

LEGAL UPDATES

November 2022

What's new this month?

—
New Decree governing registration and operations of foreign non-governmental organizations in Vietnam

—
Remarkable updates on regulations on conventional offshore borrowing and offshore debt repayment



- Contributed by Benjamin Yap Soon Tat and Dang Thi Tuong Vi -

New Guidelines and Significant Updates on Regulations governing Foreign Non-Governmental Organizations as well as Conventional Offshore Borrowing and Debt Repayment

to be effective from November 2022

The standouts of this November's legal update are Decree No. 58/2022/ND-CP dated 31 August 2022, and Circular No. 12/2022/TT-NHNN dated 30 September 2022. Both regulations will take effect in November. In general, the regulations have brought to light the legal framework and enhance some procedures in the relevant sectors.

Legal Updates – November 2022



Picture from: <https://urstore.ca/blog/challenges-ngos-face/>

New Decree governing registration and operations of foreign non-governmental organizations in Vietnam

The new Decree No. 58/2022/ND-CP ("**Decree 58**") was issued on 31 August 2022 to amend certain provisions under Decree No. 12/2012/ND-CP ("**Decree 12**") regarding foreign non-governmental organizations (NGOs). Decree 58 came into effect on 1 November 2022.

Project offices regime being removed

Previously under the old Decree 12, an NGO may set up in various local regions project offices in order to supervise projects in those regions. Those project offices may be independent or under the representative office in Vietnam of this NGO. It is also required for an NGO to additionally obtain project office registration certificates.

However, under the new Decree 58, the project office regime was removed. Accordingly, an NGO may, directly or via its representative office, supervise projects in Vietnam.

A project office registration certificate, which was issued under the old Decree 12, will remain in effect until expiry of its term and thereafter may be replaced with either an operation registration certificate or a representative registration certificate.

Conditions for foreign NGOs to operate in Vietnam

The new Decree 58 maintains previous key conditions for foreign NGOs to operate in Vietnam but makes certain necessary revisions in order to improve the efficiency of State administration. In particular, a foreign NGO shall not only (i) ensure its legal status under laws of country of incorporation and (ii) have proper articles of association or equivalent, but also (iii) ensure that the articles of association or equivalent must be in line with Vietnam's "interests and needs", (iv) make proposals for detailed three-year plans for projects in Vietnam and (v) make proposal for a representative in Vietnam.

Conditions for foreign NGOs to set up representative offices in Vietnam

Decree 58 has removed conditions that a foreign NGO (i) must be granted with an operation registration certificate and (ii) has been effectively operating at least 3 years in Vietnam, before it applies for setting up in Vietnam a representative office.

Instead, the foreign NGO shall (a) ensure its legal status under laws of country of incorporation, (b) have proper articles of association or equivalent in line with Vietnam's "interests and needs", (c) make proposals for at-least-five-year plans for projects in Vietnam and (d) make proposal for a chief representative in Vietnam.

New regulations on temporary suspension or termination of operations of foreign NGOs in Vietnam

Decree 58 has clearly separated circumstances which may lead to either temporary suspension of operations or termination of operations of a foreign NGO. For example, the Vietnamese authority may temporarily suspend the operations of a foreign NGO in case (i) its relevant registration certificate has expired; or (ii) it does not comply with sectors and/or operation regions as provided in the relevant registration certificate.

Meanwhile, actions such as (i) money laundering, terrorist aiding or (ii) failure to remedy breaches reported in a decision on temporary suspension of operations or (iii) failure to operate for a consecutive 12-month period from issuance of registration certificate may lead to termination of operations



Picture from: <https://sundiatapost.com/activist-calls-for-strict-regulation-of-csos-ngos-ahead-of-2023/>

Remarkable updates on regulations governing conventional offshore borrowing and offshore debt repayment

On 30 September 2022, the Governor of the State Bank of Vietnam (“**SBV**”) issued Circular No. 12/2022/TT-NHNN guiding foreign exchange administration in respect of offshore borrowing and offshore debt repayment of enterprises (“**Circular 12**”). This Circular 12 will take effect on 15 November 2022 and replace Circular No. 03/2016/TT-NHNN (“**Circular 03**”).

Registration or notification in case of changes in relation to offshore loans

Like the old Circular 03, the new Circular 12 remains the requirement that a borrower shall register with SBV in case of changes in contents as recorded in confirmations issued by SBV, except for some specific cases whereby a notification to SBV will be sufficient. The new Circular 12 has made clearer such exemptions, especially in relation to (1) plans for payment of interests and fees without changes in calculation methods and (2) increase or decrease the disbursement amounts, principal amounts and/or interest amounts.

Arrangements about foreign loans in case a borrower being restructured

Circular 12 has introduced a legal framework to deal with offshore loan in case where the borrower is restructured. In principle, a successor (or successors) after the restructuring shall take over rights and obligations of the borrower, such as paying debts or carrying out administrative procedures.

In case of joint successors (including foreign owned enterprises), they are required (i) to nominate a representative to carry out the licensing procedures and reporting obligations at SBV, and (ii) to open a joint bank account (or otherwise, open various bank accounts at the same bank) for lending transactions.

Monthly reporting

Since the effective date of Circular 12, borrowers will submit online monthly reports on borrowing status, instead of quarterly reports under the old Decree 03.



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