

## Chapter 39

### Vietnam

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## I. MEDIA LAW

### A. SOURCES

#### § 39:1 Basic principles

The Vietnamese Constitution<sup>1</sup> and the Law on Press<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

#### § 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, further, develop mass media in order to meet the People’s demands

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#### [Section 39:1]

<sup>1</sup>Vietnamese Constitution, dated November 28, 2013, which came into effect on January 1, 2014 (“Constitution”).

<sup>2</sup>Law on Press No. 103/2016/QH13, passed by the National Assembly on April 5, 2016, taking effect on January 1, 2017 (“Law on Press”), which replaces the old Law on Press No. 29/LCT-HDNN8, passed by the National Assembly on December 28, 1989.

<sup>3</sup>Law on Press, Article 13. *See also* Law on Publishing No. 19/2012/QH13, passed by the National Assembly on November 20, 2012, coming into force on July 1, 2013 (“Law on Publishing”), Article 5.2.

<sup>4</sup>Law on Press, Article 13. *See also* Law on Publishing, Article 5.3.

for information and to serve the cause of building and protecting the Homeland.<sup>1</sup>

### § 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).<sup>1</sup>

In addition to the Law on Press, the Law on Publishing, the Decree on Radio and Television Services,<sup>2</sup> 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, in 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 partici-

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#### [Section 39:2]

<sup>1</sup>Constitution, Article 60.2.

#### [Section 39:3]

<sup>1</sup>Law on Press, Articles 3.1, 3.5–3.6.

<sup>2</sup>Decree No. 06/2016/ND-CP, dated January 18, 2016 of the Government on management, provision and use of radio and television services (“Decree on Radio and Television Services”).

pating in publishing activities.<sup>1</sup> Publishing activities include publishing, printing and distribution of publications, including distribution via the Internet.<sup>2</sup> The Law on Publishing (and Intellectual Property Law)<sup>3</sup> provides that the State shall ensure protection of copyright.<sup>4</sup>

The Ministry of Information and Communications (“MIC”) oversees the uniform administration of public and private publishing activities throughout the country<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

Other matters related to publishing activities may be governed by the Law on Press, Intellectual Property Law and its implementing documents, the Civil Code,<sup>8</sup> the Penal Code,<sup>9</sup> as well as the related international commitments of Vietnam, such as the Berne Convention for the Protection of Literary and Artistic Works (“Berne Convention”)<sup>10</sup> and the

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**[Section 39:5]**

<sup>1</sup>Law on Publishing, Article 1.

<sup>2</sup>Law on Publishing, Article 1.

<sup>3</sup>Law on Intellectual Property No. 50/2005/QH11, passed by the National Assembly on November 29, 2005, as amended on June 19, 2009 (“Intellectual Property Law”).

<sup>4</sup>Law on Publishing, Articles 5.1 and 21. *See also* Intellectual Property Law.

<sup>5</sup>Law on Publishing, Article 6.2.

<sup>6</sup>Law on Publishing, Article 6.2.

<sup>7</sup>Law on Publishing, Article 8.

<sup>8</sup>Civil Code No. 91/2015/QH13, passed by the National Assembly on November 24, 2015, taking effect on January 1, 2017 (“Civil Code”), which replaces the old Civil Code No. 33/2005/QH11, passed by the National Assembly on June 14, 2005.

<sup>9</sup>Penal Code No. 100/2015/QH13, passed by the National Assembly on November 27, 2015, as amended by Law No. 12/2017/QH14 of the National Assembly dated June 20, 2017 (“Penal Code”), taking effect on January 1, 2018.

<sup>10</sup>Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, as revised in Paris on July 24, 1971, and amended in

Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPs”).<sup>11</sup>

### § 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,<sup>1</sup> Intellectual Property Law,<sup>2</sup> their implementing documents, and Article 344 of the Penal Code, relating to publication.<sup>3</sup>

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.<sup>4</sup> The number of foreign channels broadcasting on Pay TV is limited to 30% of the total number of channels.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> A provider of a foreign channel needs a certificate of registration for the provision of

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1979, S. Treaty Doc. No. 99-27 (1986).

<sup>11</sup>Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299; 33 I.L.M. 1197 (1994).

#### [Section 39:6]

<sup>1</sup>Law on Cinematography No. 62/2006/QH11, passed by the National Assembly on June 29, 2006, as amended on June 18, 2009 and November 20, 2018 (“Law on Cinematography”).

<sup>2</sup>Intellectual Property Law.

<sup>3</sup>Penal Code, Article 344.

<sup>4</sup>Decree on Radio and Television Services, Articles 7.1 (a) and 10.1 (a).

<sup>5</sup>Decree on Radio and Television Services, Article 17.1.

<sup>6</sup>Decree on Radio and Television Services, Article 17.5.

<sup>7</sup>Decree on Radio and Television Services, Article 15.1.

subscription services. A foreign broadcaster needs to obtain this certificate through its authorized agent in Vietnam.<sup>8</sup>

### § 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.<sup>1</sup> Related documents that directly govern online content include: Decree No. 72/2013/ND-CP of the Government, dated July 15, 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,<sup>2</sup> promulgating regulations on the publication of news bulletins, documents and leaflets, press releases, and distribution of news items on electronic screens<sup>3</sup> by foreign agencies and organizations. Individuals and organizations providing online services or operating online activities must also obey the Law on Cinematography.<sup>4</sup>

### § 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

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<sup>8</sup>Decree on Radio and Television Services, Articles 17.4 and 18.1.

#### [Section 39:7]

<sup>1</sup>Law on Press.

<sup>2</sup>Decision No. 28/2002/QD-BVHTT and Circular No. 21/2011/TT-BTTTT were amended by Circular No. 04/2014/TT-BTTTT of the Ministry of Information and Communication, dated March 19, 2014, effective on May 5, 2014, which guides Decree No. 88/2012/ND-CP of the Government, dated October 23, 2012, on the press activities of foreign press agencies, foreign representative bodies and foreign organizations in Vietnam. According to Circular 04, the forms attached to Decision 28 and the forms attached to Circular 21 are annulled.

<sup>3</sup>This expression covers computer screens; however, the Decision does not specifically refer to computer networks and the Internet.

<sup>4</sup>Law on Cinematography.



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.<sup>1</sup> Other sources include Penal Code articles regarding slander and humiliating other

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#### **[Section 39:11]**

<sup>1</sup>Civil Code, Article 34.1, right to protection of honor, dignity, and reputation.

persons,<sup>2</sup> 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.<sup>3</sup> In certain circumstances, provisions of the Law on Competition<sup>4</sup> and Decree No. 24/2018/ND-CP<sup>5</sup> in the labor context may apply.

Defamation in the Internet environment is also regulated by the Law on Information Technology<sup>6</sup> 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.<sup>7</sup>

### § 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.<sup>1</sup> Persons who

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<sup>2</sup>Penal Code, Articles 48.2, 155, 156.1 and 156.2.

<sup>3</sup>Law on Complaints No. 02/2011/QH13, passed by the National Assembly on November 11, 2011 (“Law on Complaints”); Chapter V—Reception of Citizens of the Law on Complaints was replaced by Law on Reception of Citizens No. 42/2013/QH13, passed by the National Assembly of Vietnam on November 25, 2013, effective on July 1, 2014; Law on Denunciations No. 25/2018/QH14, passed by the National Assembly on July 12, 2018 (“Law on Denunciations”).

<sup>4</sup>Law on Competition No. 23/2018/QH14, passed by the National Assembly on June 12, 2018 (“Law on Competition”).

<sup>5</sup>Decree No. 24/2018/ND-CP of the Government, dated February 27, 2018 (effective from April 15, 2018), providing for settlement of complaints and denunciations in the fields of labor, vocational education, Vietnamese guest workers, employment, occupational safety and hygiene.

<sup>6</sup>Law on Information Technology No. 67-2006-QH11, passed by the National Assembly on June 29, 2006 (“Law on Information Technology”), as amended on November 24, 2017.

<sup>7</sup>Law on Information Technology, Articles 12.2 and 18.2; Decree 72, Article 5.1.

#### [Section 39:12]

<sup>1</sup>Penal Code, Article 156.1 and 156.2.

commit the crime of humiliating others, “seriously infringe upon the dignity or honor of other persons.”<sup>2</sup>

### § 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.<sup>1</sup>

### § 39:14 Types of relief available

Depending on the facts and circumstances of a defamation claim, relief is available pursuant to civil law,<sup>1</sup> criminal law,<sup>2</sup> the Law on Publishing,<sup>3</sup> the Law on Press,<sup>4</sup> the Law on Information Technology, Decree 174,<sup>5</sup> and Decree 159.<sup>6</sup>

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.<sup>7</sup> Article 592.1 of the Civil Code provides for (a) reasonable costs for mitigating

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<sup>2</sup>Penal Code, Article 155.

#### [Section 39:13]

<sup>1</sup>See also the Law on Press, Article 9.8 which states that the media is not permitted to provide false information that distorts, slanders or hurts the reputation of organizations or agencies or the honor and dignity of individuals; or attributes guilt without court judgment.

#### [Section 39:14]

<sup>1</sup>Civil Code, Article 592.

<sup>2</sup>Penal Code, Article 48.

<sup>3</sup>Law on Publishing, Article 9.

<sup>4</sup>Law on Press, Article 59.5.

<sup>5</sup>Decree No. 174/2013/ND-CP of the Government, dated November 13, 2013 on penalties for administrative violations in post, telecommunications, information technology and radio frequency, as amended by Decree No. 49/2017/ND-CP of the Government dated April 24, 2017 (“Decree 174”).

<sup>6</sup>Decree No. 159/2013/ND-CP of the Government, dated November 12, 2013 on penalties for administrative violations press and publication (“Decree 159”).

<sup>7</sup>Civil Code, Articles 589–593.

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.<sup>8</sup> 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.<sup>9</sup> 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 (i.e., 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.<sup>10</sup>

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.<sup>11</sup> Furthermore, offenders may be subject to a fine of between VND 10 million and 50 million, as well as a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.<sup>12</sup>

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

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<sup>8</sup>Civil Code, Article 592.2.

<sup>9</sup>Civil Code, Article 592.2.

<sup>10</sup>Civil Code, Articles 34, 360 and 592.

<sup>11</sup>Penal Code, Article 156.1-2.

<sup>12</sup>Penal Code, Articles 48 and 156.4.

law on complaints and denunciations.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

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.<sup>16</sup> Decree 159 provides administrative fines for defamatory acts in the fields of press and publication.<sup>17</sup>

#### § 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.<sup>1</sup>

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

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<sup>13</sup>Law on Publishing, Article 9.

<sup>14</sup>Law on Publishing, Articles 11.1 and 11.2.

<sup>15</sup>Law on Information Technology, Article 22.

<sup>16</sup>Decree 174, Articles 64.3.a, 65.4.a, 66.3.g and 68.3.

<sup>17</sup>Decree 159, Articles 8.4.b, 20.2.b and 20.2.c.

#### [Section 39:16]

<sup>1</sup>Civil Code, Article 588.

administrative violations in progress, or from the time of termination of violations with regard to terminated administrative violations.<sup>2</sup>

#### 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.<sup>1</sup> 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.<sup>2</sup> Consent is required for the collection, retention, use, and publication of information and data about the private life of an individual.<sup>3</sup>

Article 159 of the Penal Code 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

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<sup>2</sup>Law on Handling Administrative Violations No. 15/2012/QH13, passed by the National Assembly of Vietnam on June 20, 2012 (“Law on Handling Administrative Violations”), Article 6.

##### [Section 39:17]

<sup>1</sup>Civil Code, Article 38.1.

<sup>2</sup>Civil Code, Article 38. *See also* Law on Information Technology, Article 21; Decree No. 90/2008/ND-CP of the Government, dated August 13, 2008 on anti-spamming, as amended by Decree No. 77/2012/ND-CP on October 5, 2012. Penalty provisions for different violations provided in Decision 90 were replaced by penalty provisions in Decree No. 174/2013/ND-CP dated November 13, 2013.

<sup>3</sup>Civil Code, Article 38.

but continue to commit violations shall be subject to a fine of between VND 20 million and VND 50 million or noncustodial reform for up to three years.<sup>4</sup>

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 otherwise provided 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.<sup>5</sup> A monetary fine of up to VND 70 million (approximately US\$3,300), may be imposed on the illegal act of storage, access, disclosure or use of “related” information of the services users.<sup>6</sup>

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.<sup>7</sup>

An individual is entitled to request any organization or in-

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<sup>4</sup>Penal Code, Article 159.1.

<sup>5</sup>Law on Information Technology, Article 21.2.

<sup>6</sup>Decree 174, Article 66.

<sup>7</sup>Law on Information Technology, Article 21.3.

dividual 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.<sup>8</sup>

Under Decree 52,<sup>9</sup> 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<sup>10</sup> 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).<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

Decree 90 provides principles for collection and use of personal email addresses or mobile phone numbers of customers for advertisement purposes, and prohibited acts

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<sup>8</sup>Law on Information Technology, Article 22.

<sup>9</sup>Decree No. 52/2013/ND-CP of the Government, dated May 16, 2013 on e-commerce ("Decree 52").

<sup>10</sup>Decree 52, Article 69.2.

<sup>11</sup>Decree 52, Article 69.3.

<sup>12</sup>Decree 52, Articles 70.1 and 70.4.

<sup>13</sup>Decree 52, Article 70.3.



relating to the transfer and trading of email addresses for spamming purposes.<sup>14</sup>

The Law on Consumer Protection<sup>15</sup> 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.<sup>16</sup>

### § 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

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<sup>14</sup>Some key principles of Decree 90 include: requirements of recipients' prior consent before an advertising email or text message could be sent, or before an electronic address (e.g., email address or mobile phone number of the customer) could be collected for advertisement purposes (Articles 7, 8); requirements of senders to develop a mechanism for recipients to unsubscribe from advertising emails (Articles 7, 12) and to stop sending advertisement emails or text messages right after recipients notify senders of their refusal to receive such emails or messages (Article 7); and time during the day for sending advertising emails or text messages (Article 7).

<sup>15</sup>Law on Protection of Consumers Rights No. 59/2010/QH12, adopted by the National Assembly of Vietnam on November 17, 2010 ("Law on Consumer Protection"), as amended on November 20, 2018.

<sup>16</sup>Law on Consumer Protection, Article 6.

claim, relief is available pursuant to the Penal Code, and various decrees on handling administrative violations, including Decree 174, Decree 159, Decree 158,<sup>1</sup> Decree 185.<sup>2</sup> 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; organizations could be subject to an administrative penalty or suspension from operation; if causing damages, they must pay compensation.<sup>3</sup> 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 20 million and 50 million, or noncustodial reform for up to three years.<sup>4</sup> Offenders are subject to a prison term of between one and three 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) disclosing obtained information that affects the honor, prestige or dignity of another person; or
- (e) causing the victim to commit suicide.

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**[Section 39:20]**

<sup>1</sup>Decree No. 158/2013/ND-CP of the Government, dated November 12, 2013, on penalties for administrative violations in culture, sports, tourism and advertising as amended by Decree No. 28/2017/ND-CP of the Government dated March 20, 2017 (“Decree 158”).

<sup>2</sup>Decree No. 185/2013/ND-CP of the Government, dated November 15, 2013, on penalties for administrative violations in commercial activities, production, and trading of counterfeit or banned goods and protection of consumer rights, as amended by Decree No. 124/2015/ND-CP of the Government dated November 19, 2015 and Decree No. 141/2018/ND-CP of the Government dated October 8, 2018 (“Decree 185”).

<sup>3</sup>*See, e.g.*, the Law on Information Technology (Article 77), the Law on E-Transactions (Article 50), and the Law on Consumer Protection (Article 11).

<sup>4</sup>Penal Code, Article 159.1. For different levels of fines for various piracy violations, *see also* Decree 174 (e.g., Articles 65, 66), Decree 158 (e.g., Articles 4.1.b, 56), Decree 159 (e.g., Articles 8.2.d, 8.3.e, 20.1.a), and Decree 185 (e.g., Articles 65, 82.4.b, 84.4).

Offenders may also be subject to a fine of between VND 5 million and VND 20 million and/or a ban from holding certain posts for one to five years.<sup>5</sup>

#### § 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 limitations 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.<sup>1</sup>

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.<sup>2</sup>

### 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.”<sup>1</sup>

#### § 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,

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<sup>5</sup>Penal Code, Article 159.2-3.

#### [Section 39:22]

<sup>1</sup>Civil Procedure Code 92/2015/QH13, passed by the National Assembly on November 25, 2015 (“Civil Procedure Code”), Article 184 and Civil Code, Article 588.

<sup>2</sup>Law on Handling Administrative Violations, Article 6.

#### [Section 39:23]

<sup>1</sup>Civil Code, Article 38.

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.<sup>1</sup>

### § 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 stated 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.<sup>1</sup>

## II. ADVERTISING LAW

### A. SOURCES OF ADVERTISING LAW

#### § 39:29 Basic principles

Advertising activities are mainly governed by the Law on Advertising.<sup>1</sup> Pursuant to Article 3 of the Law on Advertising, the State must protect the legal rights and interests of

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#### [Section 39:24]

<sup>1</sup>Civil Code, Articles 21 to 25 and 38.

#### [Section 39:28]

<sup>1</sup>Civil Code, Article 588.

#### [Section 39:29]

<sup>1</sup>Law on Advertising No. 16-2012-QH13, passed by the National Assembly on June 21, 2012 ("Law on Advertising"), Article 1.1.

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.<sup>2</sup>

### § 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. Advertising activities are also regulated by various pieces of legislation, such as the Commercial Law<sup>1</sup> and the Law on Competition.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

Advertisements on spoken, visual or electronic media, printed media and advertisements in publications, films,

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<sup>2</sup>Law on Advertising, Article 19.

#### [Section 39:31]

<sup>1</sup>Commercial Law, No. 36/2005/QH11, passed by the National Assembly on June 14, 2005 (“Commercial Law”), Articles 102–106.

<sup>2</sup>Law on Competition No. 27/2004/QH11, passed by the National Assembly on December 3, 2004 (“2004 Law on Competition”). A new Law on Competition (“2018 Law on Competition”) which will replace the 2004 Law on Competition, will take effect on July 1, 2019.

<sup>3</sup>Commercial Law, Article 103. Law on Advertising, Article 39.

<sup>4</sup>Law on Advertising, Article 20.

photos, videos, picture discs, sound video, and sound discs are also governed by the Law on Advertising.<sup>5</sup>

With respect to advertising cosmetics and drugs, Decree 181<sup>6</sup> and Circular 09<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

Advertising through email and text messages is regulated by Decree 90,<sup>10</sup> 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

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<sup>5</sup>Law on Advertising, Articles 21–26.

<sup>6</sup>Decree No. 181/2013/ND-CP of the Government, dated November 14, 2013, implementing certain articles of the Law on Advertising (“Decree 181”), Articles 3–4.

<sup>7</sup>Circular No. 09/2015/TT-BYT of the Ministry of Health, dated May 25, 2015, stipulating the approval for contents of advertisements of special products, commodities and services under the management of the Ministry of Health (“Circular 09”), Articles 5–6.

<sup>8</sup>Law on Advertising, Article 7.

<sup>9</sup>Law on Advertising, Article 37.

<sup>10</sup>Decree 90, Articles 7 to 16.

the hours of 7:00 a.m. and 10:00 p.m., unless otherwise agreed by the recipient.<sup>11</sup>

### § 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.<sup>1</sup> 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.<sup>2</sup> 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 with respect to any false information or advertising.<sup>3</sup>

### § 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

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<sup>11</sup>Decree 90, Articles 7, 12 and 16.

#### [Section 39:33]

<sup>1</sup>Law on Quality of Goods and Products No. 05/2007/QH12, passed by the National Assembly on November 21, 2007 (“Law on Quality of Goods and Products”).

<sup>2</sup>Law on Advertising, Article 11.

<sup>3</sup>Law on Consumer Protection, Article 8.

services which have been registered or declared.<sup>1</sup> 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.<sup>2</sup> Moreover, though the 2018 Law on Competition eliminates the definition of false advertising, the following actions of illegally luring customers could be deemed to be prohibited unfair competition practices:

- (i) providing false or misleading information to customers about an enterprise, its goods or services, or promotions or transaction conditions related to the goods or services provided by such enterprise in order to attract the customers of another enterprise; or
- (ii) comparing an enterprise's goods or services with another enterprise's goods or services of the same type without being able to prove the contents of the comparison.<sup>3</sup>

#### § 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.<sup>1</sup> 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 is 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.

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#### [Section 39:34]

<sup>1</sup>Law on Advertising, Article 8.9.

<sup>2</sup>Commercial Law, Article 109.

<sup>3</sup>Law on Competition, Article 45.

#### [Section 39:35]

<sup>1</sup>Civil Code, Articles 584 to 585.



**§ 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 and Consumer Protection Agency ("VCCA") 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 (the previous name of VCCA) about these claims, the company could not prove the claimed results. The company was fined VND 45 million (approximately US\$2,130) for violation of Article 45 of the Law on Competition. Additionally, the company revised the advertisement content to comply with Vietnamese laws.<sup>1</sup>

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 US\$1,420) for violation of Article 45 of the Law on Competition.<sup>2</sup>

**§ 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 organiza-

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**[Section 39:36]**

<sup>1</sup><http://www.vca.gov.vn/NewsDetail.aspx?ID=211=1>.

<sup>2</sup><http://www.baomoi.com/Electrolux-VN-bi-phat-vi-quang-cao-lo/c/7181452.epi>.

tion, the latter may claim compensation for extra-contractual damage.<sup>1</sup>

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.<sup>2</sup> Providing false advertisements can result in a fine up to VND 140 million (approximately US\$6,600). Supplemental sanctions include compulsory removal or dismantlement of the advertisement, compulsory formal apologies and compulsory rectification of the false advertising information.<sup>3</sup> 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 US\$6,600).<sup>4</sup> An organization could be fined at a level equal to two times the fines for individuals.<sup>5</sup> 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.<sup>6</sup>

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 US\$470) and VND 100 million (approximately US\$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 US\$2,370) or a ban from

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**[Section 39:37]**

<sup>1</sup>Law on Advertising, Article 11.2.

<sup>2</sup>Decree 158, Article 2.

<sup>3</sup>Decree 158, Article 51.7.

<sup>4</sup>Decree No. 71/2014/ND-CP of the Government dated September 15, 2014, effective on the same day, on dealing with breaches in the competition sector (“Decree 71”), Articles 5.2 and 33.

<sup>5</sup>For the same act of administrative violations, a principle in the Law on Handling Administrative Violations (*see* Article 3.1.e) is that the levels of fines for organizations are twice the amount for individuals.

<sup>6</sup>Decree 71, Articles 33.3, 28.4.

practicing certain occupations or doing certain jobs for one to five years.<sup>7</sup>

### § 39:38 Defenses available

Pursuant to Decree No. 99/2011/ND-CP,<sup>1</sup> a consumer has the right to make a claim of false advertising against an advertising party.<sup>2</sup> 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.<sup>3</sup> For proving the fault of an advertising party, the burden of proof shifts to the advertising party.<sup>4</sup>

### § 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.<sup>1</sup>

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<sup>7</sup>Penal Code, Article 197.

#### [Section 39:38]

<sup>1</sup>Decree No. 99/2011/ND-CP of the Government, dated November 27, 2011, detailing and guiding a number of articles of the Law on Consumer Protection ("Decree 99").

<sup>2</sup>Decree 99, Articles 20 to 23.

<sup>3</sup>Civil Procedure Code, Article 91.

<sup>4</sup>Law on Consumer Protection, Article 42.2.

#### [Section 39:39]

<sup>1</sup><http://tcvn.gov.vn/sites/head/en/tim-kiem-tieu-chuan.aspx?sk==tcvn>.

**§ 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

**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.”<sup>1</sup>

**§ 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 copy-

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**[Section 39:40]**

<sup>1</sup>Law on Handling Administrative Violations, Article 6.

<sup>2</sup>Penal Code, Articles 27

<sup>3</sup>Penal Code, Article 27.3.

<sup>4</sup>Civil Code, Article 588.

**[Section 39:41]**

<sup>1</sup>Law on Advertising, Article 8.13. *See also* Intellectual Property Law.

right holder shall have the right to communicate, or publish, its works to the public by any means.<sup>1</sup> 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.<sup>2</sup>

**§ 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.<sup>1</sup> 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.<sup>2</sup>

Criminal penalties may be applied to an offender who, without permission of holders of a copyright or related rights, commits the act of infringing upon copyrights or intellectual property rights on a commercial scale. A fine of between VND 50 million (approximately US\$2,370) and VND 1 billion (approximately US\$47,400) shall be imposed on such an offender, or non-custodial reform for up to five years. Furthermore, the Penal Code also sets forth sentences against business entities committing crimes. Accordingly, a fine of between VND 300 million (approximately US\$14,220) and VND 5 billion (approximately US\$237,000) shall be imposed on such entities or suspension of operation for 6 to 24 months.<sup>3</sup>

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**[Section 39:42]**

<sup>1</sup>Intellectual Property Law, Articles 19.3, 20.

<sup>2</sup>Intellectual Property Law, Article 20.

**[Section 39:43]**

<sup>1</sup>Penal Code, Articles 27.

<sup>2</sup>Penal Code, Article 27.3.

<sup>3</sup>Penal Code, Articles 225 and 226.

### 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.<sup>1</sup> The State and society preserve and develop a progressive Vietnamese culture imbued with national identity and assimilating the quintessence of human culture.<sup>2</sup> 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.<sup>3</sup>

##### § 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, in 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

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**[Section 39:45]**

<sup>1</sup>Constitution, Article 40.

<sup>2</sup>Constitution, Article 60.1.

<sup>3</sup>Constitution, Article 60.2.

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.<sup>1</sup> 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; and
4. Right to protect the integrity of their works, and to

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#### **[Section 39:49]**

<sup>1</sup>Commercial Law, Articles 129 to 140.

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; and
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.<sup>1</sup>

## 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.<sup>1</sup> However, the moral rights of the artists will be governed by the Intellectual Property Law.<sup>2</sup>

### § 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.<sup>1</sup> This will not affect the moral rights of the artist related to such artwork.<sup>2</sup>

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#### [Section 39:50]

<sup>1</sup>Intellectual Property Law, Article 20.

#### [Section 39:51]

<sup>1</sup>Commercial Law, Articles 129 to 140.

<sup>2</sup>Intellectual Property Law, Articles 19, 27, 29, 43, and 45.

#### [Section 39:52]

<sup>1</sup>Commercial Law, Articles 129 to 140.

<sup>2</sup>Intellectual Property Law, Articles 19, 27, 29, 43, and 45.



### C. ART AUCTIONS

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

The Property Auction Law defines property auction as a method of selling property involving two or more bidders, and the auction shall be conducted according to the order and procedures prescribed in the Property Auction Law. The law requires that auctions shall be conducted by auctioneers, except those conducted by property auction councils.<sup>1</sup> “Auctioned property seller” means an individual or organization that owns a property item to be auctioned or a person authorized by a property owner to sell a property item through auction or a person having the right to put a property item up for auction under an agreement or in accordance with law. “Auctioned property buyer” means a winning bidder that enters into a contract for purchase and sale of an auctioned property item or has property auction results approved by a competent agency.

### 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.<sup>1</sup> 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.<sup>2</sup>

Whether a bona fide purchaser of a stolen artwork must

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**[Section 39:53]**

<sup>1</sup>Property Auction Law, Article 6.4.

**[Section 39:54]**

<sup>1</sup>Civil Code, Article 123.

<sup>2</sup>Civil Code, Article 167.

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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.