

# Chapter 39

## Vietnam

*Waewpen Piemwichai and Tu Ngoc Trinh  
Tilleke & Gibbins*

### I. Media Law

#### A. Sources

##### **39:1 Basic principles**

The Vietnamese Constitution and the Law on Press provide general principles for the administration of the media by the Government of the Socialist Republic of Vietnam (the State). The State is mandated to create favorable conditions for citizens to exercise freedom of the press and freedom of speech in the press, and allow the media to properly carry out its role. The law provides that the media and journalists must operate within the framework of the law and will be protected by the State. No organization or individual is permitted to limit or obstruct the operation of the media or journalists, and the media will not be subject to censorship prior to printing, transmitting, or broadcasting.

No one is permitted to abuse the right to freedom of the press, or freedom of speech in the press, to infringe upon the interests of the State, or the legitimate rights and interests of organizations and citizens.

##### **39:2 Constitutional sources**

The Constitution declares that the State and society develop literature and the arts in order to meet the diverse and healthy spiritual needs of the People, and develop mass media in order to meet the People's demands for information and to serve the cause of building and protecting the Homeland.

##### **39:3 Codified sources**

The Law on Press governs all activities related to information on events and matters in social life that are expressed in words, images, and sounds, which are created and periodically published, released, and transmitted to the general public through the forms of print media (newspapers and magazines), audio media (radio programs), visual media (television and audiovisual programs), and online news (online news websites and magazines).

In addition to the Law on Press, the Law on Publishing, the Decree on Radio and Television Services, and legal normative documents related to the Internet govern media activities.

### **39:4 Case law sources**

Vietnam was historically a civil law country and, as such, customary law, precedent, court decisions, and opinion juris were not sources of law. However, on April 2016, Vietnam formally adopted its first case precedents in the jurisdiction. These precedents are all previous cassation decisions by the Supreme Court. According to the Supreme Court, judges and tribunals are required to study and apply these precedents in dealing with similar cases to make sure that those with the same legal events and details are resolved consistently.

## **B. Regulatory Framework**

### **39:5 For publishing industry**

The publishing industry is mainly governed by the Law on Publishing, which regulates the organization and operation of publishing activities as well as the rights and obligations of public and private organizations and individuals participating in publishing activities. Publishing activities include publishing, printing and distribution of publications, including distribution via the Internet. The Law on Publishing (and Intellectual Property Law) provides that the State shall ensure protection of copyright.

The Ministry of Information and Communications (MIC) oversees the uniform administration of public and private publishing activities throughout the country through the offices of local People's Committees in provinces and cities. The People's Committees exercise the administration of publishing activities, including licensing for printed publications within their respective localities in accordance with the authority delegated by the State. A foreign publishing house may apply for a license to establish a representative office to introduce its products and to expedite transactions related to publications.

Other matters related to publishing activities may be governed by the Law on Press, Intellectual Property Law and its implementing documents, the Civil Code, the Penal Code, as well as the related international commitments of Vietnam, such as the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). At the time of this writing, the new Civil Code discussed in this article was passed but had not yet come into effect.

### **39:6 For broadcasting industry**

Activities in the broadcasting industry, which include radio and television services, fall under the Law on Press, the Decree on Radio and Television Services, the Law on Cinematography, Intellectual Property Law, their implementing documents, and Article 271 of the Penal Code, relating to the publication and distributions of books, newspapers, audio discs, and tapes.

Radio and television services are classified into free services ("Free TV") and fee-based services ("Pay TV"). Free TV may only broadcast Vietnamese channels, while Pay TV may broadcast both Vietnamese and foreign channels. The number of foreign channels broadcasting on Pay TV is limited to 30% of the total number of channels. The broadcast content of foreign channels must be edited and translated by a media agency which has obtained a license to edit foreign channels, and that agency is responsible for the content of their translations and editing.

There are several licenses required for providers of Vietnamese channels. Only a media agency that has obtained a license for operating in the broadcasting industry is eligible to apply for such license. A provider of a foreign channel needs a certificate of registration for the provision of subscription services. A foreign broadcaster needs to obtain this certificate through its authorized agent in Vietnam.

### **39:7 For online services**

Electronic media is a component of "the press" and is thus governed by the Law on Press and related regulations. Related documents that directly govern online content include: Decree No. 72/2013/ND-CP of the Government dated 15 July, 2013, on the management, provision, and use of Internet services and online information ("Decree 72"); Circular No. 09/2014/TT-BTTTT of the Ministry of Information and Communication dated August 19, 2014, on management, provision and use of information on websites and social networks; and Decision No. 28/2002/QD-BVHTT as amended by Circular No. 21/2011/TT-BTTTT promulgating regulations on the publication of news bulletins, documents and leaflets, press releases, and distribution of news items on electronic screens by foreign agencies and organizations. Individuals and organizations providing online services or operating online activities must also obey the Law on Cinematography.

### **39:8 Regulators and their core competencies**

The Ministry of Information and Communications (MIC) is the policy-making and regulatory body in the fields of press; publishing; posts; telecommunications and the Internet; radio frequency; information technology, electronics; broadcasting and national information infrastructure; and the management of related public services on behalf of the State. The ministry also regulates

standards, technical standards, charges, and tariffs in related services. The MIC grants and revokes operating licenses in the fields of broadcast and television.

The MIC established the Directorate of Broadcasting and Electronic Information, which directly manages activities related to the broadcasting industry and the provision and use of electronic information. The MIC also established the Directorate of the Press and the Directorate of Publishing.

### **39:9 Public sector in the media industry**

In Vietnam, the State controls the field of audio and visual media, from radio channels, public television programs, and cable television to all other forms of audio-visual media. Vietnam Television, or VTV, is the national television network and is directly under the management of the State. Vietnam Cable Television, known as VCTV, is a component of Vietnam Television.

Another nationwide broadcasting agency is Vietnam Multimedia Corporation, or VTC, which is a State-owned company under the control of the MIC. VTC provides audio and visual programs via the Internet, services relating to digital television, and satellite digital television. Provincial and municipal broadcasting agencies are directly under the control of local governments. Online services provide the greatest freedom for individuals and organizations in both the private sector and civil society.

### **39:10 Split of legislative/regulatory authority between the federal government and individual states**

The legal and political system in Vietnam is centralized with one state and does not follow a federal system.

## **C. Defamation**

### **39:11 Main sources of law**

The law of defamation is mainly based on the Civil Code sections related to personal rights. The Civil Code states that the honor, dignity, and reputation of an individual shall be inviolable and protected by law. Other sources include Penal Code articles regarding slander and humiliating other persons, as well as the Law on Complaints and the Law on Denunciations, promulgated to facilitate complaints and denunciations related to the activities of public agencies, thus contributing to democracy, the enhancement of the socialist legal system, the protection of State interests as well as the legitimate rights and interests of citizens, agencies, and organizations. In certain circumstances, provisions of the Law on Competition and Decree No. 119/2014/ND-CP in the labor context may apply.

Defamation in the Internet environment is also regulated by the Law on Information Technology and Decree 72, according to which the contents of stored digital information or the provision and use of Internet services and online information must not distort, slander, or offend the prestige of organizations or the honor, dignity or prestige of citizens.

### **39:12 Definition and significant subdivisions**

Under the Penal Code, persons who commit the crime of slander are those who trump up or spread stories knowing them to be fabricated in order to infringe upon or damage the honor, legitimate rights, or interests of another person or to accuse another person of committing a crime and denouncing them before competent agencies. Persons who commit the crime of humiliating others, "seriously infringe upon the dignity or honor of other persons."

### **39:13 Main factors or elements of claim**

The Civil Code simply provides that damage is caused by harm to the honor, dignity, or reputation of an individual or harm to the honor or reputation of a legal entity. The court will interpret the codified definitions and determine if defamation has been proven based on the facts of each case.

### **39:14 Types of relief available**

Depending on the facts and circumstances of a defamation claim, relief is available pursuant to civil law, criminal law, the Law on Publishing, the Law on Press, the Law on Information Technology, Decree 174, and Decree 159.

Vietnam's Civil Code provides that any person who intentionally or unintentionally harms the life, health, honor, dignity, reputation, property, or other legal rights or interests of an individual, or harms the honor, reputation, or property of a legal entity, thereby causing damage, must compensate a plaintiff for such damage. Article 592.1 of the Civil Code provides for (a) reasonable costs for mitigating and remedying the damage, (b) loss of or reduction in actual income, and (c) other loss and damage as provided by law.

A person causing harm to the honor, dignity, or reputation of another person must also pay compensation for the mental suffering of the aggrieved person. The amount of compensation for mental suffering will be agreed upon by the parties, and if the parties are not able to agree, the maximum sum will not exceed 10 months wages at the minimum monthly wage rate provided by the State. Furthermore, if damage is caused by harm to the life, health, honor, dignity, or reputation of a person, or a decrease or loss of one's credit (prestige) or confidence, the perpetrator must cease the harmful acts, make a public apology and retraction, and pay a sum of

money to compensate for the damage caused.

Article 156 of the Penal Code sets forth that those who are found guilty of slander are subject to a fine of between 10 million and 50 million Vietnamese dong ("VND"), noncustodial reform for up to two years, or a prison term of between three months and one year. The sentence shall be between one and three years' imprisonment if the person commits the crime (i) in an organized manner; (ii) abusing their position and power; (iii) against more than two persons; (iv) against their own grandfathers, grandmothers, fathers, mothers or persons who teach, nurture, look after, educate and/or medically treat them; (v) against persons who are performing their official duties; (vi) using a computer network, telecommunications network, or electronic device; (vii) causing the victim to suffer certain levels of mental and behavioral disability because of the offense; or (viii) by falsely accusing other persons of serious crimes. Furthermore, offenders may be subject to a fine of between 1 million and 10 million VND, as well as a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.

The Law on Publishing regulates complaints and denunciations regarding publishing activities. Individuals have the right to lodge a complaint about any conduct contrary to law in publishing activities in accordance with the provisions of law on complaints and denunciations. When appropriate, a publishing house, body, or organization may be required to compensate for loss and damage. Also, a complainant may request civil proceedings or request the competent State body to institute a prosecution when a publication contains errors, slanders, or offends honor and dignity, causing loss and/or damage to legal rights and interests.

The Law on Information and Technology enables individuals to claim compensation for damage caused by violations in the supply of personal information, and allows individuals to request organizations or individuals that store their personal information in the network environment to inspect, correct or cancel such information.

Decree 174 provides different levels of administrative fines related to different activities in the Internet environment which distort, slander, or offend the prestige of organizations or the honor, dignity or prestige of citizens. Decree 159 provides administrative fines for defamatory acts in the fields of press and publication.

### **39:15 Defenses available**

Defenses are not specifically mentioned in Vietnam's law of defamation. Defendants facing a defamation complaint may explain any extenuating or mitigating circumstances.

### **39:16 Time period for asserting claim**

The time period for initiating a legal action claiming compensation for damage is three years. This period is calculated from the date on which the claimant knew or should have known that his or her legal rights or interests were infringed.

The time period for handling administrative violations is generally one year, except in cases of violations in press and publication where the time would be two years, calculated from the time of discovery of violations with regard to administrative violations in progress, or from the time of termination of violations with regard to terminated administrative violations.

### **D. Invasion of Privacy**

#### **39:17 Main sources of law**

There is no single comprehensive law on data privacy in Vietnam, but there are a number of laws and regulations having provisions to protect data privacy. The key principle across these legal documents is that the collection, processing and use of personal information must be done with the consent of the information owner and the use of such information must be appropriate in accordance with the stated purposes. Sanctions, ranging from administrative sanctions to fines to criminal penalties for serious violations are set out in relevant laws and regulations.

The right to privacy is set forth in Article 38 of the Vietnamese Civil Code. The article clearly states that the right to privacy of an individual and the safety and confidentiality of the mail, telephone, electronic data, and other forms of private information must be kept safe and confidential. The control of personal mail, telephone, electronic mail, and other forms of electronic information may only be conducted by law. Consent is required for the collection, retention, use, and publication of information and data about the private life of an individual.

Article 125 of the Penal Code 1999 provides that those who appropriate letters, telegrams, telex, facsimile, or other documents transmitted by telecommunication or computer or commit illegal acts infringing upon the secrecy or safety of letters, telephone conversations, or telegraphs and who have been disciplined or administratively sanctioned for such acts but continue to commit violations shall be subject to sanctions.

The Law on Information Technology states that an authorized State body is responsible to monitor and supervise digital information and to investigate breaches of the law arising from the process of transmitting or storing digital information.

Organizations and individuals collecting, processing, and using the personal information of

another person in a network environment must obtain consent from such person, unless provided otherwise by law. Organizations and individuals collecting, processing, and using personal information of another person shall have the responsibility to notify persons as to the form, scope, place and purpose of the collection, processing, and use of his or her personal information; to use the collected personal information for proper purposes and to store such information only for a certain period as provided by law or as agreed upon by the parties; to take necessary managerial or technical measures to ensure that the personal information shall not be lost, stolen, disclosed, modified, or destroyed; to immediately take necessary measures upon receipt of a request for re-examination, correction, or cancellation; and not to supply or use relevant personal information until such information is corrected. A monetary fine of up to VND 70 million (approximately USD 3,300), may be imposed on the illegal act of storage, access, disclosure or use of "related" information of the services users.

Organizations and individuals are entitled to collect, process, and use the personal information of another person without the consent of the latter in a case where such personal information is used for the following purposes: signing, modifying, or performing contracts for use of information, products, or services in a network environment; pricing or calculating charges for use of information, products, or services in a network environment; and performing other obligations in accordance with the law.

An individual is entitled to request any organization or individual storing his or her personal information in a network environment to check, correct, or cancel such information.

Organizations or individuals are not permitted to supply the personal information of another person to any third party unless otherwise provided by law or agreed by such person. Individuals are entitled to claim compensation for loss caused by a breach during the supply of personal information.

Under Decree 52, the notification of collection and use of personal information of customers is required, and must be clearly displayed to the consumers before or at the time of collecting information as well as included in the website's privacy policy (which needs to be publicly displayed at an easy-to-spot position on the website). The general rule is that organizations that collect and use personal information of consumers on their e-commerce websites must obtain the prior consent of consumers. However, there are exceptions for cases where personal information has already been published on e-commerce websites, or where collection of personal information is for concluding or performing goods/service purchase or sale contracts, or where the collection of personal information is done for calculating prices or charges for use of information, products and services online. In addition, if personal information of a customer is collected and used for the purposes of transferring customers' personal information to a third



party, or sending advertisements, product introductions or other commercial information, the organizations which collect customers' information must develop a mechanism for the customer to choose to permit or not to permit the use of their personal information.

Decree 90 provides for principles for collection and use of personal email addresses or mobile phone numbers of customers for advertisement purposes, and prohibited acts relating to the transfer and trading of email addresses for spamming purposes.

The Law on Consumer Protection provides that the safety and confidentiality of information about consumers shall be assured when consumers participate in transactions or use goods and services, except when a competent state authority requests such information. Traders who collect, use or transfer consumers' information must clearly and publicly notify consumers of the purposes of collection and use of consumers' information; obtain consumers' consent and use information appropriately for notified purposes; ensure safety, accuracy and completeness of consumers' information; and obtain consumers' consent if transferring consumers' information to a third party unless provided otherwise by law.

### **39:18 Definition**

Privacy law is defined in several pieces of legislation, including the Civil Code, Penal Code, the Law on Information Technology, the Law on E-transactions, Decree 52, Decree 90, and the Law on Consumer Protection. The court interprets and applies the law according to specific cases and circumstances.

### **39:19 Main factors or elements of claim**

In a claim for invasion of privacy, the elements of tort law or criminal law are applied where appropriate.

### **39:20 Types of relief available**

Depending on the facts and circumstances of a privacy claim, relief is available pursuant to the Penal Code, and various decrees on handling administrative violations, including Decree 174, Decree 159, Decree 158, Decree 185. The general principle for relief is that depending on the nature and seriousness of the violations, individuals could be subject to administrative penalty, disciplinary action, or prosecution for criminal liability; if causing damage, they must pay compensation; organizations could be subject to administrative penalty or suspension from operation; if causing damages, they must pay compensation. For example, under the Penal Code, sanctions for an invasion of personal privacy or safety of letters, telephone, or telegraph include

a warning, a fine of between VND 1 million and 5 million, or noncustodial reform for up to one year. Offenders are subject to noncustodial reform for one to two years or a prison term of between three months and two years if they commit the crime in one of the following circumstances:

- (a) in an organized manner;
- (b) abusing their positions and/or powers;
- (c) committing the crime more than once;
- (d) causing serious consequences; or
- (e) recidivism.

Offenders may also be subject to a fine of between 2 million and 20 million VND and/or a ban from holding certain posts for one to five years.

### **39:21 Defenses available**

Defenses for invasion of privacy are not clearly set out in Vietnam law.

### **39:22 Time period for asserting claim**

If there is any damage caused by an invasion of privacy, the limitation period for asserting a claim related to such violation is three years from the date on which the right to privacy of an individual, legal entity, or other subject was infringed.

The time period for handling administrative violations is generally one year, except in cases of violations in press and publication where the time limit is two years, calculated from the time of discovery of violations with regard to administrative violations in progress, or from the time of termination of violations with regard to terminated administrative violations.

## **E. Right of Publicity**

### **39:23 Main sources of law**

Article 38 of the Civil Code protects persons against illegal publication of their private information. "The collection, retention, use and publication of information and data about the private life and personal secrets of an individual must have the consent of that person."

### **39:24 Protection of right of publicity after death**

Regarding the protection of right of publicity of a person after death, the Civil Code states that if

a person has died, lost the capacity for civil acts, or is not yet 15 years of age, the consent of a parent, spouse, adult child, or representative of that person must be obtained, except where the law has other regulations.

### **39:25 Main factors or elements of claim**

The elements of a violation of the right to publicity are not specifically mentioned in Vietnam's laws. It can be understood that the court will interpret specific cases and circumstances.

### **39:26 Types of relief available**

There is no concrete provision regarding the relief available for a plaintiff claiming violation of the right to publicity.

### **39:27 Defenses available**

Defenses for violating the right to publicity are not clearly mentioned in Vietnam's laws.

### **39:28 Time period for asserting claim**

If there is any damage caused by the violation of the right to publicity, the time period for asserting a claim of such violation is three years from the date on which the right to publicity of an individual, legal entity, or other subject was infringed.

## **II. Advertising Law**

### **A. Sources of Advertising Law**

#### **39:29 Basic principles**

Advertising activities are governed mainly by the Law on Advertising. Pursuant to Article 3 of the Law on Advertising, the State must protect the legal rights and interest of advertisers and create favorable conditions for persons conducting advertising services. Information included in advertisements for goods, services, and business activities must be true, accurate, and clear; must not be misleading or confusing; or cause loss or damages to producers, business persons or consumers.

#### **39:30 Constitutional sources**

There are no provisions in the Constitution specifically governing advertising activities.

#### **39:31 Codified sources**

The Law on Advertising came into effect on January 1, 2013, and is the main legislation governing activities of advertising in Vietnam. Advertisement is also regulated by various pieces of legislation, such as the Commercial Law and the Law on Competition. Only Vietnamese business entities, branches of foreign business entities, and foreign invested enterprises in Vietnam may directly, or through advertising business enterprises, advertise their products, goods, or services. Foreign business entities that do not have commercial representatives in Vietnam who wish to advertise their products or services must hire Vietnamese business entities to conduct advertising services.

The Law on Advertising regulates the advertisement of "conditional products," such as medical drugs, cosmetics, domestic and medical chemicals, pesticides and antiseptics, milk and dietary products for toddlers, food and food additives, medical examination and treatment services, etc., which must have specific certificates issued by the competent authorities.

Advertisements on spoken, visual or electronic media, printed media and advertisements in publications, films, photos, videos, picture discs, sound video, and sound discs are also governed by the Law on Advertising.

With respect to advertising cosmetics and drugs, Decree 181 and Circular 09 provide further guidance on the Law on Advertising related to the subject matter. Under these regulations, abusing the name, symbol, or image of pharmaceutical organizations, doctors, pharmacists or health officers in order to advertise medicine or cosmetics is prohibited.

Vietnamese law strictly prohibits tobacco advertisement in all forms, including using the label, symbols, and appellation of tobacco products with products and services not related to tobacco.

Advertisements in outdoor places are regulated by the Law on Advertising. Organizations or individuals placing an advertisement outdoors must protect urban beauty, landscape, and environment in compliance with the laws on advertising, rural and urban planning, traffic order and safety, and the safety of society.

Advertising through email and text messages is regulated by Decree 90, and as further amended by Decree 77. Decree 90 and Decree 77 also impose the following general restrictions on email and text message advertising: (i) the advertising email and advertising text message may only be sent after obtaining clear prior consent from the recipient; (ii) the advertiser must immediately stop sending email and text message advertisements when receiving the refusal from the recipient; (iii) it is prohibited to send more than one advertising email with the same content to an email address within 24 hours, unless otherwise agreed by the receiver; and (iv) it is prohibited

to send more than one advertising message with the same contents to a telephone number within a 24-hour period, and such message may only be sent between the hours of 7:00 a.m. to 10:00 p.m., unless otherwise agreed by the recipient.

### **39:32 Case law sources**

Advertising cases are handled by State bodies rather than courts.

## **B. False Advertising**

### **39:33 Main sources of law**

False advertising is regulated by a number of Vietnamese laws, namely, the Penal Code, the Commercial Law, the Law on Advertising, the Law on Competition, the Law on Consumer Protection and the Law on Quality of Goods and Products. Any individual or organization providing false advertising, depending on the nature and seriousness of the offense, shall be charged with an administrative liability or criminal penalty. Additionally, under the Law on Consumer Protection, consumers have the right to request a refund or compensation for loss and damage when goods and services do not satisfy the standards, quality, quantity, and price as offered by the suppliers, and may complain, denounce, and institute proceedings in respect of any false information or advertising.

### **39:34 Definition and significant subdivisions**

The Law on Advertising prohibits advertising with contents which are untrue or misleading about the business capacity or ability to provide products, goods, or services of an organization or individual conducting business in products, goods or services; or about the quantity, quality, price, usage, design, package, trademark, origin, type, method of serving or warranty period of products, goods or services which have been registered or declared. The Commercial Law prohibits false advertisement of goods and services with respect to any of the following: quantity, quality, price, usage, design, origin of goods, type, packaging, method of service, and warranty period. The Law on Competition defines false advertising as providing false or misleading information to consumers relating to one of the following:

- (i) price, quantity, quality, usage, design, type, packaging, date of manufacture, use expiry, origin of goods, manufacturer, place of manufacture, processor, or place of processing;
- (ii) manner of use, method of services, warranty period; or
- (iii) other false or misleading information.

### **39:35 Main factors or elements of claim**

Regarding compensation for damages in cases of false advertising, the Commercial Law, the Law on Advertising, the Law on Quality of Goods and Products, and the Law on Consumer Protection have provisions on claims, but, in general, they refer to principles of the Vietnam Civil Code. Under the Civil Code, an injured person may claim compensation based on the following elements:

- (i) there has been an illegal act committed (such as providing false advertisements);
- (ii) there has been damage caused and the damage caused must be the result of the illegal acts and vice versa (an injured person must prove the damage was caused by false advertising, which may include material damage and mental suffering); and
- (iii) the party causing damage was at fault.

### **39:36 Examples of claims found false or misleading and claims found not false or misleading**

There have been few cases related to false advertising in Vietnam. The facts of a case and full text of a court's decision are not easily obtained. Certain cases decided by competent authorities have been published on the website of such authorities.

Several cases handled by the Vietnam Competition Administration Department (VCAD) may serve as examples.

In August 2011, a television shopping company advertised its cosmetic products as having miraculous beautifying effects for consumers that would work within a short time. These cosmetic products had completed the necessary quality standards process with the Ministry of Health of Vietnam, but when they were advertised on television, the product functions and uses were magnified as compared with the approved product standards. When questioned by the VCAD about these claims, the company could not prove the claimed results. The company was fined VND 45 million (approximately USD 2,130) for violation of Article 45 of the Law on Competition. Additionally, the company revised the advertisement content to comply with Vietnamese laws.

In another case, a leading electronics company advertised a product with claims that it acted "against wrinkles in clothes" or "water safe to 50%" but later failed to prove these claims. In September 2011, the company was fined VND 30 million (approximately USD 1,420) for violation of Article 45 of the Law on Competition.

### **39:37 Types of relief available**

If it is proved that an individual or organization committed an act of false advertisement, administrative sanctions or criminal penalties may be applied. In cases where a false advertisement causes damage to an individual or organization, the latter may claim compensation for extra-contractual damage.

Administrative sanctions include monetary fines and a variety of remedial measures such as warnings, compulsory removal or dismantlement of advertisements, compulsory formal apologies and compulsory rectification of the false advertising information. Providing false advertisements can result in a fine up to VND 140 million (approximately USD 6,600). Supplemental sanctions include compulsory removal or dismantlement of the advertisement, compulsory formal apologies and compulsory rectification of the false advertising information. With respect to an act of providing false advertisement aimed at unfair competition, an organization may be subject to a fine of up to VND 140 million (approximately USD 6,600). An organization could be fined at a level equal to two times the fines for individuals. Additional sanctions and measures for remedying consequences may also be applied, including confiscation of material evidence and facilities used to commit the breach, all profits earned from such breach, and public retraction.

Criminal penalties may be applied to an offender only when the false advertisement causes serious consequences or the offender has continued to commit an offense after being administratively sanctioned or sentenced for such offense and not yet entitled to criminal record remission. The offender may be subject to a fine of between VND 10 million (approximately USD 470) and VND 100 million (approximately USD 4,740), or noncustodial reform for up to three years. There may also be additional sanctions of a fine up to VND 50 million (approximately USD 2,370) or a ban from practicing certain occupations or doing certain jobs for one to five years.

### **39:38. Defenses available**

Pursuant to Decree No. 99/2011/ND-CP, a consumer has the right to make a claim of false advertising against an advertising party. The consumer should submit a written request to the State administrative body for consumer protection, including the information of the violating trader, details of the case, the consumer's specific request and enclosed documents and evidence. The consumer is not required to prove the violations of the advertising party for these administrative claims, and the burden of proof is on the advertising party. In particular, when faced with such a claim, an advertising party must prove that all contents of its advertisement are true and not misleading to consumers. In a civil proceeding, the responsibility to prove the damage caused by the defendant belongs to the plaintiff. For proving the fault of an advertising party, the burden of proof shifts to the advertising party.

### **39:39 Evidence required to support advertising claims based on tests**

There is no specific regulation regarding scientific tests or surveys used to substantiate claims made in advertisements. Tests and examinations may vary from case to case. In cases of advertising claims relating to the quality of goods, the Vietnam official standards (*i.e.*, TCVN) issued by the Vietnam Standard and Quality Center can be used to verify whether the advertised products reach the quality standard or not.

### **39:40 Time period for asserting claim**

The time limit for the authority to impose a penalty for an offense pursuant to administrative procedures is one year from the date on which the offense was committed. If within such time limit, an offender commits a similar offense or intentionally evades or obstructs justice, the time limit will commence from the date on which the new offense was committed or the act of evasion or obstruction ceased.

The time limit for criminal liability prosecution is five years for less serious crimes, 10 years for serious crimes, 15 years for very serious crimes and 20 years for particularly serious crimes, calculated from the date on which false advertising was carried out. If the offender deliberately flees, and a warrant is issued, the limitation is tolled, and the time limit must be recalculated from the time when the offender is arrested.

The time limit for initiating legal action claiming compensation for damage is three years from the date on which the legal rights or interests of an individual or organization were infringed.

## **C. Third Party Trademarks and Copyrights in Advertising**

### **39:41 Permissibility of using another party's trademark in advertising without that party's authorization**

Vietnamese regulations strictly prohibit "advertisements violating laws and regulations on intellectual property."

### **39:42 Permissibility of using another party's copyrighted work in advertising without that party's authorization**

Under Vietnam's Law on Intellectual Property, a copyright holder shall have the right to communicate, or publish, its works to the public by any means. When a party attempts to use another party's copyrighted work in an advertisement, it must ask for permission from the copyright holder and must pay royalties, remuneration, or other material benefits to the copyright



holder.

### **39:43 Time period for asserting claim of trademark infringement or copyright infringement**

Under Vietnamese civil law, if any damage is caused by trademark or copyright infringement, the time period for asserting a claim of such infringement is three years from the date on which the infringement was conducted.

The time limit for criminal liability prosecution is five years for less serious crimes, 10 years for serious crimes, 15 years for very serious crimes and 20 years for particularly serious crimes, calculated from the date on which infringement was carried out. If the offender deliberately flees, and a warrant is issued, the limitation is tolled, and the time limit must be re-calculated from the time when the offender is arrested.

Criminal penalties may be applied to an offender who, without permission of holders of copyright or related rights, commits the act of infringing upon copyrights or intellectual property rights on a commercial scale. Such offender shall be imposed a fine of between VND 50 million (approximately USD 2,370) and VND 500 million (approximately USD 23,700), or non-custodial reform for up to two years.

## **III. Entertainment Law**

### **A. Sources**

#### **39:44 Basic principles**

The Vietnamese government tends to encourage the entertainment activities of its citizens. However, these activities must not violate the nation's legal framework or the Constitution.

#### **39:45 Constitutional sources**

The Vietnamese Constitution provides general principles on cultural and artistic activities. The Constitution provides its citizens with the right to undertake scientific and technical research, and also the right to engage in literary and artistic creation, and to enjoy the benefits from such activities. The State and society preserve and develop a progressive Vietnamese culture imbued with national identity and assimilating the quintessence of human culture. The State and society develop culture and arts in order to satisfy the People's diverse and healthy spiritual needs; and develop mass media in order to satisfy the People's demands for information and to serve the cause of building and protecting the Homeland.

### **39:46 Codified sources**

Vietnam does not have a single comprehensive law governing entertainment activities. Any case relating to a specific aspect of entertainment will be regulated by the applicable law (e.g., Law on Cinematography, etc.).

### **39:47 Case law sources**

Vietnam was historically a civil law country and, as such, customary law, precedent, court decisions, and opinion juris were not sources of law. However, on April 2016, Vietnam formally adopted its first case precedents in the jurisdiction. These precedents are all previous cassation decisions by the Supreme Court. According to the Supreme Court, judges and tribunals are required to study and apply these precedents in dealing with similar cases to make sure that those with the same legal events and details are resolved consistently.

## **B. Types**

### **39:48 Legal matters characterized as entertainment law**

In Vietnam, cultural and informative activities can be characterized as entertainment activities, including press, publishing, cinematography, performing arts, public cultural activities and cultural services, fine arts, cultural and art exhibitions, fashion shows, model contests, beauty contests and photography.

## **IV. Art Law**

### **A. Sources**

#### **39:49 Main sources of law relating to sale of artworks**

Generally, the Commercial Law governs the sale of artwork, as it is treated as any other kind of goods. The Commercial Law provides for trade fairs and exhibitions. The moral rights attached to artistic goods are regulated by the Intellectual Property Law.

#### **39:50 Sources of law for artists' rights**

Vietnam's Intellectual Property Law clearly states artists' rights related to their artworks. Artists' rights are comprised of moral rights and economic rights.

The moral rights of authors are listed in Article 19, as follows:

1. Right to give titles to their works.

2. Right to attach their real names or pseudonyms to their works, and to have their real names or pseudonyms acknowledged when their works are published or used.
3. Right to publish their works or to authorize other persons to publish their works.
4. Right to protect the integrity of their works, and to forbid other persons to modify, edit, or distort their works in whatever form, causing harm to the honor and reputation of the author.

The economic rights of authors are stipulated in Article 20, as follows:

1. To make derivative works.
2. To display their works to the public.
3. To reproduce their works.
4. To distribute or import the original or copies of their works.
5. To communicate their works to the public by wireless or landline means, electronic information networks, or other technical means.
6. To lease the original or copies of cinematographic works and computer programs.

Economic rights can be transferred to another party, while the artists' moral rights cannot.

## **B. Relationships**

### **39:51 Relationship between dealer and artist**

The economic rights of artists and the relationship between dealers and artists is simply the relationship between buyers and sellers under the Commercial Law. However, the moral rights of the artists will be governed by the Intellectual Property Law.

### **39:52 Relationship between purchaser and dealer**

The relationship between an art purchaser and a dealer is governed by the Commercial Law, and transactions can be considered as a shift of property rights. This will not affect the moral rights of the artist related to such artwork.

## **C. Art Auctions**

### **39:53 Laws relating to auctions and auction houses**

The Commercial Law defines auctions as follows: "Auction of goods means a commercial activity whereby the seller conducts, or hires an auctioneer to conduct, the public sale of goods in order to select the purchaser offering the highest price." In addition, Decree 17/2010/ND-CP also provides property auction as a means of public sale of property in which increasing bids are offered by two or more bidders. The law requires auctioneers and sellers of goods to be business

entities with a business registration for auctioneering services or a seller who conducts an auction of their own goods. A "seller of goods" means the owner of goods or the person authorized by the owner of goods to sell the goods.

#### **D. "Stolen" Art Works**

##### **39:54 Legal issues regarding "stolen" artworks**

Under Vietnamese civil law, the purchase or sale of stolen property is an invalid transaction. However, according to Article 133 of the Civil Code, if the property is "not subject to ownership registration, and has already been transferred to a bona fide third party through another transaction, the transaction with that bona fide third party will still be valid, except for the following situation: Owners may reclaim movable property not subject to ownership right registration from bona fide possessors in cases where such bona fide possessors have acquired such property through unindemnifiable contracts with persons who have no right to dispose of the property. In similar cases with indemnifiable contracts, the owners may reclaim the movable property if such movable property has been stolen, lost, or possessed against the owner's will.

Whether a bona fide purchaser of a stolen artwork must return the artwork to the person from whom the artwork was stolen or to that person's heirs will be determined based on the facts of the case.