

LEGAL SERVICES COUNTRY PROFILE

SOCIALIST REPUBLIC OF VIETNAM

International Legal Services Advisory Council

Attorney-General's Department

Australia

January 1998

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Introduction

The International Legal Services Advisory Council (ILSAC) was established in late 1990 by the Australian Government to assist in improving Australia's international performance in legal and related services. To help achieve this purpose profiles for seventeen countries and economies of the Asia Pacific region have been prepared. The Profiles, which are intended as a guide only, cover Australia, Cambodia, China, Fiji, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Papua New Guinea, The Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam.

ILSAC is chaired by the Hon Sir Laurence Street AC KCMG and comprises representation from private legal practice, the Law Council of Australia, commercial dispute resolution centres, education institutions and relevant Government departments and agencies.

This third edition of the Profiles is designed to provide an overview of the legal and related services sector in each country or economy. The information in the Profiles is organised under the following main headings:

1. General information:	key data, legal language, form of government and economic indicators.
2. Basic legal information:	system and sources of law, structure and regulation of the legal profession, law-making bodies and professional legal education.
3. Legal services market:	professional legal associations, local, Australian and foreign law firms, and commercial dispute resolution.
4. Market access requirements:	foreign lawyer admission requirements, regulation and restrictions on foreign lawyers/firms and recent regulatory changes.
5. Australian legal services:	prospects for Australian legal services; Australian dispute resolution services and Australian legal education and training services.
6. References/sources:	list of source material and date of information contained in the profile.

Comments, additional information or corrections, and suggestions for improvement of this Profile would be welcome.

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1 General information

Official name

Socialist Republic of Vietnam.

Population

The 1989 census revealed a population of 64.4 million. In 1994 the population was estimated to be 72 million. The population growth rate in 1994 was estimated at 2.2 per cent.¹

Languages

The official language is Vietnamese. Although French has been the traditional second language, English is increasingly popular. Among older government and state-owned enterprise officials, Russian, Chinese, German and other East-European languages may be spoken. Chinese (Mandarin, Teochew and Cantonese) and Japanese are popular as foreign language subjects in schools. Various Chinese languages are also spoken among the ethnic Chinese minority, which lives mostly in Ho Chi Minh City.

Legal language

All legal documents are in Vietnamese.² An English translation of over 200 laws relating to Foreign Investment in Vietnam is provided by means of a loose leaf service published by Phillips Fox jointly with the State Committee for Cooperation and Investment (SCCI). It covers over 200 laws including the Foreign Investment Law.

Capital

Hanoi.

Form of government

Vietnam is ruled by the Communist Party of Viet Nam. The process of political reform, with a greater role for the National Assembly, began in the late 1980s. Vietnam's first elections after reunification of the country, were held in July 1992. Although non-Party candidates were permitted to stand for election, candidates have to be endorsed by the Vietnam Fatherland Front, an umbrella body for mass organisations. The Communist Party maintains its authority, but a large number of new and younger candidates were elected.

The 1992 Vietnamese Constitution reflects the new economic philosophy of *doi moi* (renovation). The new model gives a more managerial, rather than controlling, role to government and describes the economy as "a multi-sector economy in accordance with the market, based on state management and

socialist orientations.” It also accepts the existence of the private sector and guarantees foreign investors against nationalisation of assets.

- Head of State: President Le Duc Anh.
- Head of Government: Prime Minister Vo Van Kiet.
- Ruling Party: Communist Party of Vietnam.
- Head of Judiciary: (Chief Judiciary of the Supreme People’s Court) Pham Hung.
- Minister of Justice: H. E. Nguyen Dinh Loc.

Political background

Vietnam as an independent nation has a long history. From its cradle in the Red River Delta it slowly grew towards the South, ultimately incorporating the Mekong Delta in the 18th century. After having been under French rule since 1859³, Ho Chi Minh declared Vietnam independent on 2 September, 1945. Following three decades of almost continuous warfare, the Democratic Republic of Vietnam (North) and the Republic of Vietnam (South) were formally reunited in July 1976. Peace was briefly interrupted again in December 1978 (Cambodia) and 1979 (China).

Economic information

Basic indicators	1990	1991	1992	1993	1994*
GDP (US\$bn.)	n/a	7.0	10.0	12.4	15.0
GNP per capita (US\$)	n/a	192	200	220	240
Real GNP growth (%)	n/a	4.7	8.3	7.5	8.5
Inflation (%)	67.5	67.6	17.5	5.2	14.0
Exports (US\$ bn.)	1.7	1.9	2.5	3.9	3.6
Imports (US\$ bn.)	2.1	2.1	2.4	3.0	3.3
Trade balance (US\$ bn.)	-0.6	-0.2	0.1	-0.9	-0.3

Source: Dept of Foreign Affairs and Trade, *Country Economic Brief: Vietnam* November 1994; Australian Embassy figures.

* Preliminary unofficial figures

Per cent of services sector in GDP

The percentage of the services sector in GDP has been around 37–38 per cent in the period 1990–1994. Industry and construction are the fastest growing sectors whereas agriculture’s share in GDP is declining.⁴ Trade in services shows promise for Australian exporters. However, the low levels of purchasing power and the Vietnamese reliance on foreign assistance to fund consultancy and contracting services are somewhat limiting rapid expansion.

Total two-way trade with Australia (1993–94; mn. A\$)	44.3
as % of total Australian trade	0.3
rank in total Australian trade	32
Value of Australian exports A\$ million	152.3
as % of Australian exports	0.2
market ranking in Australian exports	36
% growth (five-year trend)	26
Value of Australian imports A\$ million	289.9
as % of Australian imports	0.4
market ranking in Australian imports	29
% growth (five-year trend)	129

Source: Department of Foreign Affairs and Trade, *Composition of Trade—Australia, 1993–94, 1994.*

Australia-Vietnam trade

Major Australian exports to Vietnam in 1993–94 were petroleum and oils (incl. refined), telecommunications equipment, medicaments, electricity distribution equipment and base metals. Major Australian imports in 1993 were crude petroleum and oils, seafood, clothing and coffee.

Trade and investment prospects

As can be seen in the above table, growth in trade between Australia and Vietnam has been impressive over the past five years. Although the figures are partly the result of starting from a small base, they do also reveal a fundamental increase in trading and investment activity. Expected sustained growth within the Vietnamese economy will provide opportunities for Australian firms in most sectors, but particularly those exporting capital equipment.

The Vietnamese policy of *doi moi* has resulted in an increase in investment opportunities and Australian firms are already participating in a range of sectors, the most notable being finance, legal services, telecommunications and resource development. In terms of funds invested, Australia is the sixth⁵ largest foreign investor in Vietnam (behind Taiwan, Hong Kong Singapore, Japan and South Korea). Several economic treaties and agreements have been signed by the two countries (eg. Trade and Economic Cooperation Agreement (1990), Investment Promotion and Protection Agreement (1991) and Double Taxation Agreement (1992, effective from 1993)). An Air Services Agreement is to be signed in 1995.

Vietnamese—Australian trade and investment relations are complemented by Australia's sizeable aid commitment (A\$200m over the period 1994/5 to 1997/8) and continuing educational links (200 new Vietnamese students enrolled each year under the aid program).

Vietnamese economy— current assessment

Some reforms in agriculture and industry date from the late seventies, but substantial reforms were initiated after the VIth Party Congress in December 1986. This also marked the beginning of the opening up of Vietnam to the non-socialist world. As Vietnam withdrew its troops from Cambodia in 1989, more and more countries resumed aid and business relations. The USA lifted its embargo of Vietnam in February 1994, after it had already relaxed its opposition to lending by multilateral organisations such as the IMF.

The fundamentals of the Vietnamese economy are sound. Economic growth in 1994 was close to 9 per cent,⁶ fuelled largely from investment growth, foreign assistance and a 13 per cent increase in industrial output.⁷ Inflation was reduced dramatically between 1991 (67%) and 1992 (17%) as a result of the government's tight monetary policies. The rate came down further in 1993 (5.2%) but increased somewhat in 1994 to around 14 per cent.⁸ The government's objective is to keep monetary policy tight.

Fiscal policy has undergone considerable reform in recent years, with the government moving toward a more market-oriented stance on public sector management. In April 1994, Prime Minister Vo Van Kiet instructed ministers to reduce expenditure and restructure accounting mechanisms. The taxation system is under continuous reform and tax rates increased in 1994.⁹ Collection of taxes has improved greatly in recent years as well, although evasion is still widespread. Alternative revenue sources, such as the sale of state-owned enterprises, are also being explored.

Exports rose by 25 per cent during 1994, but at the same time imports rose by 20 per cent leading to an increase in the current account deficit to 6.6 per cent of GDP. Some of the increase is attributable to the import of capital equipment which should contribute to future economic growth. However, there has also been a boom in the import of consumer goods such as motorbikes and electrical goods. There is a perception that the currency (the Dong) is overvalued, and there has been continuing debate on the best means of devaluation. The World Bank advised the government to devalue the currency overnight by 30 per cent, but the government, favouring a more gradual approach, has so far resisted. The Dong has very slowly depreciated from 10057¹⁰ against the US\$ in 1992 to 11,000 in March 1995.¹¹

2 Basic legal information

Legal system

In practice, there are currently two separate categories of legal services available in Vietnam: services provided to domestic users of the Vietnamese legal system; and those services provided to accommodate foreign investment in the country. Officially, the distinction is between Bar Association services in the courts and so-called “legal consultancy” services.

Sources of law

Vietnam has been exposed to three major legal systems, Confucian, French and Socialist. Prior to French colonisation, the country was largely governed on the basis of Confucian principles, as laid down in the Le, Nguyen and other codes. The villages, which were more influenced by animist and Buddhist view points, had a certain amount of freedom in the economic sense, but civil and criminal legislation was regulated by imperial bureaucrats.

The French introduced a Commercial and Civil Code which was heavily based on the French Codes. They only applied to Europeans and French-speaking Vietnamese. The French legal system was more established in the South. The Codes remained in force until 1954 in the North and 1975 in the South. Ironically, the Civil Code was only translated into Vietnamese in 1974.

After 1954 in the North and 1975 in the South; relatively little was done to develop a systematic legal system. In the late 1950s and early 1960s land reform legislation was influenced by China. By the 1970s, Soviet legal thought provided the primary influence.

The current challenge facing Vietnam is marrying socialist legal jurisprudence with a legal system attuned to the needs of the emerging mixed market economy. Vietnamese law makers have drawn upon a wide range of laws for inspiration. The initial “doi moi” legislation (eg. the foreign investment law of 1978) displayed a clever adaptation of Chinese laws. More recently, French, Anglo-American, and frequently East-Asian laws have been a source of legal experience, however, laws are increasingly reflecting local social, political and economic conditions.

Legal development

In the past ten years, the law and legal system of Vietnam have undergone major changes. The Ministry of Justice was re-established in the early 1980s after having been disbanded for a period of twenty years. It has recently increased in importance as a ministry, reportedly fourth in precedence, as Vietnam moves from a command economy to a market-based economy.

Although there remains much work to be undertaken in the development of the legal infrastructure of Vietnam to support this process, it is apparent that Vietnam is in the process of creating a more comprehensive legal environment.

Structure of the legal profession

There are about 5,200 domestic lawyers in Vietnam who are members of the Vietnam Lawyers' Association. A graduate must make application to join the Association upon graduation.¹² Until recently, there was little experience in commercial law in the North, as the sole function of these local lawyers was to represent people in court. In the South however, a number of lawyers, who were active in the commercial area before 1975, have again taken up their metier. Most commercial lawyers are still working with the government, including ministries and state-owned enterprises.

According to a report released by the Ministry of Justice in January 1995, there are about 570 domestic members of the Vietnamese Bar Association, of which 335 have obtained law degrees granted by domestic and foreign universities and the rest have what are called "university-corresponding degrees".

Regulation of the legal profession

Presently there are no regulations specifically governing foreign lawyers.¹³ Domestic lawyers are governed by the *Ordinance on Organisation of Lawyers* passed by the State Council on 18 December 1987, and Decree No. 15/HDBT dated 21 February 1989 of the Council of Ministers, various statutes of the Bar Association and relevant regulations. _

However, Vietnam is currently considering the introduction of two new Decrees to regulate the organisation and operation of foreign and domestic lawyers. Although they have been awaited for some time, they are expected to be promulgated in 1995. Australian law firms were invited to assist in this process by advising the Ministry of Justice on the proposed draft for the regulation of foreign lawyers operating in Vietnam.¹⁴ Around 48 foreign law firms sponsored an international forum in Hanoi in 1993 at which they provided comments on the draft Decree relating to foreign practitioners operating in Vietnam.

The Government has instructed the Ministry of Trade effective as of 28 January 1995 to cease the issue of Representative Office Licenses for foreign law firms pending the promulgation of the Decree. According to the Draft Decree, all foreign law firm's representative offices will have four months to convert to a branch of their practice overseas.

Law-making bodies

The Vietnamese legislative system adopts a multi-tiered approach, which comprises many levels of legislation from Laws (Acts) and Ordinances, Decrees and ministerial regulations, to circulars and directives. Ministries, together with heads of State bodies with ministerial status,¹⁵ are responsible for the preparation of draft legislation in matters pertinent to their respective portfolios, for submission to the National Assembly. However, before any draft form of legislation can be submitted to the National Assembly for deliberation it must be vetted by the National Assembly Legal Commission, whose task it is to ensure that all legislative proposals before the Assembly are in accordance with the Constitution and are not potentially in conflict with the operation of any laws already in existence. The Ministry of Justice prepares and participates in the drafting of legislation.

The National Assembly is the only body vested with the power to amend the Constitution and pass laws. When the National Assembly is not in session, the Standing Committee of the National Assembly can be empowered to pass Ordinances to deal with urgent matters. The Government makes Decrees. The Ministries generally are confined to the issuing of circulars, instructions and decisions, although in many cases they prepare draft legislation in their areas of responsibility for submission to the National Assembly for debate and promulgation. The People's Committees may also issue decisions and directives from time to time. The Supreme Court has been publishing so-called "key case summaries" in its Annual Reports in order to promote the consistency of the judicial system. One issue facing Vietnam is the extent to which the judicial system, other than the Supreme Court, is allowed to interpret the laws in order to pass judgements that allow for a judicial consistency.

The Law on Organisation of the Government of the Socialist Republic of Vietnam was proclaimed on 30 September 1992. This law reiterates that the Government is the executive body of the National Assembly and the highest administrative body in Vietnam. The Government, inter alia, promulgates Resolutions and Decrees, and is also responsible for presenting draft laws to the National Assembly and draft ordinances to the Standing Committee of the National Assembly.

Documents having the force of law, promulgated by the Government, the Prime Minister, ministers, or heads of state bodies holding ministerial status, are required to be published in the Official Gazette ("Cong Bao") of Vietnam.

Law derived from Australia

There is no direct influence from Australian legislation on Vietnamese legislation. However, various Australian lawyers and law firms have been involved in the drafting of new Vietnamese legislation (see the section on Australian and other Foreign Legal Firms for more detailed information).

Court structure

The court system is comprised of the Supreme People's Court, the highest court in Vietnam and directly accountable to the National Assembly, the local People's Courts, which are supervised by the Supreme People's Court, and military tribunals, as established by *The Law on Organisation of People's Courts* which was proclaimed, as amended, on 28 December 1993. These are the leading judicial adjudicatory institutions in Vietnam. The law holds that once the determinations of the People's Court are in effect, they must be upheld by all State bodies, economic and social organisations, the citizens as well as the armed forces of Vietnam.¹⁶

The Supreme People's Court is headed by the Chief Justice, whose term of office runs concurrently with that of the National Assembly. The Court itself is made up of the Council of the Supreme Court Justices, the Committee of Judges, the Central Military Court, an economic court, a criminal court, a civil court, and three appeals courts, together with any other specific court the Standing Committee of the National Assembly deems necessary to be established from time to time. The role of the Supreme People's Court includes issuing preliminary or final judgments, considering appeals from lower courts and supervising appeal proceedings in those cases where the judgments of the lower courts have not yet taken effect.¹⁷

The organisational structure of the local People's Courts and military tribunals is generally analogous to that of the Supreme People's Court, excluding the appellate jurisdiction of the higher court, and is overseen by the Minister of Justice, which is also responsible for organisation and training matters relating to the People's Courts.

Provincial Courts deal with civil, economic and criminal matters, but District Courts deal with civil and criminal matters only. The decision to establish Economic Courts in Provincial Courts and in the Supreme People's Courts to operate as part of and within the existing judicial system of the People's Courts in Vietnam in 1993 was an essential step in the process of legal reform in Vietnam keeping pace with economic reform.¹⁸

Consistent with the growing appreciation by the Government of Vietnam of the necessity for judicial independence under the rule of law, the National Assembly in October 1992, passed a new court-organisation law. This, in addition to changing the procedure under which judges are appointed in Vietnam from being elected for a five year term by the local People's Councils to being appointed by the State President, also ensured that judges were no longer paid by the local People's Councils but by the Government of Vietnam. The National Assembly also substantially increased the remuneration received by judges under the new laws at the same time.

Professional legal education

Local training

Before a Vietnamese lawyer can be recognised officially as a lawyer in Vietnam, he or she must first obtain a law degree (or a corresponding degree, see below) and then go through a probationary period which lasts for six months to two years depending on the previous work experience of the applicant. Those who have worked as a defender in the Courts for at least two years are exempted from that requirement. Upon the expiry of the probationary period, each para-legal (trainee lawyer) (including those who are exempted from the probationary period) must take a theoretical and practical examination which is conducted by the Board of Chairmen of the Bar Association under the guidance of the Ministry of Justice. If the examination is passed, the para-legal will be recognised by the Minister of Justice as a lawyer and be granted a Lawyer Certificate; otherwise, he or she may be given a probationary extension of up to six months before taking part in the second examination.

Qualifications for practice

In theory, a Vietnamese lawyer cannot practise (as understood in Western countries) unless he or she is a member of the Bar Association. To be a member of the Bar Association, the lawyer must satisfy the following requirements:

- (i) be a citizen of the Socialist Republic of Vietnam;
- (ii) have good qualifications and morals;
- (iii) hold a law degree or a degree of a corresponding legal level; and
- (iv) be in good health.

Persons considered as having a “degree at a corresponding level” to a law degree are those who have worked on legal issues for at least five years and who receive one year’s legal training. Such persons may include legal experts of science research institutes, legal teachers in universities, former judges, investigators, prosecutors, inspectors, arbitrators and legal consultants in ministries.

It is worth noting, however, that those who are currently working in the Court of Justice, Public Prosecution Office, Police Office, justice bodies, State Inspection bodies, Economic Arbitration bodies, Customs Office, and home affairs bodies of the Communist Party (except those who work as legal researchers or legal teachers) are prohibited from being members of the Bar Association (*Ordinance on Bar Associations, Article 11*).

The admitted lawyers may participate in litigation before the courts (including military tribunals). They can provide advice

and consultancy services to government and business enterprises, whether state-owned or private or Vietnamese or foreign.

Principal universities

Universities which offer graduate law degrees include: the Hanoi Law University and its campus in Ho Chi Minh City, the Faculties of Law of Hanoi National University and Ho Chi Minh City University, and reportedly also: the People's Control College, the University of the People's Police, the University of People's Security Forces, the National Academy for Politics and the National Academy of Administration.

Among these, the Hanoi Law University is the largest law school with nearly 25,000 full and part-time students nationwide. This includes students at all levels of education: regular, irregular (or open university), in-service training, etc. The curriculum covers major legal issues such as: public and private international law, civil and criminal law, constitutional and administrative law, economic law, etc. The Hanoi Law University is organised under the Ministry of Justice.

The Hanoi Law University graduates approximately 800 lawyers a year, about a quarter of whom are from its Ho Chi Minh City campus. Its principal campus is located in Hanoi (5000 students), but it also has operations throughout Vietnam (in total 20,000 students) which work along the lines of a distance education program, with residence periods in Hanoi and other cities. Not all students complete the full diploma program—many students follow the in-service, two year program, or are trained as court officials, procurators, etc. In addition to undergraduate and graduate training, the Hanoi Law University contributes to the (re)training of judges and economic arbitrators.¹⁹ The Faculty of Law at Ho Chi Minh City University in 1992–93 had around 2,400 undergraduate students: 1,900 in Ho Chi Minh City in daytime attendance, 150 in Dalat and 350 in the Mekong Delta in distance learning programs. For the academic year 1993–94 it expected to recruit around 1,400 new students, namely 800 in Ho Chi Minh City, and 300 each in Dalat and in the Mekong delta.²⁰ Graduation numbers are not known.

Other domestic training institutions

Law is also studied as a compulsory subject in the curriculum of some other universities such as the University of Finance and Accounting and the National Economics University.

Post-graduate legal courses

At present, only the following institutions may confer Master's or Doctorate degrees: the Institute of State and Law, the Hanoi Law University, Hanoi National University, the Ho Chi Minh

National Academy of Political Science and the Department of Law of Ho Chi Minh City University.²¹

Other than with the above mentioned institutions, post-graduate legal training is not readily available and Vietnam still relies on foreign sponsors for training of Vietnamese lawyers overseas. Australia is playing a significant role in this respect. Otherwise, all forms of overseas legal training are conducted by private arrangements through employment or private sponsorship.

Other domestic legal qualifications

Demand for legal training no longer comes only from those wanting to become lawyers. A recently opened Open University course in law apparently received numerous applications, many of which were from Vietnamese business people recognising the need to know more about (commercial) law in the new business environment.

Practical legal training

No information currently available.

Foreign legal training

Sources

The key source of external legal training and technical assistance received by Vietnam has, until recently, been the former Soviet Union and East Germany. After the collapse of the Soviet Block, Australia, Canada France, Germany and the United States have become the favoured destinations for Vietnamese law students.

In 1993, 20 lawyers from the Ministry of Justice, the National Assembly and various government departments and universities undertook a short-term course in Western Legal concepts at the Faculty of Law and the Centre for Asian and Pacific Law in the University of Sydney for a short term course. The course was considered successful and this program is therefore currently (March 1995) being repeated. It is funded by the Swedish International Development Authority (SIDA).

The USA and France seem to be favoured for longer term post-graduate law studies.

Many Australian law firms have hosted Vietnamese lawyers while undertaking study in Australia. The hosting arrangements usually provide the lawyer with the opportunity to observe and participate in the work of that firm in Australia.

At least six lawyers are pursuing studies in the United States on a Fulbright Grant.

Skills obtained

Information not currently available.

3 Legal services market

The role of the law and that of lawyers in Vietnam are increasing in importance as a result of the overall rapid economic developments in Vietnam. In an interview in August 1992, Prime Minister Vo Van Kiet stated “there must be a complete change from bureaucratic management to running the nation by law”. This view reinforces that of the Central Committee of the Communist Party.

The April 1992 Constitution reflects the new emphasis on the rule of law. The standards required of local lawyers and regulations covering foreign lawyers are being considered. An ambitious program of new legislation—a mining law, petroleum law, a commercial code, an insurance law, a mortgage law, a bankruptcy law, a foreign judgments law, laws relating to privatisation of state owned companies, a civil code and amendments to the land and foreign investment laws are currently being drafted or have recently been adopted by the National Assembly.

Professional associations/ law societies/bar associations

There are two main associations affecting lawyers in Vietnam, the Bar Association and the Vietnam Lawyers’ Association. It is, however, important to distinguish between the Bar Association, which is a professional association of domestic legal practitioners established to “assist citizens and organisations on legal issues” and the Vietnam Lawyers’ Association—“ a socio-political organisation, the united body of Vietnamese citizens who worked or are working in the field of law in the whole country and is a member of the Vietnam Fatherland Front”. Membership of the Vietnam Lawyers’ Association is not limited to lawyers or trainee lawyers. Around 30 branches of the Bar Association have been established throughout Vietnam including the Hanoi, Ho Chi Minh City and Hai Phong Bar Associations.

Local legal firms

Local legal firms

On 28 July 1992, seven lawyers were granted a licence by the People’s Committee of Hanoi to establish the first private local law firm in Vietnam, in the form of a limited liability company, Lead Co.²² Since then, eight further similar firms have been established (four located in the North and four in the South of Vietnam²³). In addition to these firms, thirty-two legal consultancy centres have been established throughout the country, whose functions range from advising clients on legal issues in general to representing them in litigation proceedings, and drafting legal documents such as wills, contracts etc.

Although the number of firms involved in commercial work is still small, this group, and the amount of time they devote to commercial work, is increasing.

Following the growth in these centres the Ministry of Justice is presently strengthening its supervision over firms and consultancy centres providing legal services. According to a senior official of the Ministry, no further licenses to establish consultancy centres will be granted until the new decree governing legal services is issued.

Increasingly, local firms are developing relationships with foreign firms, whereby Vietnamese lawyers are being seconded to the foreign firm, or the other way round. An example is Lovell White Durrant, which has close ties with Vietlaw Ltd and has a partner from that firm on secondment in their Ho Chi Minh City offices.²⁴ The Vietnamese firm Quang Minh reportedly works closely together with White & Case.

Local lawyers

Vietnamese lawyers work for a variety of organisations: the Vietnamese government (including state-owned enterprises), research institutes and universities and private companies. They also work in conjunction with foreign legal firms. Vietnamese lawyers are also employed in the courts, arbitration bodies, National Assembly and bar associations. There are approximately 3,000 judges currently working throughout Vietnam.

The Ministry of Justice employs over 50 lawyers mostly in criminal and civil matters. These lawyers draft civil and criminal laws and procedures, provide opinions on all laws drafted by other ministries and state bodies and are responsible for appointment of staff to, and the administration of, the People's Courts at provincial and district levels. The Ministry of Justice itself has recently been substantially upgraded in the hierarchy of ministries, indicative of the recognition now accorded legal development and the rule of law in Vietnam.

Per cent in international commerce

Information not currently available. However, most Vietnamese lawyers are still active mainly in the areas of family and criminal law.

Value of legal services

The total value of legal services provided by the local law firms is unknown but, judging from the mushrooming number of firms and legal consultancy centres, it may be concluded that there is a strong demand for such services.

Local legal firms involved in international work

A relatively small amount of the work of domestic firms is undertaken for international clients. The local firms concentrate on the provision of services to Vietnamese citizens, who, because of language and cultural barriers as well as the high cost, rarely instruct a foreign law firm.

Practice mix

As mentioned above, most lawyers are predominantly active in the areas of family and criminal law.

Australian and other foreign legal firms

There are currently 24 foreign law firms operating in Vietnam, with 34 representative offices.²⁵

Foreign lawyers are involved in Vietnam in several different ways:

- as members of the licensed representative offices of foreign firms, acting on behalf of foreign clients;
- visiting Vietnam on behalf of local and foreign clients; and
- as “aid”-funded consultants on various aspects of law:

The State Committee for Cooperation and Investment (SCCI) estimates it has had contact with 300 foreign lawyers. Lawyers from a total of around 48 law firms from countries including Australia, Thailand, Hong Kong, Singapore, the UK, France, Japan, Taiwan, Canada and the US have visited Vietnam.²⁶ By January 1995, according to statistics released by the Ministry of Trade, 23 foreign law firms had been licensed to set up 31 resident representative offices in Vietnam.

Australian firms

Over a relatively short period of time, Australian lawyers and law firms have developed a considerable presence in Vietnam in providing advice to investors and companies wishing to do business in the country. As of November 1994, at least 20 foreign firms had either a representative office or worked in conjunction with a Vietnamese business consultancy. Of these 20 firms, at least three were Australian, namely Phillips Fox; Freehill Hollingdale & Page; and Sly & Weigall in association with Deacons and Graham & James.²⁷

Phillips Fox, the first foreign law office to be licensed to operate in Hanoi, has five expatriate lawyers presently living in Hanoi supported by one local government lawyer who consults with the office daily, and two other local consultant lawyers, all supported by a head translator and a staff of five.²⁸

Freehill Hollingdale & Page opened representative offices in both Hanoi and Ho Chi Minh City in 1994, after having been involved with Vietnam since 1987.

Sly & Weigall in association with Deacons of Hong Kong and Graham & James of the United States has maintained a presence in Hanoi since June 1992. Their office has an association with Investconsult Limited, the largest private Vietnamese investment consultancy in Vietnam, and received its representative office license in December 1993. The office comprises two foreign staff and several administrative staff. The firm also has an office in Ho Chi Minh City.²⁹

At the same time, at least 35 other firms, of which five are Australian, were active in the Vietnam (eg. on a fly in/fly out basis). Some of these firms were in the process of applying for a license to set up a representative office.³⁰

Apart from acting on behalf of foreign clients, Australian law firms have been actively involved in providing advice and services to the Government of Vietnam to assist with the modernisation of laws and regulations, particularly those relating to foreign trade and investment. To this end, the following projects have been completed or are currently in train:

- Phillips Fox translated the Foreign Investment Law and continues to assist the State Committee for Cooperation and Investment (SCCI) with publication of a loose-leaf service on laws. Also, Phillips Fox continues to assist the Ministry of Heavy Industries in relation to drafting the mining law under the auspices of UNDP funding; and has been retained by the Ministry of Science, Technology and Environment in relation to technology transfer legislation.³¹
- Freehill Hollingdale & Page comprised part of the Western Australian Department of Land Administration team funded by AusAid (AIDAB) and the UNDP to examine the feasibility of introducing a modern land management system into Vietnam, which has completed its submissions to the Vietnamese Government.
- Sly & Weigall have conducted a number of in-country seminars and provided advice and assistance to the Ministry of Justice on international commercial Arbitration, Vietcombank on bank guarantees, the Directorate-General of Post and Telecommunication on the drafting of a new telecommunications law, and the Ministry of Science, Technology and the Environment on technology transfer.
- Mallesons Stephen Jaques was assigned by the World Bank to advise the Vietnamese Government on the Land Law Project in the lead up to the formulation of its new land laws adopted by the National Assembly in July 1993.

Lawyers from the firm were also engaged by the UN to work on the Vietnam Minerals Law project (jointly funded by the UN and AusAid (AIDAB)³²).

- Mr Ron Harmer of Blake Dawson Waldron has been instrumental in assisting the Vietnamese to draft laws on bankruptcy and insolvency under the auspices of the World Bank, which have been passed recently by the National Assembly.³³
- Maddock Lonie & Chisholm have been assisting the Ministry of Justice and the Ministry of Construction with the drafting of the Vietnamese National Construction Law, a project funded by AusAid (AIDAB).

Australian firms with other forms of representation

Firms represented in Vietnam

No information currently available

Other international firms with links to Australia

Baker & McKenzie opened offices in both Hanoi and Ho Chi Minh City in January 1994.

Australian lawyers

Australian lawyers working for non-Australian firms include Tim Whitehead (Freshfields), and Mark Lockwood and Tan Nguyen (Baker & McKenzie).

Local lawyers

Vietnamese lawyers are working for both Australian and non-Australian legal firms in Vietnam.

(Non-Australian) foreign legal firms

- Sinclair Roche & Temperley from the United Kingdom has a practice based in Hanoi, comprising two, or possibly three expatriate lawyers.
- Tilleke & Gibbins Consultants Limited from Thailand (the first foreign law firm to be granted a licence to open an office in Vietnam) has a presence in Hanoi and Ho Chi Minh City.
- Chor Pee from Singapore has a licence to operate in Vietnam and employs Vietnamese practitioners.³⁴

Legal Services Country Profile: Vietnam

- Freshfields (a UK based international firm) have representative offices in Hanoi and Ho Chi Minh City.
- Clifford Chance (UK) is represented in Hanoi.
- Gide Loyrette Nouel (France) has an office in Hanoi.
- Lucy Wayne & Associates (UK) operates in cooperation with Investconsult in Ho Chi Minh City.

The following firms are known to have an office in Vietnam, but further details are not available:

- Mandel Ngo & Partners (France).
- Jeantet et Associes/Bureau Francis Lefebvre (France).
- Johnson Stokes & Master (Hong Kong).
- Lafarge Flecheux Revuz/Lussan Brouillard/Silve/Repiquet (France).
- Pollak & Co (France).
- Simeon & Associes (France).

American law firms are now actively involved in establishing a presence in Vietnam following the recent lifting of the US trade embargo. Accordingly, from 1994, the presence of American law firms will increase dramatically and be a leading force among foreign law firms operating in Vietnam. The following firms have already established a presence:

- Paul Weiss Rifkind Wharton & Garrison recently signed a co-operative agreement with Investip, a Vietnamese law firm and business consulting company, which will give the US law firm a presence in Ho Chi Minh City and Hanoi.³⁵
- Russin & Vecchi has opened up offices in Ho Chi Minh City and Hanoi. Russin & Vecchi was the only international law firm in Vietnam prior to 1975, operating from its original offices in what was then called Saigon, from 1967 to 1975.³⁶
- Skadden Arps Slate and Meagher & Flom applied for a license to open up a representative office in November 1994.
- Dirksen Flipse Doran & Le have opened an office in Ho Chi Minh City. Originating from the USA (Seattle) they also have offices in Laos and Cambodia.
- Lovell White Durrant opened a representative office in late 1994.
- White & Case have a representative office in Vietnam.

- Coudert Brothers have a representative office in Vietnam.

Status of lawyers employed

Local lawyers

In Vietnam, only those lawyers who are admitted to the bar are strictly speaking 'lawyers'. All others are 'legal consultants'. Until recently representative offices could only hire a limited number of local staff thereby limiting the scope for hiring local lawyers. However, as of 10 February 1995 those restrictions have been removed. At present, the only form of recognised representation is the representative office.

Foreign lawyers

Foreign lawyers are mainly working for representative offices of foreign companies in Vietnam, and for international organisations.

Practice mix

Foreign firms are mainly engaged in advising foreign investors to Vietnam, on aspects of commercial law.

Commercial arbitration

To date, the Vietnamese authorities have had little exposure to mainstream Western legal practice and the accepted commercial principles governing private international law.

As is common with many Asian cultures, adversarial commercial arbitration does not fit very well with traditional Vietnamese culture. Commercial arbitration is often viewed as the creator, not the solver, of business problems. Commercial arbitrators have, in the past, been state employees, and as such saw their roles as the supervisors and implementers of government policy and not as independent adjudicators of private rights as is the case in the West.³⁷

Therefore, the existing legal system in Vietnam is not particularly well suited to accommodate the resolution of commercial disputes in a manner that would be generally considered satisfactory to a foreign investor.³⁸

Until 1987, there was little legislation recognising private commercial relationships. Arbitration essentially served the function of the State in managing and planning a command economy and was not the subject of independent process. There are few people with training and experience in market or commercial law. The procedural rules are not adopted to commercial cases, eg. one cannot force the discovery of documents. Furthermore, there is no useful enforcement, eg. on the Bankruptcy Law.³⁹

Firms/centres and principal coverage

Prior to April 1993 international trade disputes were settled by the Vietnam Foreign Trade Arbitration Council or the Vietnam Maritime Arbitration Council, both attached to the Vietnam Chamber of Commerce and Industry (VCCI). These Councils mainly determined disputes between Vietnam and parties from foreign, mostly socialist, countries. The Vietnam Maritime Arbitration Council dealt with Comecon⁴⁰ trade and heard around 10 cases a year.

However, in April 1993, the Prime Minister ratified regulations for the organisation of the “Vietnam International Arbitration Centre” (VIAC).⁴¹ Under these regulations the VIAC is

described as a non-government organisation, established by the Vietnam Chamber of Commerce and Industry (Article 1), having the power of jurisdiction over all disputes arising out of Vietnam's international economic transactions such as contracts in foreign trade, investment, tourism, transportation, international insurance, technology transfers and international credit and payments (Article 2).

The regulations further provide that any decision of the arbitrators shall be final (Article 8) and that there is no recourse for appeal to any other courts or any other organisation. Arbitrators are selected by the Executive Committee of the Vietnam Chamber of Commerce and Industry for a period of four years, and may include foreign experts. The regulations also charge the Board of Management of the Vietnam Chamber of Commerce and Industry with the task of drawing up the arbitration rules that shall govern the VIAC.⁴²

Those people previously in charge of the arbitration of state-owned enterprises, were transferred in 1993 to the new VIAC. Reportedly, the VIAC has adjudicated 22 cases since April 1993, around half of which were continuing Comecon cases—the awards were roughly half in favour of the Vietnamese party, half in favour of the foreign party.

Presently, foreign investors prefer not to submit disputes to domestic courts, particularly in view of continuing difficulties with judgement enforcement. For this reason the formation of the VIAC is of itself an important development in the handling of international commercial disputes by Vietnam. For practical purposes therefore most commercial disputes arising in Vietnam involving foreign investment are dealt with offshore, by way of international arbitration pursuant to “law of the contract” clauses. However, there are continuing problems with the enforcement of foreign judgments and arbitral awards, that cannot begin to be resolved until Vietnam ratifies the New York Convention (see below).

Foreign restrictions

Opinions are divided as to whether foreign lawyers have the right of appearance before the VIAC. The Statutes as published by the VCCI state that foreign lawyers can be arbitrators in the VIAC, however, they do not seem to discuss the nationality of the lawyer presenting the case before the VIAC.

International instruments

It is unlikely, in the foreseeable future, that there will be effective regulations in place enabling the enforcement of foreign judgments and arbitral awards in Vietnam, although there are plans to introduce such regulations at some stage; among these plans is the possible ratification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958), also known as the New York Convention.

Vietnam is not a signatory to any international treaty with respect of copyright or intellectual property, neither is it a member of the World Trade Organisation. On December 2, 1994, the Standing Committee of the National Assembly issued the Ordinance on Copyright, which, though providing a certain measure of copyright protection, falls short of that offered by international conventions. Copyright protection is extended if the work is registered in Vietnam within 30 days of the original publication. The extent to which protection ensues without registration is not entirely apparent. The Ordinance includes computer software and audio-visual work. Although the Ordinance mentions 'musical works', it is not clear whether this covers sound recordings.

Vietnam is reportedly proposing to ratify New York Convention in the course of 1995. Ratification would impose on Vietnam's courts certain duties such as:⁴³

- (i) the duty to recognise and enforce arbitration agreements to which the convention applies;
- (ii) the duty to assist parties and arbitrators in the conduct of arbitration; and
- (iii) the duty to recognise and enforce arbitration awards to which the Convention applies.

Australia entered into an Investment Promotion and Protection Agreement with Vietnam on 11 September 1991, being one of the first countries to do so.⁴⁴ It also signed an agreement for avoidance of double taxation and prevention of fiscal evasion with respect to taxes in income in 1992.

4 Market access requirements

Foreign lawyer/ firm regulation

In May 1993 the Ministry of Justice hosted a legal forum which was sponsored by some 48 international law firms from 11 countries to discuss proposed legislation to regulate the establishment of foreign legal firms in Vietnam. At the moment, foreign lawyers and law firms are being treated as foreign investors and have to comply with the relevant legislation. Several versions of a draft Law to regulate foreign lawyers and firms have been considered. Since then there have been two more drafts of the law to regulate foreign lawyers. While the Ministry of Justice reportedly wants foreign lawyers in Vietnam, the local legal profession is understood to want them excluded or severely curtailed in their activities. Accordingly, it is likely that foreign lawyers will only be able to practise the law of the jurisdictions in which they are admitted and international law. The current draft decree (February 1995) is expected to be passed in the first half of this year, but may be deferred again, because of ongoing internal debate concerning the issue.

Body responsible

To date, foreign lawyers have established presences in Vietnam in the form of representative offices of foreign economic organisations whose licensing procedures, organisations and operations are under the control of the Ministry of Trade. If the present draft Decree comes into force in its current form, this will change and the Ministry of Justice would become the body responsible for granting licenses. Reportedly, the Government has instructed the Ministry of Trade to cease the issue of Representative Office licenses for foreign law firms pending the promulgation of the draft Decree.

Laws & regulations

Presently, there are no regulations in force specifically governing the conduct and operation of foreign lawyers in Vietnam.⁴⁵ Legal firms are treated like foreign investors and are therefore under the regulations of the Ministry of Trade.

Foreign lawyer admission to practice requirements

According to the current⁴⁶ draft legislation, foreign lawyers will be able to operate in Vietnam as legal consultants in one of two forms: in a partnership with a Vietnamese firm or as a branch of a foreign firm in Vietnam. One of the conditions for obtaining a license is that the prospective firm “has foreign clients who are carrying out investment and business in Vietnam”. From the draft decree it is not clear whether a

foreign firm can have Vietnamese clients (eg Vietnamese export companies). A foreign firm can practise ‘international’ and ‘foreign’ law, but not provide legal consultancy services concerning Vietnamese laws or appear in the legal proceedings as defenders or as representative for their clients before the courts of Vietnam.

The following information is based on the most recent draft of the decree that will regulate foreign lawyers.

Citizenship

It is understood there will be no citizenship requirements relating to lawyers operating in Vietnam. The present draft decree contains a provision that “the Government of Vietnam guarantees a fair and equal treatment to all foreign lawyer organisations conducting legal consultancy practice in Vietnam”.

Educational qualifications

Foreign lawyers will be required to submit and attach a notarised copy of their Practising Certificate or Lawyer Card to the application for a license to operate in Vietnam in either partnership form or a branch of the foreign law firm.

Experience

Each foreign lawyer must have worked as a legal practitioner for at least five years and currently be practising in a foreign law firm.

Pupillage period

No such requirements are relevant.

Residency requirements

Foreign lawyers who work in a partnership must stay in Vietnam for at least 90 days a year and a branch of a foreign law firm must have at least one foreign lawyer permanently residing in Vietnam (article 35 of the draft decree).

Government approvals

The Ministry of Justice will be in charge of the management of legal consultancy practices by foreign lawyers in Vietnam, in particular it will be responsible for the issuance of licenses to set up or extend the duration of foreign lawyer organisations in Vietnam while provincial-level government organisations, called “Justice Services”, will be dealing with registration of these activities.

Other

None.

Admission authority

Not applicable as foreign lawyers are not admitted.

Special admission

Not regulated

Additional requirements

Visa restrictions

Visas will presumably be issued after licenses are granted—there are no provisions relating to visas in the draft decree.

Work permits

As under visas.

Regulation of foreign law firms

(The information in this section is based on the most recent draft of a decree to regulate foreign lawyers.)

In the case of a foreign firm setting up a branch, it is only allowed to set up at most two branches (draft decree article 10) in the country. There appears to be no limit as to the number of different partnerships in which a foreign firm may participate, so that it seems that a foreign firm could set up partnerships in several cities.

Use of firm names

No provisions in draft decree.

Employment of local lawyers

According to the draft decree (article 36), Vietnamese people with legal training can be employed in two capacities: firstly, Vietnamese consultant lawyers who can provide consultancy services concerning Vietnamese laws, and secondly, Vietnamese citizens with law degrees to work as legal consultants trainees, but who are not allowed to provide their consultancy services to the clients. Otherwise the Labour laws of Vietnam are applicable.

Local firm association

Local firm association is allowed in the form of partnerships. It would seem from the draft decree that there is no limit to the

number of partnerships a foreign firm could establish (eg in different cities) whereas the number of foreign branches is limited to two.

Government approvals

Upon presentation of the documents as specified in the draft decree (article 12–17), the Ministry of Justice will decide within 60 days to grant a license; the firm then has 90 days to register its practice with the Justice Service of the province in which their head office is located (article 18–19).

Other

The People's Committees of provinces and cities have the responsibilities for controlling and inspecting the organisation and operation of foreign firms, for dealing with certain breaches of the decree and for recommending to the Ministry of Justice that it review and make decisions on issues under its authority (article 44).

Restrictions on practice

(The information in this section is based on the most recent draft of a decree to regulate foreign lawyers).

Local law

Foreign lawyers cannot, under the draft decree, practise Vietnamese law. However, they can either co-operate with Vietnamese firms in order to be able to provide these services (article 27) or employ Vietnamese consultant lawyers (article 36).

Home law

Home law can be practised by foreign lawyers who are licensed to operate in Vietnam according to the guidelines mentioned above.

Foreign law

Foreign law can be practised by foreign lawyers who are licensed to operate in Vietnam.

International law

International law can be practised by foreign lawyers who are licensed to operate in Vietnam.

Other

None

Recent regulatory changes

None until the draft decree is passed.

5 Australian legal services

Australian law firms

For Australian law firms and lawyers providing services, see 3: *Legal services market*.

Australian firms have been involved from the beginning of “Doi moi” (or economic renovation), and as a result have built up a strong position, both as investment consultants as well as advisers to the Vietnamese government. As a result, many Australian firms are now well established in Vietnam.

Prospects for Australian legal services

Prospects are in general good, due to the fact that many Australian firms have had time to build up expertise in Vietnam, as well as language capability and local contacts. However, in the next few years the competition from American law firms is bound to increase substantially. Competition from European firms is likely to be less as they tend to be involved more in Eastern Europe and the Commonwealth of Independent States (former Soviet-Union).

Dispute resolution services

The **Australian Centre for International Commercial Arbitration (ACICA)** provides services for the settlement of international commercial disputes of all kinds to the region. ACICA was established in 1985 as a company limited by guarantee and incorporated in Victoria by The Institute of Arbitrators, Australia. The Institute of Arbitrators has as its main objectives the education and training of arbitrators and their grading, the nomination of arbitrators to arbitrate disputes and the promotion of arbitration as a means by which commercial disputes can be resolved. ACICA has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (ICSID)*.

ACICA has Co-operation and Trade Arbitration Agreements with 34 International Arbitral Centres around the world including those in the world's major trading nations in Asia, Europe, the Middle East and the Americas.

ACICA is a member of the Council of Asia Pacific Commercial Dispute Resolution Centres and has close relationships with the International Chamber of Commerce Court of Arbitration in Paris.

ACICA has concluded a Co-operation Agreement and is in regular communication with the Hong Kong International Arbitration Centre.

For further information on ACICA, contact:

**The Secretary General
Australian Centre for International Commercial Arbitration
Level 1
22 William Street
Melbourne Vic. 3000
Telephone: (03) 9629 6799
Facsimile: (03) 9629 5250**

The **Australian Commercial Disputes Centre (ACDC)** provides consulting, training and dispute resolution services both domestically and internationally. It concentrates on mediation, expert appraisal and determination. ACDC has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACDC is the London Court of International Arbitration (LCIA) Registry for the whole Asia-Pacific Region. LCIA's services are available to all involved in international commercial activity. It is open to any party to elect to have his/her dispute determined under the internationally recognised LCIA Arbitration Rules or UNCITRAL Rules.

ACDC is also a member of the Council of Asia Pacific Commercial Disputes Centres.

For further information on ACDC, contact:

**Ms Carol Dance
Chief Executive Officer
Australian Commercial Disputes Centre
Level 4
50 Park Street
Sydney NSW 2000
Telephone: (02) 9267 1000
Facsimile: (02) 9267 3125**

Legal education and training

AusAID (formerly the Australian Agency for International Development), proposes to undertake a significant legal sector assistance project in Vietnam. It is not clear at this time when the project will be implemented.

The Department of Employment, Education and Training has funded a report on the nature and extent of Australian universities' involvement in Vietnam, a draft of which is due to be completed in April 1995. Vietnam's Ministry of Education and Training has asked Australia to help design and develop a World Bank higher education reform project.⁴⁷

Overseas students studying law in Australia

Undergraduate/postgraduate

As of late March, 1995, there were 15 AusAID funded students enrolled in “Law and legal studies”. It is not known whether these students are enrolled at the undergraduate or postgraduate level. In addition to courses funded by the Australian Government and other aid agencies, are a number of lawyers who are funded by Australian firms to come to Australia and who combine studying with work at the Australian firm’s offices.

Short courses

After a successful first group of 20 middle-level civil servants with legal training returned to Vietnam, a second group of 20 lawyers is currently being trained in the principles and applications of Australian law and legislation at the Faculty of Law and Centre for Asian and Pacific Law in the University of Sydney. This program is funded by the Swedish International Development Authority (SIDA).

Several lecturers from Australian Universities have been giving in-country seminars in the past years.

Overseas students studying in Australia

Commonwealth-funded higher education institutions

Most students in Australia are funded by organisations such as the AusAID (Australian Agency for International Development). However, some students are now privately funded, either from Vietnam, or by relatives living in Australia. As of late March 1995, there were 464 Vietnamese, AusAID sponsored, students in Australia. Each year, AusAID sponsors around 200–250 new students.

Overall

Australia has a strong commitment to the development of human resources in Vietnam as reflected in the increasing numbers of students funded by AusAID.

Qualifications recognised

Information not currently available

Australian Education Centre representation

There is no Australian Education Centre currently in Vietnam. The Department of Employment, Education and Training has a

Legal Services Country Profile: Vietnam

Counsellor (Education and Training), Ms. Marea Fatseas, at the Australian Embassy in Hanoi.

IDP (International Development Program of Australian Universities and Colleges Limited) has been represented in Vietnam since late 1993. As IDP is awaiting approval to operate, it currently only offers counselling and limited assistance to students.⁴⁸

Value of educational services

Information not currently available

6 International legal assistance

Australia

Australian aid program and legal assistance

The Australian Agency for International Development (AusAID), previously known as AIDAB, administers Australia's development assistance program to Vietnam. In October 1991 Australia resumed bilateral aid to Vietnam with a pledge to commit A\$100 million over four years. During his visit to Vietnam in April 1994 the Australian Prime Minister announced a doubling of the program with a new four year commitment of A\$200 million for the period 1994/95 to 1997/98.

The sectors targeted for assistance are education and training, health, infrastructure, and natural resource development. Australian assistance to Vietnam is provided wholly in grant form, through a variety of mechanisms the content of which remains the subject of ongoing discussions between AusAID and the Vietnam State Planning Committee (SPC). The sectors ultimately selected for grants will reflect the stated priorities of the Vietnamese Government and are areas where Australia holds a comparative advantage. To date the following projects have been actioned with relevance to legal development:

- funding for assistance in the drafting of mining legislation through the UNDP at a cost of A\$420,000. The project aims to foster investment in mineral exploration in Vietnam through a new mining law and regulations, a model mining agreement and an administrative framework for the effective operation of the new legislation;
- the Vietnam National Construction Law Project commenced in November 1993 with the aim of assisting the Ministry of Construction with the drafting of legislation to encourage safe and cost-effective development and construction in Vietnam. The project will also develop effective facilities and procedures for the ongoing review, upgrading and modification of the National Construction Law. The cost of the project is estimated at A\$2.02 million;
- Ministry of Justice Project. This project proposal arose from an initiative of the Asian Law Centre of the University of Melbourne at the request of the Ministry of Justice and was formally requested under the bilateral aid program in September 1993. An AusAID prefeasibility study was undertaken in June 1994 to design a program of assistance to the Ministry of Justice in the area of legal and judicial reform. The project design is being reviewed by

Australia and Vietnam before activities start, probably towards the end of 1995.

A joint AusAID and UNDP study to determine the feasibility of introducing a nationwide land management system in Vietnam was completed at the end of 1994.

Total Australian aid to Vietnam is expected to be A\$72.2 million in 1994/95. The bilateral program includes activities aimed at alleviating poverty and those promoting mutual economic benefits to Australia and Vietnam.

Approximately two hundred and fifty new students will commence study in Australia in 1995 (from 1996 onwards there will be an intake of 150 new students a year). A program of short courses has been established in the field of economics and management which will target key people involved in managing Vietnam's transition to a market economy. Large scale education projects in English language and technical and vocational training are underway. A measure of the importance Australia attaches to the economic and social development of Vietnam is indicated by the establishment of Vietnam as one of the major bilateral recipients of Australian aid.

Australian universities

A number of Australian university law schools provide training services to Vietnamese organisations and individuals involved in legal education. Examples include:

- A team from the Asia Law Centre, the University of Melbourne, has lectured on the contract and commercial laws of the leading common law countries;
- The Centre for Asian & Pacific Law, The University of Sydney, undertook in 1993 a training program (one month's English language and two month's legal training) for Vietnamese lawyers, legal educators and court administrators funded by the Swedish International Development Agency (SIDA) on behalf of the Government of Vietnam. The intensive course is being held again in early 1995.

A Memorandum of Understanding was signed in Hanoi on 14 June 1994 by the Hon Simon Crean MP, Minister for Employment, Education and Training on behalf of the Australian Government and by Tran Hong Quan, Minister for Education and Training, on behalf of the Government of the Socialist Republic of Vietnam. This Memorandum which provides a framework for programs of cooperation in education and training has effect for two years. The Department of Employment, Education and Training has a Counsellor (Education and Training) Ms. Marea Fatseas, at the Australian Embassy in Hanoi.

Australian International Legal Cooperation (AILEC) program

The Australian International Legal Cooperation (AILEC) program is a three year program directed at fostering closer relations in law between Australia and Vietnam, Laos and Cambodia. It was established by the Australian Government in mid 1993 for a three year term. The Australian International Legal Cooperation (AILEC) Committee advises the Attorney-General of Australia on legal cooperation activities and other matters relevant to the AILEC program. The Committee is chaired by Ms Elizabeth Nosworthy, a senior private practitioner in Brisbane, and comprises 14 members drawn from private practice, university law schools, the business community, government departments and the Law Council of Australia. The Committee and AILEC program is serviced by a small Secretariat in the Australian Attorney-General's Department, Canberra.

Total approved funding of the AILEC program is A\$670,000. The AILEC program will be reviewed in mid 1996.

The Chair of the AILEC Committee, Ms Elizabeth Nosworthy, and the Director of the AILEC Secretariat visited Vietnam in May 1994 in connection with the development of a program of legal cooperation activities.

AILEC Committee members who have visited Vietnam in the last year include Mr John Gillespie, Mr David Laidlaw and Professor Alice Tay and all have prepared reports or undertaken legal cooperation activities on behalf of AILEC and or/AIDAB. Mr Bill Magennis, a member of the Committee, is resident in Hanoi.

An AILEC Program Coordinator, Ms Angela Corcoran, who is locally based, assists with the implementation of AILEC legal cooperation activities.

AILEC legal cooperation activities to Vietnam, to date, comprise support for two seminars in bankruptcy law which were arranged by Ministry of Justice, a visit by a Vice Minister of the Ministry of Justice to Australia in December 1994 and provision of legal materials and text books. A high profile symposium in Hanoi on Market Legal System Law is proposed for late 1995 or early 1996. A Legal Sector Background Paper on Vietnam was prepared and published in March 1994. In addition, the AILEC Secretariat has participated in arrangements for visits of government lawyers to Australia.

Other countries and multilateral

The United Nations Development Programme (UNDP) signed a project agreement with the Ministry of Justice on 25 April 1994: Strengthening the Legal Capacity in Vietnam (VIE/94/003). The project has an indicative budget of US\$1.2

million with a Vietnamese Government contribution in kind of VND 544,368,000 and an expected duration of two years.⁴⁹

The Swedish International Development Agency (SIDA) has provided assistance for the training of Vietnamese lawyers in western legal concepts (in Australia in 1993 and 1995) and assistance to the Ministry of Justice in bankruptcy, dispute resolution, companies law and commercial law.⁵⁰

Canada is understood to be considering implementation of a program of legal sector assistance to Vietnam. Canada has provided assistance (together with UNDP) to Vietnam with respect to petroleum legislation.⁵¹

France has provided assistance to the Ministry of Justice and the Ministry of Trade and Tourism for the Civil Code and the Commercial Law.⁵²

The International Development Law Institute (IDLI), a Rome-based non-government organisation with the objective of encouraging and facilitating the use of legal resources in the development process, has conducted a number of training workshops in the region. Workshops held in Vietnam, usually of one week's duration, include Contracts and Fiscal Legislation for Joint Venture Enterprises (in French) (Hanoi, 1990); Negotiating and Arbitrating International Contracts (Ho Chi Minh City, 1991); and Negotiation and Legal Management of International Investment Contracts (Hanoi, 1993). A workshop on legal drafting was scheduled to be held in Hanoi in June 1994.

The Asia Foundation, a private American grant-making organisation based in San Francisco, supports a number of programs and activities directed at the development of legal infrastructure and legal skills in the countries of the Mekong Basin. The Mekong Region Law Center was established as a result of an international conference in August 1992, and is a joint venture between Thailand, Cambodia, Laos and Vietnam. The Center operates as an "information clearing house", providing research facilities and sharing of legal experience. Although it is, in theory, a cooperative project amongst the four countries, the experience of Thailand as the most developed member of the group adds an element of legal assistance to the operation of the centre.⁵³ The Center's inaugural meeting was held in Phnom Penh from June 17–20, 1994, at which the globalisation of law, environmental law and foreign investment law were discussed, as well as the logistics of the Center's establishment. Support for the Center was pledged from a number of countries and institutions and Mr Christopher Roper (Centre for Legal Education, Sydney) on behalf of the Australian institutions present, expressed their readiness to encourage support from within Australia.⁵⁴

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