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Date : June 22, 2011

To : LIN Center for Community Development

Cc : Sesto E. Vecchi

From : Hoang Thi Bich Ngoc

Re : Establishing a legal entity to pursue charitable activities in Vietnam

Dear LIN Center:

Below is our discussion on the conditions and steps for establishing a non-profit organization for charitable activities in Vietnam.

Several forms of non-profit organizations that may carry out charitable purposes are:

- Social relief establishments (“**SRE**”);
- Charitable funds (“**Fund**”);
- International non-governmental organizations (“**INGO**”);
- Associations;
- Scientific and technological organizations (“**STO**”); and
- Volunteer Groups.

These organizations are different in terms of their establishment, operational purposes, functions, and state management. For example, the essential difference between an SRE and a Fund is that an SRE directly assists people in difficult situations, whereas a Fund only finances such assistance. An INGO that is set up in a foreign country may carry out its activities in Vietnam once it obtains an appropriate permit. The main purposes of an INGO's activities are to support development and to provide humanitarian aid.

I. Social relief establishment (SRE)

The purpose of an SRE is to assist individuals experiencing social difficulties, such as: orphans, abandoned children, HIV/AIDS-infected children, lonely elderly persons, seriously disabled persons, HIV/AIDS-infected persons in poor households, victims of domestic violence, sexually abused victims, trafficking victims, and victims of forced labor. There are many other groups of persons that may qualify for such assistance.

An SRE may be established by the State, by one or more organizations, or by individuals. A foreign organization or individual may establish and operate an SRE in Vietnam. The State of Vietnam encourages both onshore and foreign organizations and individuals to establish SREs in Vietnam. The SRE Department is in charge of SREs and is in the Ministry of Labor, Invalids, and Social Affairs (“**MOLISA**”).

The establishment, operation, and liquidation of SREs is regulated by:

- Government Decree 68/2008/ND-CP dated May 30, 2008 on Conditions and Procedures for Establishing, Operating, and Liquidating Social Relief Establishments (“**Decree 68**”); and
- Circular 07/2009/TT-BLDTBXH dated March 30, 2009 of the Ministry of Labor, Invalids, and Social Affairs implementing Decree 68 (“**Circular 07**”).

1. Conditions for establishing an SRE

An SRE must satisfy the following conditions:

- On average, land area approaches a threshold of 30 square meters per beneficiary in rural areas or 10 square meters per beneficiary in urban areas;
- On average, accommodation area must be six square meters per beneficiary. For beneficiaries who need around-the-clock care, the average accommodation area must be eight square meters per beneficiary;

- An SRE that cares for 25 or more beneficiaries must have a residential area, kitchens, working offices for staff, relaxation and recreation areas, water supply, drainage systems, electricity systems, and internal roads;
- An SRE that cares for between 10 and 25 beneficiaries must ensure basic conditions in relation to accommodations, kitchens, staff offices, electricity, and water; and
- An SRE's personnel must comply with the law as to the number of beneficiaries that one employee may care for.

2. Procedures for establishing an SRE

Depending upon the scope of its operations, an organization/individual must obtain approval from one of the following licensing authorities in order to establish an SRE::

- the Chairman of the provincial Peoples' Committee for an SRE that operates throughout a province. The application must be submitted to the provincial Department of Labor, Invalids, and Social Affairs (“**DOLISA**”); or
- the Chairman of the district Peoples' Committee for an SRE that operates solely in a particular district. The application must be submitted to the Division of Labor, Invalids, and Social Affairs.

The application should include the following documents:

- Application to establish an SRE;
- Plans to support the establishment of the SRE, which include: objectives and tasks, the establishment and operation plans, a description of beneficiaries; the organizational structure (staff, payroll), office (location, design) and necessary equipment and facilities, and a funding plan. There are no specific forms to follow. This should take the form of a narrative of essential information with necessary enclosures.
- Rules of operation of an SRE. The rules should cover: the responsibilities of the director and the various departments, the responsibilities of the key staff, the responsibilities and interests of beneficiaries, property and mechanisms for financial management, and other management matters. Some of these details may be set out in a document like a charter or internal operating rules;
- Documents that relate to land use rights and ownership of houses or assets attached to the land where the SRE will be located. Leases are acceptable as well.

- Letter from the Peoples' Committee of the ward where the SRE will be located. The letter must confirm that the Peoples' Committee agrees with the SRE's location; and
- The SRE's director's curriculum vitae. The curriculum vitae must be certified by the Peoples' Committee of the ward where the director resides.

The regulatory time frame for the authorities to examine the application is 15 working days and the time frame for issuing the decision to establish an SRE is 20 working days. In practice, it will take longer.

II. Social Fund/Charity Fund (Fund)¹

A Fund is a legal entity that has its own seal, bank account, and logo. Its purpose is to develop and support various activities, e.g. cultural, educational, health, athletic, scientific, charitable, and humanitarian activities. A Fund may undertake various programs and projects and it operates on the basis of the following principles:

- its purposes and its operations are not-for-profit;
- it is voluntary, self-financing, and it is responsible for its own undertakings;
- it operates under a charter that has been recognized by the agency that licenses it; and
- it makes public all revenues and expenditures and is financially transparent.

The establishment and operation of a Fund are regulated by:

- Government Decree 148/2007/ND-CP dated September, 25, 2007 on the Organization and Operation of Social Funds and Charity Funds (“**Decree 148**”);
- Circular 09/2008/TT-BNV dated December 31, 2008 of the Ministry of Home Affairs implementing Decree 148 (“**Circular 09**”); and
- Circular 10/2008/QD-BTC dated February 12, 2008 of the Ministry of Finance promulgating the Regulation of Financial Management of Social Funds and Charity Funds (“**Circular 10**”).

¹ Decree 148 neither defines nor makes a distinction between a Social Fund and a Charity Fund. They are collectively referred to as “Fund” in Decree 148.

1. Conditions for establishing a Fund

A Fund's founding member(s) may be Vietnamese or foreign individuals/organizations. Specifically, they must be:

- Vietnamese citizens who are 18 years or older and who have full civil capacity;
- Vietnamese entities or foreign invested enterprises; or
- Foreign individuals or foreign organizations. Note that a foreign individual or organization cannot set up a Fund by itself. It may do so, however, in cooperation with one or more Vietnamese individuals or organizations.

Founding members must commit to making financial contributions at a specific level. Under Circular 09. A Fund has members that are either foreign invested companies, foreign individuals, or foreign organizations, must have the following minimum value of assets:

- Fund operating only in a ward : VND 1 billion;
- Fund operating only in a district : VND 2 billion;
- Fund operating only in a province : VND 5 billion; and
- Fund operating throughout the country : VND 10 billion;

2. Procedures for establishing a Fund

For a Fund that operates throughout Vietnam or in at least two provinces or a Fund that receives contributions from foreign individuals/organizations in cooperation with Vietnamese individuals/organizations, the founding members must obtain approval from the Minister of the Ministry of Home Affairs. For other Funds, the founding members must seek approval from the chairman of the provincial Peoples' Committee.

An application to establish a Fund must include the following documents:

- Application to establish a Fund;
- Draft of the Fund's charter;
- Plan to establish and operate the Fund. The main intended activities of the Fund should be indicated in the plan;
- Evidence proving that the Fund will have an office (e.g. Memorandum of Understanding from a prospective landlord);
- Commitment to contribute assets necessary for establishing the Fund; and

- Documents proving the founding members' statuses (e.g. their juridical records).

If a Fund is established according to a will or authority from an organization, a certified copy of the will or a certified copy of the delegation of authority is required.

The regulatory time frame for the licensing authorities to consider and then issue an Establishment License for a Fund is 60 working days from the date the application is received. As in the case of an SRE, it may take longer in practice.

Upon receipt of the Establishment License, a Fund may begin to operate as soon as it satisfies the following conditions:

- establishes a bank account to receive capital contributions;
- has an office; and
- has announced its establishment in three consecutive editions of a newspaper.

The Fund's operation must comply with the management requirements stipulated in Decree 148. For example, a Fund must have a Management Committee and Control Committee. The Chairperson of the Management Committee must be a Vietnamese citizen.

III. International non-governmental organization (INGO)

An INGO is an international non-governmental organization that is established in a foreign country. The People's Aid Coordination Committee ("PACCOM") is the State body that licenses and manages INGOs. PACCOM has officers who are in charge of INGOs from different geographic areas, e.g. Europe, North America, and the Asia-Pacific region. PACCOM's headquarters are located in Hanoi and it has a branch in Ho Chi Minh City.

An INGO may operate under any one of three different permits: (1) a Permit to Operate; (2) a Permit to set up a Project Office; and (3) a Permit to establish a Representative Office. A Permit to establish a Representative Office ("RO") is very difficult to obtain. It seems that PACCOM will issue an RO license only to INGOs that have world-wide recognition or a long record in Vietnam. In other cases, an INGO must follow a three-step procedure: (1) apply for a Permit to Operate and then operate for a period of time; (2) apply for a Permit to set up a Project Office and then operate for a period of time; and (3) apply for a Permit for a Representative Office.

The establishment and operation of INGOs is regulated by Decision 340/TTg dated May 24, 1996 of the Prime Minister on the Operation of INGOs. See also Guidelines 06/UB-PA of the PACCOM dated August 1996.

1. Permit to Operate

In order to obtain a Permit to Operate, an INGO must have: (i) legal person status according to the laws of its home country; (ii) clear internal statutes, mandates, and objectives; and (iii) already conducted or planned to conduct development or humanitarian projects and/or programs in Vietnam.

The application for issuance of a Permit to Operate includes:

- Application letter;
- Charter of the INGO; and
- Document certifying the INGO's legal status (e.g. Establishment Certificate). It may be a notarized copy.

2. Project Office

In order to set up a Project Office, an INGO must obtain a Permit to Operate and must have projects and/or programs that have already been approved by competent Vietnamese authorities. The scope and nature of the projects or programs require regular on-site administration and supervision.

The application to set up a Project Office should contain:

- Application letter, which among other things, must provide the reasons for setting up a Project Office, its intended address, and the number of the Project Office's expatriate and Vietnamese employees;
- Charter of the INGO;
- Document certifying the INGO has legal status (e.g. Establishment Certificate);
- Profile of person who will be chief of the Project Office; and
- Approval by appropriate Vietnamese authorities of the projects/programs.

3. Representative Office

In order to establish a Representative Office, an INGO must fulfill the conditions described above for setting up a Project Office. Additionally, it must: (i) have conducted effective programs and/or projects in Vietnam for at least two years, (ii) agreed to comply with Vietnamese law; and (iii) have feasible assistance projects and/or programs that will extend for two years or more and that have been approved by the competent authorities.

The application for a Representative Office should include:

- Application letter that, among other things, must indicate the reasons for setting up a Representative Office and the number of the Representative Office's expatriate and Vietnamese employees;
- Charter of the INGO;
- Document certifying the INGO's legal status (e.g. Establishment Certificate);
- Approval the Vietnamese authorities on projects/programs;
- Report on prior operation in Vietnam for at least two years; and
- Profile of person who will be chief of the Project Office and his/her letter of appointment.

The regulatory time for PACCOM to examine and decide to issue a Permit to Operate, to set up a Project Office, or to establish a Representative Office is 30, 60, and 90 days respectively. In practice, expect that it will take longer because PACCOM may investigate and assess the activities of the INGO. For that reason, it is often better to provide additional information in order to facilitate the assessment.

IV. Associations

An association is a voluntary organization of Vietnamese citizens or organizations conducting the same business, having the same interests, or that are united by a common goal. It operates to protect and advance the lawful rights and interests of its members and the community. The members of an association support each other. Associations may exist for various reasons, e.g. animal/environmental protection, cultural activities, educational activities, professional activities, or sports activities. An association may raise funds from membership fees and revenues from its business and services. It is also permitted to receive donations from domestic and foreign individuals/organizations.

The establishment, operation, and management of associations are regulated by Government Decree 45/2010/ND-CP dated April 21, 2010 (“**Decree 45**”).

According to Decree 45, an association is a legal entity. Its members are Vietnamese individuals or entities, including foreign invested enterprises. Decree 45 does not mention foreign entities or individuals. It seems that offshore entities/individuals are not permitted to participate in or set up an association in Vietnam. In practice, there are various associations that are established or participated in by foreign individuals residing in Vietnam. It is likely that these groups are not registered as associations under Decree 45.

1. Conditions for establishing an association

An association must satisfy the following conditions:

- Have legitimate operational purposes. It’s name and main activity must not be identical to any association that has been established in the same locality;
- Have a charter;
- Have a head office; and
- The number of Vietnamese citizens and entities that apply to join and establish the association meets the specific requirements set forth in Decree 45. For example, a national association must have at least 100 members in many provinces and a provincial association must have at least 50 members residing in the province.

2. Procedures for establishing an association

Before establishing an association, the founding members must set up a board to campaign for the association’s establishment (“**Campaign Board**”). This Board will: (i) mobilize individuals/organizations to join the association, and (ii) prepare an application for the establishment of the association.

The application for issuance of a permit for establishment of an association includes the following documents:

- Application for establishment;
- Charter of the association;
- Operation plans of the association;
- List of Campaign Board members;

- Judicial record of the leader of the Campaign Board;
- Document to prove the location of the association; and
- List of assets (if any) that the founding members have voluntarily contributed to the association.

The authorities responsible for licensing an association are:

- the chairman of the provincial Peoples' Committee for an association that operates within a province; and/or
- the minister of the Ministry of Home Affairs for an association that operates throughout Vietnam or in at least two provinces.

The regulatory time frame for the licensing authorities to consider and license an association is 60 days.

The Campaign Board must hold a meeting to establish the association within 90 days from the date a permit is issued. If the meeting is not convened within 15 days after the 90-day deadline, the Board must request an extension from the licensing authorities. An extension may not exceed 30 days. Failure to convene a meeting within the extended period of time will invalidate the permit.

V. Scientific and Technological Organization (STO)

Under the Law on Science and Technology, individuals or organizations that satisfy required conditions may set up an STO. In addition to STOs set up by local individuals or organizations, an STO may be a research and development organization having foreign investment capital for non-profit purposes. It may also be a scientific and technological service organization with foreign invested capital.

The establishment and operation of STOs are described in the following regulations:

- Law on Science and Technology;
- Government Decree 81/2002/ND-CP dated October 17, 2002 implementing the Law on Science and Technology (“**Decree 81**”); and
- Circular 02/2010/TT-BKHHCN dated March 18, 2010 of the Ministry of Science and Technology providing guidance on the establishment and registration of STOs (“**Circular 02**”).

Besides, foreign investment on STOs must comply with:

- Government Decree 80/2010/ND-CP dated July 14, 2010 on foreign investment in science and technology sector; and
- Circular 01/2011/TT-BKHHCN dated March 16, 2011 of the Ministry of Science and Technology on establishment and registration of foreign invested STOs.

STOs are categorized into: (i) scientific research organizations, (ii) scientific research and technology development organizations, and (iii) scientific service and technology organizations. STOs in categories (i) and (ii) may be institutions, centers, laboratories, research and observation stations, or experimental stations. STOs in category (iii) may be centers or offices.

1. Conditions for setting up an STO

An STO must meet specific conditions that may apply to its operating sector. For example, a chemical laboratory may need to comply with particular regulations involving chemicals. An STO must also satisfy the following general conditions:

- Its objectives and operations are compliant with the law;
- It has a charter;
- It has a sufficient number of science and technology personnel that are qualified. It must have at least five staff members with at least an undergraduate degree. At least 20% of them must have professional qualifications in the STO's domain, and at least 40% of them must work on a full-time basis. If an STO is an institute or on a national, ministerial, or provincial level, the head of the STO must have a degree that is a Ph.D. or higher.
- It has a head office and appropriate technical equipment/facilities (e.g. workshop, laboratory, machines, intellectual property, and equipment) to support its activities. The registered charter capital (in the form of cash or assets) must not be less than VND 200 million. An STO must have a head office of at least 25 square meters that is located within Vietnam.

2. Procedures for establishing an STO

The application for establishing an STO must include the following documents:

- Application made on a standard form;

- Resolution to establish the STO;
- Charter made on a standard form;
- Curriculum vitae, scientific curriculum vitae, diplomas, and job applications of the leaders of the STO;
- The list of the STO's personnel. If the STO is not established by a state agency, the following additional documents are required: the personnel's curriculum vitae, diplomas, and job applications;
- Notarized copy of the Certificate on Land Use Rights of the premises on which the STO's head office is located and/or the lease agreement of the STO's head office; and
- List of physical and technical equipment/facilities. If the STO is not established by a state agency, the following additional documents are required: commitments of capital contribution, minutes of the meeting in which the founding members determined the value of the capital contribution.

The licensing authorities for an STO are either the Ministry of Science and Technology or the Provincial Department of Science and Technology. The Ministry of Science and Technology registers: (i) STOs established by the Government, (ii) STOs established under decisions by the Prime Minister or by ministers or provincial-level People's Committee chairpersons as authorized by the Prime Minister, (iii) STOs established by decision of the National Assembly, the Supreme People's Court or the Supreme People's Procuracy, (iv) STOs established by decisions of central-level political organizations or socio-political organizations, and (v) foreign-invested STOs. The Provincial Department of Science and Technology registers all other STOs.

The regulatory time frame for the licensing authorities to consider and license an STO is 15 working days.

VI. Volunteer groups

We are not aware of any regulations that specifically control the establishment, operation, and fundraising of volunteer groups. Article 90.5 of the Law on the Organization of Peoples' Committees and Peoples' Councils stipulates that a provincial Peoples' Committee is in charge of the management and guidance of the social and charitable activities in the province. Some provinces, e.g. Hanoi City, Ho Chi Minh City, Yen Bai province, have issued guidance on certain types of volunteer activities. A volunteer group may want to begin with the provincial Peoples' Committee in order to seek detailed guidance.

There are no specific provisions governing the possibility that a volunteer group may raise funds to conduct social relief activities. In practice, an organization calls and gathers donations from its members and then directly gives them to people in difficult circumstances or transfers them to an organization that is permitted to mobilize, receive, and distribute donations.

VI. Other activities

1. Museums

Most museums are established by the State. Under Government Decree 09/2004/QĐ-BVHTT (“**Decree 09**”) promulgating the establishment and operation of private museums, an individual or non-state organization may establish a private museum. Decree 09 is completely silent on whether a museum may be established by a foreign individual or organization. Decision 156/2005/QĐ-TTg of the Prime Minister dated June 23, 2005 approving the museum system until 2020 is also silent on this possibility. This silence likely indicates that the action is not permissible. Foreign individuals/organizations are encouraged, however, to contribute to the development of the museum system by being sponsors or by providing gifts.

The establishment and operation of a private museum must follow Decree 09. A license is required for establishing a private museum.

2. Galleries (“Triển lãm” in Vietnamese)

In order to open a gallery, a license is required from the Ministry of Culture, Sports, and Tourism or the provincial Department of Culture, Sports, and Tourism. Procedures for obtaining a license are provided in the Government Decree 11/2006/ND-CP dated January 18, 2006 promulgating the Regulations on Public Culture.

* * *

Provided above are various forms of organizations that individuals or organizations may consider when carrying out non-profit activities in Vietnam. These organizations are managed by different State bodies and have different establishment requirements.

We hope that the foregoing is helpful.

With best regards,