade still requires a business license issued by the Ministry of Trade. Apart from state owned enterprises, private companies can now apply for a license for export and import business. The requirement of government approval of export and import prices as well as licenses for lot shipments of most exports and imports has been abolished. A complex system of multiple exchange rates has been replaced with a single rate reflecting market forces. Foreign exchange control has been greatly relaxed.

In May 1997 Vietnam adopted for the first time a trade law which consists of 264 articles. Notable items of the law include: basic trade principles and policies foreign businesses undertaking trade activities in Vietnam, purchase and sale of goods and commodities, trade representation, trade brokerage, trade fairs and exhibitions and settlement of trade disputes. Under this new law in addition to representative offices foreign companies can now set up branches in Vietnam to undertake certain profit making trading activities.

2. Dealing with the high costs of unsolicited email;

One reason often cited for the limited development of Vietnam's e-commerce so far is the high fees charged to Internet subscribers in relation to the low average incomes of most Vietnamese.

Despite these low incomes, Vietnamese have to pay higher fees for Internet access than do users in other regional countries. An Internet user may have to pay 25% of his/her salary, if he/she uses Internet 30 minutes per day.

It is one of the reasons why – over three years after Vietnam connected to the Internet in December 1997 – the number of Internet subscribers is still very modest, with only about 120,000 subscribers in May/2001 out of a population of 78 million.

Furthermore, although a remarkable number of domestic enterprises have now launched Web sites (about 600 by May/2001) most have used them only to introduce their products or for e-mail. There is a meagre number of Internet users for the small and untapped domestic e-commerce market.

The lack of up-to-date legal framework in Internet usage and the high Internet tariff, unsolicited mail is a serious issue. The Internet users in Vietnam are paying more and their email systems may get into troubles because of large amount of bulk email dumping..

Many see the Internet as something costly and involving too much risk. Small and medium enterprises, which constitute over 90 per cent of the total in Vietnam, spend very small sums on telecoms – and especially the Internet.

3. Protecting trademarks and administering domain names;

Vietnam recognizes the importance of protecting intellectual property rights which include patents trademarks and service marks copyright and industrial designs. In recent years the government has taken a number of steps to ensure the proper legal guarantees for such rights. In 1988 Vietnam passed *legislation protecting trademarks and patents*, and in December of 1994 the country introduced a new *copyright law*. The areas of technology transfer and industrial-property rights are less established.

Vietnam is a long-standing party to the Paris Convention for the Protection of Intellectual Property Rights, the Stockholm Convention and the Madrid Agreement for the International Registration of Marks. The nation became a member of the Patent Co-operation Treaty in March 1993.

The Vietnamese government established the *National Office of Industrial Property (NOIP)* as the sole authority for enforcing the country's laws and regulations on intellectual property rights. NOIP's responsibilities include the registration of property rights, dissemination of information regarding registration settlement of disputes over intellectual property rights and consideration of license applications. Foreign entities and individuals who wish to register must do so through a licensed industrial property agent who forwards the application to the NOIP. However foreign trademark owners may file directly with the NOIP if they have established operations in Vietnam.

Ordinance on Trade Marks is the trademark law in place in Vietnam. According to it a trademark can take the form of a letter, word, number, image, picture, design or any combination of these. Some basic generic names and geographic names, such as Hanoi,

cannot be registered. In order to be valid a trademark must be registered; otherwise it does not exist. The registration process is lengthy but inexpensive.

A trademark will be protected for 10 years from the filing date renewable for additional 10-year periods. Filing requirements include 15 specimens of the trademark and a list in English, French, German or Russian with Vietnamese translation of the goods and services bearing the mark. The registration could take maximum of six months.

A mark need not be in use in Vietnam when the application is filled. If a mark is not in use in Vietnam except for a legitimate reason within five years following the registration date it may be removed from the register on petition by a third party.

At any time during the term of registration a registration may be cancelled upon the request of a third party if it can be shown that the mark does not meet the registrability requirements or if the public is likely to be misled because the mark is similar or identical to a well known trademark.

The trademark protection system in Vietnam generally works quite well although infringements are still occurring.

Vietnam Internet Network Information Center (VNNIC) is the sole administrative body for domain names management. VNNIC was established by Decision No 580/QD-TCBD dated June 28th 2000 of Secretary General of the General Department of Posts and Telecommunications (DGPT).

VNNIC affiliated to General Department of Posts and Telecommunications undertakes the functions of managing, allocating and supervising the use of Vietnam's Internet domain names, IP addresses and autonomous system number (ASN).

Domain names allocated and managed by VNNIC are national level domain names including the second level domain names under the domain name .VN and the third level domain names under the common second level domain names.

Web site of VNNIC: <http://www.vnnic.net.vn/>

4. Regulating electronic signatures, authentication systems and other specific electronic commerce issues

The Internet penetration rate in Vietnam is still very low (120.000 over 78 million population by May/2001). The advanced usage of Internet such as email and data transfer with electronic signature, encryption are not a common practice.

Regulation is not yet available in cyberspace security and encryption, including electronic signatures, authentication systems.

In Vietnam encryption is regulated by a specialized body affiliated to the government. A new Internet policy is being considered by the government. The policy will be the basis for formulating cyberspace security and encryption regulations.

5. Protecting copyright in cyberspace

Vietnam's *Civil Code* passed in October 1995 extends copyright protection to original works in the form of written works; works expressed orally; stage performances; films video recording television and sound broadcast; photographic works; musical works; sculptures and works of fine arts; architectural works; computer software; scientific projects and textbooks; geological maps; translations adaptations or transformed works; and anthologies. The ordinance also distinguishes between the moral and economic rights conveyed in the copyright. While the author can sell the economic rights, the moral rights are retained in perpetuity.

The *Office of Copyright Protection*, part of the Ministry of Culture and Information, administers the law.

The reinforcement of copyright law in cyberspace and IT is more limited than that in traditional trade. According to the evaluation of leading experts in information technology, Vietnam is one of the countries having the highest rate of illegal software use in the world, including that for cyberspace. Most of the software products used at offices, enterprises or by individuals are copies. For the Microsoft the rate of illegal softwares use in Vietnam is estimated up to 97%. The local software products are facing the same situation.

6. Data protection

Data or personal data are protected by the law. There are two major relevant legal documents: The Ordinance on Protecting State's Secrets and Decree No.21/CP.

The Ordinance on Protecting State's Secrets stipulates issues relating to the protection of the State's secrets to raise responsibilities of State agencies, political organisations, political-social organisations, social organisations, economic organisations and others, people's armed force units and every citizen with duties of protecting State's secrets; contributing to the national construction and defence.

This ordinance takes effect from April 1, 2001.

The Decree No.21/CP of March 5, 1997 of the Government issues the "*Provisional regulation on management, establishment and use of Internet network in Vietnam*". According the decree the private life of citizens and other secrets as prescribed by the law must not be disclosed.

The legal guidance documents on data protection in cyberspace is not yet available. Most of Vietnamese companies protect their data, if they do, in an ad hoc way.

7. Content regulation

In Vietnam content in cyberspace and content in general is regulated by the government, specifically by the Ministry of Culture and Information.

Content published in Internet must conform to the law on publication, the law on the press, ordinance on state secret protection, and Provisional regulation on management, establishment and use Internet network in Vietnam.

The law on publication was adopted Jul/1993 by the president of the National Assembly.

The law on the press was proclaimed Jan/1990 by the president of the State Council.

Provisional regulation on management, establishment and use Internet network in Vietnam is known as Decree No 21/CP dated Mar/1997. A new decree is being considered to replace the current one.

8. Establishing regulatory frameworks that are fair, open and market-oriented.

Frame agreement on E-Commerce: E-Asean was signed by 10 ASEAN countries Nov/2000. The agreement was valued as the turning-point and key for the global integration of the region.

E-Asean will propose the common policy framework for Internet, infrastructure development and human resource measures, including tax reduction for commodities and information technology (IT) services, with the implementation dated from 2001.

The agreement also touched upon the matter that Asean members should quickly pass the law recognizing “e-signature” legal status.

In 1999 a task force, set up by the ASEAN economic ministers, developed an action plan called the e-ASEAN initiative.

Vietnam in E-ASEAN task force:

Mr. Nguyen Huu Anh

Deputy Director-General, Chief of Electronic Commerce Department

Ministry of Trade

Mr. Phan Tam

Manager of Science & Technology Division

International Cooperation Department

Department General of Posts and Telecommunication

9. Basic telecommunications infrastructure regulation

The basic legal document on telecommunication infrastructure is *Decree No. 109/1997/ND-CP on Post and Telecommunication*, issued the 12/Nov/1997 by the government. Its main features are as follows:

- Post and telecommunications enterprises are enterprises set up and operating under the provisions of law in the following fields:
 - o Providing post and telecommunications services;
 - o Producing post and telecommunications equipment and materials;
 - o Exporting, importing and supplying post and telecommunications equipment and materials;

- Providing consultancy on, surveying, designing and building post and telecommunications projects.
- Enterprises providing post and telecommunications services are State holds the dominating or special share, established by decision or with permission of the Prime Minister to provide domestic and international post and telecommunications services in accordance with the provisions of this Decree.
- Vietnamese enterprises providing post and telecommunications services that wish to act as agents for foreign organizations for the provisions of post and telecommunications services in Vietnam shall have to apply for permission from the Department General of Posts and Telecommunications
- Enterprises providing post and telecommunications services shall be managed, granted permits and regulated by the Department General of Posts and Telecommunications regarding the establishment and provision of post and telecommunications services

10. Internet policy

In Vietnam Internet is considered to be a value added telecommunication service and is regulated by the government. Before the introduction of Internet service to the market the government issued a decree for Internet regulation in Vietnam (Provisional regulation on management, establishment and use Internet network in Vietnam is known as Decree No 21/CP dated Mar/1997). This document provides principles and guidelines for the development of Internet service in the country as follow:

- The development of Internet service must go along with security measures to protect our network and information content transferred over the network. This can be implemented by technology measure and by creating awareness for Internet Service Providers as well as Internet Service Users.
- Unlike the basic telecommunication services the market for Internet service was open for competition from the beginning of its introduction. The Department General of Posts and Telecommunications has issued 01 Internet Access Provider (IAP) license and 05 licenses for Internet Service Providers (ISP).
- At present all Internet Service Providers must be a state owned business, stock companies where the government holds the majority of shares, or stock companies where the government holds special shares. This means that the government may hold a minority portion of shares but still keeps full control of the company, make all business decisions and other decision related to the company.
- Until now Internet services (Email, WWW, FTP, and Telnet) are considered to be value added services therefore the ISPs are not required to provide Universal Service Obligation for remote country areas. As a result they all concentrate on large cities where the business is profitable.

Internet in Vietnam is regulated by different ministries: the Department General of Posts and Telecommunications, Ministry of Science Technology and Environment, the Ministry of Information and Culture, the Ministry of Public Security. The responsibilities of each ministry as follow:

- Department General of Posts and Telecommunications:
 - Is responsible for building the backbone network.
 - Providing network infrastructure.
 - Establishes and maintains national gateways to the Internet.
 - Regulate connections and interconnection of computer networks in Vietnam to the outside Internet.
 - Issues licenses for Internet Access Providers, Internet Service Providers.
 - Issues licenses for the establishment and operation of private computer networks connected to the Internet.
 - Acts as a contact point in Vietnam for all Internet activities.
- Ministry of Science Technology and Environment issues development policies for Internet, coordinates with the Department General of Posts and Telecommunications to build the Internet development plan, selects suitable technology for the network in Vietnam, provides technical measures to protect the network and information content transferred over the network.
- Ministry of Information and Culture regulates the information content transferred over the Internet.
- Ministry of Public Security:
 - Inspects the information content transferred through the Internet.
 - Implements security measures to protect the sensitive information on the net.

In western countries the Internet is more self regulated rather than regulated by the government. This is not the case in Vietnam where Internet is centrally regulated by the government. This top-down approach of regulation and management is totally different from bottom-up (self regulated) tendency which is popular in most western countries.

11. Rates of internet usage

Internet rates are regulated by the Department General of Post and Telecommunication (DGPT). The rates are applied to all ISPs and Internet dial-up users.

There are two kind of rates: Leased line rates applied to all ISPs, and dial-up rates applied for all telephone dial-up users. The following rates are quoted from *DGPT Decision dated Oct/2000*.

Leased line rates:

- Basic rate 64kbps per month is VND28,836,00 (approx. USD2,000)
- The rates for multiple 64kbps lines have some percentage discount.

Dial-up rates:

- Max VND290 per minute per user (approx. USD0.02)
- Some discount for users in public administration and for days off and night time.

The Internet tariff in Vietnam is relatively high comparing to those of the region and to the income of Vietnamese. It is one of the reasons why – over three years after Vietnam

connected to the Internet in December 1997 – the number of Internet subscribers is still very modest, with only about 120,000 subscribers in May/2001 out of a population of 78 million.

According to the latest report of VNNIC (date 05/28/2001): There are now total 129.036 dial-up Internet accounts in Viet Nam.

Wherein by ISPs:

- VNPT : 73.641 accounts.
- FPT : 35.886 accounts.
- NETNAM: 8.077 accounts.
- Saigon Postel: 11.432 accounts.

12. Custom procedures

The basis guidance for customs procedures is *Decree No. 16/1999/ND-CP* and the Circular No. 01/1999/TT-TCHQ

Circular No. 01/1999/TT-TCHQ issued on May 10, 1999 by the General Department of Customs, guides the implementation of a number of provisions on the customs procedures in Chapters I and II of Decree No. 16/1999/ND-CP of March 27, 1999 of the Government on the customs procedures.

Regarding the customs procedures clearance places, the customs inspection places and the time limit for completing the customs procedures:

Besides the places where the customs procedures are permitted to be carried out as specified in the Decree, there are other customs procedures clearance places outside the border-gates to be decided by the Prime Minister at the proposals of the General Director of Customs.

The customs inspection places other than border-gates are those established according to regions under the Customs General Directors' decisions. At each customs inspection place of this kind, there also exists a customs apparatus which is organized and operates as a border-gates customs unit and shall be entitled to carry out the customs procedures for all kinds of export and import goods.

The customs procedures for export and import goods forwarded to the above-said places as well as the activities carried out at such places shall strictly comply with the Regulation on the customs procedures clearance places other than border-gates and forwarded export and import goods promulgated by the General Director of Customs.

The time limit for completing the customs procedures for import goods:

- For import goods transported by maritime, air and railway transport means: within 30 days after the goods arrive at the discharge border-gates indicated in the bills of lading, the customs procedures fillers shall have to go to the customs authorities to fill in the customs procedures. The date the goods arrive at the discharge border-gates shall be the date the discharge border-gate customs authorities affix seals certifying the goods' arrival at the border-gates on the manifests.
- For import goods transported by land-road and river transport means: the date the goods arrive at the first entry border-gate shall be the date the border-gate customs

authorities receive and register dossiers submitted and produced by the customs procedures fillers.

- The time limit for completing the customs procedures for export goods: the customs procedures fillers shall have to fill in the customs procedures at the export border-gates before the transport means depart, within:
- 08 hours for goods transported by sea;
- 04 hours for goods transported by river, railway (at the delivering stations) or land-road transport means;
- 2 hours for goods transported by air;

This Circular also provides detailed guidance on the customs procedures for export and import goods; for goods on transit, goods exported or imported for trade fairs and exhibitions; goods exported or imported via post; goods purchased or sold from/to transport means on entry or exit at the Vietnamese sea ports and river ports, the customs procedures for departing or arriving transport means.

13. Policies for SME's and Ecommerce

The state and government of Vietnam have made significant contributions to SME development. Thus, the economic and legal reforms of the late 1980's and early 1990's provided SMEs in the private sector with the legal basis on which to own property and means of production and conduct business. Especially noteworthy in this regard have been:

- *The 1992 Constitution* which recognizes the right of freedom of business and requires equal treatment before the law for all sectors of the economy, while recognizing the leading role of the State sector.
- *The Land Law* of 1993 which provided the rights for SMEs and others to have land use rights to possess and use land and to transfer and mortgage land use rights.
- *The Private Enterprise and Companies Laws* of 1990 which provided SMEs with means to enter the market and organize their businesses.
- *The Civil Code* enacted in 1995 which defines and enlarges upon many of the civil rights provided for in the Constitution including the rights to do business by contract and to secure performance of contracts by pledges and mortgages.
- *The Law on Corporate Income Tax* enacted in 1997 which simplifies and significantly "levels the playing field" for taxes on profits of all domestic enterprises including SMEs.
- *The Law on Value Added Tax* enacted in 1997 to replace the Turnover Tax with its cascading effects on all enterprises with a simpler, fairer tax.
- *The Commercial Law* of 1997 which provides a legal basis for trade by SMEs and others.

More recently, the Government has undertaken other significant policy initiatives which will improve the policy and legal climate for SMEs including the following:

- Enactment in May 1998 of the new amended Law on Promotion of Domestic Investment which increases incentives and facilities for national investment projects including the possibility of access to foreign capital.
- 1999, ending the requirement of exit visas for Vietnamese travelers, thereby making access to international markets and new technology easier for SMEs as well as other enterprises.
- Promulgation on 31 July 1998 of new Decree 57 under which all registered enterprises, including SMEs, have the right to import and export goods covered by their business establishment licenses without the need for import and export licenses except in a small number of specified products subject to quotas or special conditions.
- Significantly streamlining business registration procedures within the confines of the 1990 Laws on Private Enterprises and Companies under a joint circular by the Ministry of Planning and Investment and the Ministry of Justice dated 10 July 1998.
- Perhaps most important of all, in June of 1998, officially recognizing and defining SMEs in Document No. 681/CP-KTN and appointing MPI (Ministry of Planning and Investment) to coordinate with other Ministries, Departments and provincial offices to prepare strategies and policies for the development of SMEs.

14. Directory of Government Agencies

Ministry of Agriculture and Rural development

- 1 Bach Thao, Hanoi
- (84 4) 825-9670
- <http://www.mard.gov.vn/>

Ministry of Construction

- 37 Le Dai Hanh, Hanoi
- (84 4) 825-5497

Ministry of Culture and Information,

- 51-53 Ngo Quyen, Hanoi
- (84 4) 826-4287
- <http://www.vnnews.com/cinet/>

Ministry of Defense

- 1 Hoang Dieu, Hanoi
- (84 4) 826-4287

Ministry of Education and Training,

- 49 Dai Co Viet, Hanoi
- (84 4) 826-2395

- <http://www.moet.edu.vn/>

Ministry of Energy

- 18 Tran Nguyen Han, Hanoi
- (84 4) 826-3725

Ministry of Finance

- 8 Phan Huy Chu, Hanoi
- (84 4) 826-2789
- <http://www.mof.gov.vn/>

Ministry of Fisheries

- 57 Ngoc Khanh, Hanoi
- (84 4) 825-4709
- <http://www.fistenet.gov.vn/>

Ministry of Foreign Affairs

- 1 Ton That Dam, Hanoi
- (84 4) 825-8201
- <http://www.mofa.gov.vn/>

Ministry of Forestry

- 123 Lo Duc, Hanoi
- (84 4) 825-3236

Ministry of Industry

- 54 Hai Ba Trung, Hanoi
- (84 4) 285-8311

Ministry of Justice

- 25A Cat Linh, Hanoi
- (84 4) 825-4658

Ministry of Labor, War Invalids & Social Affairs

- 12 Ngo Quyen, Hanoi
- (84 4) 825-4728

Ministry of Public Health

- 138A Giang Vo, Hanoi
- (84 4) 825-8101
- <http://www.moh.gov.vn/>

Ministry of Public security

- 15 Tran Binh Trong, Hanoi
- (84 4) 826-8131

Ministry of Science, Technology & Environment

- 39 Tran Hung Dao, Hanoi
- (84 4) 826-3388
- <http://www.moste.gov.vn/>

Ministry of Trade

- 21, Ngo Quyen, Hanoi
- (84 4) 825-3915
- <http://www.vietnammarket.vnn.vn/>

Ministry of Transport

- 80 Tran Hung Dao, Hanoi
- (84 4) 825-2079
- <http://www.mt.gov.vn/>

Vietnam Chamber of Commerce and Industry (VCCI)

- 9 Dao Duy Anh, Hanoi
- (84 4) 574 2022
- <http://www.vcci.com.vn/>

Vietnam Department General of Post and Telecommunication

- 18 Nguyen Du, Hanoi
- (84 4) 825 5602
- http://www.vnpt.com.vn/DGPT/dgpt_general.html

Vietnam Directorate for Standards and Quality

- Hoang Quoc Viet, Ha noi.
- (84 4) 7562608
- <http://www.tcvn.gov.vn/>

15. Key Government Documents

- Land Law (1988),
- Law on Foreign Direct Investment (1988),
- The Company Law and the Law on Private Enterprises (1991),
- Law on Export and Import Taxes (1992),
- Ordinance on Land and Housing Taxes (1992),
- Amended and Supplemented Law on Export and Import Taxes (1993),
- Law on Revenue Tax (1993),
- Amended and Supplemented Law on Special Consumption Tax (1993),
- Law on Agricultural Land Use Tax (1993),

- Law on Land (1993),
- The Labor Code (1993),
- Law on Bankruptcy (1994),
- Law on Tax on Transfer of the Right for Land Use (1994),
- Law on Domestic Investment Promotion (1994),
- Amended Company Law (1994),
- Amended Law on Private Enterprise (1994),
- The Civil Code (1995),
- Law on State Owned Enterprise (1995),
- Budget Law (1996), and
- The Commercial Law (1997).

16. Information references

All information used in this country report was taken from official information sources of relevant organisations, majority of which web sites are available. The following are some main sources:

- National Assembly's Information Center (CILRS), <http://www.vietlaw.gov.vn/>
- Nhan Dan (The People) newspaper, the Central Organ of the Communist Party of Vietnam, the voice of the Party, State and people of Vietnam, <http://www.nhandan.org.vn>
- Department General of Post and Telecommunication (DGPT), http://www.vnpt.com.vn/DGPT/dgpt_general.html
- Vietnam News Agency (VNA), <http://www.vnagency.com.vn/>
- Directorate for Standards and Quality (TAMEQ), <http://www.tcvn.gov.vn/>
- Vietnam Post and Telecommunication Corporation (VNPT), <http://www.vnpt.com.vn/>
- Vietnam Network Information Centre (VNNIC), <http://www.vnnic.net.vn/>
- UNDP Vietnam, <http://www.undp.org.vn>