

## FOREIGN LAW FIRMS IN VIETNAM

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### **Decree 87-2003-ND-CP of the Government dated 22 July 2003 on Practice by Foreign Lawyer Organizations and Foreign Lawyers in Vietnam**

Decree 87 substantially reforms the regulatory framework for the operations of foreign law practices and foreign lawyers in Vietnam, replacing the former Decree 92-1998-ND-CP of the Government dated 10 November 1998 ("Decree 92"). Decree 87 has been under development since March 2002.

Decree 87 is issued pursuant to the Ordinance on Lawyers dated 25 July 2001, effective as of 1 October 2001 ("Ordinance on Lawyers"), which primarily deals with the conditions for and conduct of legal practice by Vietnamese lawyers and Vietnam lawyer organizations, but also provides for the Government to issue separate regulations on foreign law practices and foreign lawyers in Vietnam.

Under Decree 87, a foreign lawyer organization lawfully established and currently operating overseas ("offshore foreign law firm") may be permitted to operate in Vietnam subject to the sole condition that it "has goodwill towards the State of Vietnam" (undefined). Under Decree 92, offshore foreign law firms wishing to operate in Vietnam were subject to 5 additional conditions: having foreign clients carrying on business or investment activities in Vietnam, having a good reputation in providing legal consultancy services, having an operational plan and undertaking to fulfil its obligations, and having material facilities necessary for its operations.

Decree 87 provides for offshore foreign law firms to operate in Vietnam in 3 forms, as follows:

1. "Branch": Established as a subsidiary of an offshore foreign law firm. This was the only form of operation permitted under Decree 92. The former limit of 2 on the number of branches that may be established by an offshore foreign law firm under Decree 92 as been omitted. Under Decree 87, a branch has unlimited liability for its operations in Vietnam (more properly, the offshore foreign law firm has unlimited liability for the operations of the branch). Decree 87 now expressly states that the managing lawyer of a branch (a mandatory appointment) is the legal representative of the branch and may be a foreign lawyer or a Vietnamese lawyer. The managing lawyer of a branch is no longer required to have provided legal consultancy services for 5 or more years and a branch is no longer required to have at least one foreign lawyer who works on a permanent basis at the branch in Vietnam (as required by Decree 92).
2. "Foreign law firm": Established by one or more offshore foreign law firms. Decree 87 does not expressly refer to foreign law firms being established in the form of a partnership, but the partnership form is suggested by the provision of Decree 87 that a foreign law firm has unlimited liability for its operations. A foreign law firm is required to operate pursuant to a charter (contents of which are prescribed in Decree 87). As for a branch, the head of a foreign law firm may be a foreign lawyer or a Vietnamese lawyer. Decree 87 provides for a foreign law firm to establish a subsidiary branch outside the province or city under central authority in which the head office of the foreign law firm is located.
3. "Foreign-Vietnamese law partnership": Established between one or more offshore foreign law firms and one or more Vietnamese partnership law firms on the basis of a partnership agreement (setting out their rights and obligations, the relationship between the partners and the organizational structure and management of the partnership). The partners jointly bear unlimited liability for the operations of the partnership. As for a branch and a foreign law firm, the head of a foreign-Vietnamese law partnership may be a foreign lawyer or a Vietnamese lawyer. As for a foreign law firm, Decree 87 provides for a

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foreign-Vietnamese law partnership to establish a subsidiary branch outside the province or city under central authority in which the head office of the foreign-Vietnamese law partnership is located.

Decree 87 provides for the above 3 entities to be collectively referred to as "organizations of foreign practising lawyers in Vietnam", which we will refer to as "foreign law practices in Vietnam".

Decree 87 provides for the operational duration of foreign law practices in Vietnam to be limited, not by law but as proposed by the applicant and approved by the Ministry of Justice ("MoJ"). In particular, Decree 87 no longer prescribes a 5 year (extendable) limit on branch licenses (as prescribed by Decree 92).

Decree 87 prescribes the application, licensing and registration procedures for foreign law practices in Vietnam. Written approval of the MoJ is required for any change in the name, office location, managing lawyer/head, or areas of practice of a foreign law practice in Vietnam.

Decree 87 provides for the merger of one or more foreign law firms into another foreign law firm established in Vietnam and for the consolidation of two or more foreign law firms into one foreign law firm.

The scope of practice of foreign law practices in Vietnam has been substantially broadened under Decree 87. Foreign law practices are no longer restricted to advising on foreign and international law in the fields of business, investment and commerce (as they were under Decree 92). They are now permitted to "provide legal consultancy services and other legal services", including consultancy on the Vietnamese law where a foreign law practice employs a Vietnamese lawyer or employs a foreign lawyer with a Vietnamese law degree and satisfying all requirements as applied to a Vietnamese lawyer (prescribed in the Ordinance on Lawyers).

The prohibition on participation in Vietnamese court proceedings applicable to foreign lawyers under Decree 92 has been retained under Decree 87 and, interestingly, extended to apply expressly to Vietnamese lawyers (and any trainee Vietnamese lawyers) employed by foreign law practices.

As under Decree 92, legal consultancy co-operation contracts may be entered into with Vietnamese law offices and law partnerships, either on a long-term or case-by-case basis, for consultancy on Vietnamese law and now also foreign and international law. The principal contents of such contracts are no longer prescribed nor are copies required to be sent to the MoJ and the local Department of Justice under Decree 87 (as they were under Decree 92).

Foreign law practices in Vietnam may now employ Vietnamese lawyers (prohibited under Decree 92). The scope of legal consultancy and legal services by Vietnamese lawyers is unrestricted and may extend to foreign and international law as well as Vietnamese law.

Foreign law practices in Vietnam may now receive trainee lawyers from Vietnamese Bar Associations to train them in legal practice. Previously, under Decree 92, branches were entitled to employ trainee lawyers (with no reference to bar associations).

Foreign lawyers may practise in Vietnam if they are issued with a practising certificate by the MoJ upon satisfaction of 3 conditions:

- (i) Has a current practising certificate issued by a competent foreign agency or organization;
- (ii) Has goodwill towards the State of Vietnam;
- (iii) Is employed by a foreign law practice in Vietnam or a Vietnamese lawyer organization.

Practising licenses for foreign lawyers are valid for a duration of 5 years only, but are extendable for successive 5 year periods. The practising license replaces the work permit required under Vietnamese labour laws for foreigners working in Vietnam.

Foreign lawyers may provide consultancy on foreign and international law (as under Decree 92) and may now also provide consultancy on Vietnamese law if they have a Vietnamese law degree and satisfy all requirements as applicable to an equivalent Vietnamese lawyer.

Foreign lawyers practising in Vietnam are now obliged to abide by the principles of legal practice prescribed in article 2 of the Ordinance on Lawyers, the prohibitions applicable to lawyers prescribed in article 16 of the Ordinance on Lawyers, and the regulations on professional legal ethics issued by the MoJ.

Of note, Decree 87 now requires foreign lawyers practising in Vietnam to be present in Vietnam on a regular basis.

Foreign lawyers may be employed on a contractual basis by a Vietnamese law office or law partnership (introduced by the Ordinance on Lawyers).

Unlike Decree 92, Decree 87 omits any reference to fees.

The bands of fines for various categories of breaches by foreign law practices and foreign lawyers have been reduced, in particular the maximum fine has been reduced from VND100 million (under Decree 92) to VND20 million under Decree 87.

Branches of offshore foreign law firms currently operating in Vietnam may continue to operate as such until expiry of their licenses, after which they must apply for licensing under Decree 87, or they may apply for conversion into an onshore foreign law firm. Foreign lawyers currently practising in Vietnam must apply for a new practising certificate under Decree 87 within 30 days of effectiveness of Decree 87.

Decree 87 will be effective as of 30 days after its publication in the Official Gazette, which has not yet occurred. On current timing of publication of legislation in the Official Gazette, Decree 87 is likely to become effective by mid-September 2003.

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