

Agricultural law in Vietnam: overview

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A Q&A guide to agriculture law in Vietnam.

The Q&A gives a high level overview of agricultural law, including acquiring agricultural companies and co-operatives, competition law, land ownership and usage rights, pricing and tender processes, tax and financing, crop seed business, importing crop seeds, commercial crop production and distribution, plant variety right protection, GM crops, GM foods, importing animals, gene patents, and product liability.

To compare answers across multiple jurisdictions, visit the Agriculture [*Country Q&A tool*](#).

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Agricultural policy

1. Briefly outline recent agricultural policy and main developments in your jurisdiction.

Vietnam is a member of the:

- World Trade Organization (WTO).
- Food and Agriculture Organization of the United Nations (FAO).
- International Plant Protection Convention (IPPC).

Vietnam is not a member of the Office International des Epizooties (IOE)/World Animal Health Organization.

The government has issued several policies to encourage and support investment in and development of agriculture, at small-scale and industrial level, including:

- Decree No. 57/2018/ND-CP of the government on incentive policies for enterprises investing in agriculture and rural areas.
- Decision No. 899/QD-TTg of the Prime Minister approving the agricultural restructuring project to raise added value and sustainable development. This especially incentivises the use of biotechnology and high technology in agricultural production, forestry and fisheries.
- Decision No. 1819/QD-TTg of the Prime Minister approving the agricultural restructuring plan 2017-2020, which aims to:

- ensure the sustainable development of agriculture and rural areas;
- increase added value, efficiency and competitiveness;
- improve the lives of farmers;
- reduce poverty; and
- protect the environment and national security.

2. Is there a system for subsidies or other support for agriculture in your jurisdiction? Briefly outline its main provisions.

Subsidies and other support for agricultural products are strongly affected by Vietnam's WTO commitments. When joining the WTO, Vietnam committed to fully comply with the provisions on subsidies in the Agreement on Agriculture (without exception) (www.wto.org/english/tratop_e/agric_e/agric_e.htm). Due to limited financial resources, most agricultural subsidies in Vietnam are in the "green box" group, focusing on (among others):

- Investing in the construction of agricultural infrastructure (irrigation, transport, seed production systems and so on).
- Prevention of epidemics and natural disasters.
- Scientific research.
- Agricultural extension.
- Programmes for the improvement of plant varieties and animal breeds.

3. Do environmental issues form part of government support for agriculture in your jurisdiction? If yes, please give brief details.

Environmental issues are a top concern of the government, including in terms of its support for agriculture. The main objectives of Decision No. 1819/QĐ-TTg of the Prime Minister to sustainably develop agriculture and rural areas in Vietnam include:

- Effectively responding to climate change.
- Protecting the ecological environment.
- Reducing emissions in agricultural production.
- Increasing forest coverage to 42%.

The government has issued several policies to achieve these objectives, such as Decree No. 83/2018/ND-CP on agricultural extension, which aims to:

- Prioritise the development of agricultural production models aimed at responding to climate change.
- Prevent and reduce damage caused by natural disasters and pests.

- Protect the environment.

These objectives are then given priority and applied nationwide. For example, the state budget provides up to 100% of the costs for providing training, dissemination of information, organisation of conferences and seminars, and model-learning tours for such agricultural production models to be more widely applied.

4. Briefly outline how disadvantaged areas such as uplands are treated within agriculture.

The state is developing different projects to support hamlets, villages and mountain villages of communities with special difficulties in border areas, mountainous areas, lagoons of coastal zones and islands, to develop new rural areas and sustainable poverty reduction. Subject to specific projects, the state does the following:

- Supports participants in projects in part or in full for all varieties of cultivars, livestock, machine tools, equipment, production materials, plant protection products, veterinary drugs and technical training.
- Supports a model of concentrated and integrated production development using raw materials corresponding to typical conditions in a local area, and duplicates this model by developing specific products advantageous to the local area under the program "one commune, one product".

5. Is agriculture governed at national and local level? Briefly outline any regional framework and variations if applicable.

Agriculture is governed at the national level. This is because Vietnam has a single, unified legal system applicable to the whole country.

Agricultural business vehicles

6. What business vehicles are typically used in the agriculture sector? Are specific forms such as co-operatives used and are they open to foreign investment?

Foreign direct investment

Foreign investors typically carry out direct investment in Vietnam in the agriculture sector mainly through the following, under the Law on Investment and Law on Enterprises:

- Wholly foreign-owned companies or joint ventures with local investors.

- Purchasing shares in Vietnamese enterprises or carrying out the merger and acquisition of enterprises, and so on.

(Article 22, Law on Investment.)

Co-operatives

The Law on Co-operatives provides for co-operatives and unions of co-operatives. A co-operative is defined as a collective economic organisation with co-owners and legal status, established voluntarily by at least seven members who co-operate with and assist one another in production, business or job creation activities to meet their common needs, on the basis of autonomy, self-responsibility, equality and democracy in management of the co-operative (*Article 3.1, Law on Co-operatives*).

There are several forms of government support and preferential policies extended to co-operatives and unions of co-operatives operating in agriculture, forestry, fisheries or salt production, including:

- Investment in infrastructure development.
- Land allocation and land lease.
- Preferential credit.
- Capital and breeding stock to recover from natural disasters and epidemics.
- Product processing.

(Article 6.3, Law on Co-operatives.)

Co-operatives and unions of co-operatives can enter into joint ventures, associate, and co-operate with domestic and foreign organisations and individuals to achieve their operation objectives, and to contribute capital to, purchase shares from, and establish businesses to support their activities. Foreign individuals of more than 18 years of age residing in Vietnam can become members of co-operatives (*Article 4, Decree 193/2013/ND-CP*).

7. Is the acquisition of domestic agricultural business vehicles by foreign investors subject to special prior government approval(s)? If yes, set out the approval procedures and authorities involved.

There are no regulations classifying companies as agricultural companies. However, companies can be classed as agricultural based on the lines of business

(codes of business lines) set out in their Enterprise Registration Certificates or Investment Registration Certificates.

The acquisition of agricultural companies by any party, whether foreign or local, or an individual or legal entity, does not require any special prior approvals from the governmental authorities.

8. Is there a specific competition (anti-trust) law regime for the agriculture sector? Briefly set out the aspects of the competition regime that are most relevant to agriculture (for example, restrictive agreements and practices and merger control).

There is no specific competition (anti-trust) law regime for the agriculture sector. The Competition Law 2018 and its implementing regulations apply to competition matters relating to agriculture.

Vietnamese competition law divides restrictive agreements and practices into two main categories:

- Those that are completely prohibited.
- Those that may be exempted from prohibition if procedures required by law are carried out.

(Articles 11, 12 and 14, Competition Law.)

An economic concentration (such as a merger, consolidation, acquisition or joint venture) must be notified to the Competition Authority if it meets certain thresholds.

If so, the Competition Authority will carry out a preliminary examination and (if applicable) an official examination. Permission for the concentration is given based on the total assets or revenue of each participating party, as well as the transaction value and the combined market share of the participating parties *(Articles 33.2, 36 and 37, Competition Law)*.

Acquiring and holding agricultural land

Ownership

9. Are there restrictions on the acquisition of agricultural land? Consider any restrictions on local and foreign investors, and on legal entities and natural persons.

In Vietnam, land (including agricultural land) is owned by the state. Individuals and organisations can only acquire and hold rights to use land, including agricultural land (*see [Question 10](#)*).

Foreign companies can acquire land use rights as capital contribution from local land users (*Article 174.2(dd), Land Law*). Although no legal provision clearly prohibits a direct sale of a land use right by a local land user to a foreign company, foreign companies can only acquire a land use right directly from the state. Therefore, as a matter of practice, the acquisition of land use rights usually occurs in the form of capital contribution from local land users.

The state can permit foreign enterprises that wish to use land for agriculture, forestry, aquaculture or salt farming to rent land for the purpose of carrying out investment projects (*Article 133.1, Land Law*).

If the state allocates or leases land to individuals and organisations, the allocation or lease will rely on:

- Annual district-level land use plans approved by competent state agencies.
- Land use demands as indicated in investment project documents or in applications for land allocation and land lease.

Economic organisations, households and individuals can lease or receive a transfer or contribution as capital of agricultural land use rights to carry out investment projects in non-agricultural production and business, if they meet all the following conditions:

- Prior written approval from the competent authority.
- The use purpose for the land area is consistent with the approved master plans and land use plans.
- For land used exclusively for wet rice cultivation, the land recipient must pay an amount to the authority to compensate for the lost agricultural land plot or increase the effectiveness of the paddy land.

(Articles 193 and 134, Land Law.)

An exchange, transfer, lease, sublease, inheritance, donation or mortgage of land use rights or contribution of land use rights as capital must be registered with the Land Use Right Registration Office under the Department of Natural Resources and Environment (DONRE) where the land is located, and will take effect from the time of registration in the cadastral book (*Article 188, Land Law*).

Land tenure and usage rights

10. Briefly outline the main ways that agricultural land is held. What usage rights are typically granted over agricultural land (for example, leases)? Are there restrictions (such as a maximum length of lease terms)? Consider any restrictions on local and foreign investors, and on legal entities and natural persons.

Main land use rights and legislation

In Vietnam, land (including agricultural land) is owned by the state. Individuals and organisations can only acquire and hold rights to use land, including agricultural land.

Vietnam adopted a new Land Law in 2013, which took effect on 1 July 2014. The government and the relevant ministries and agencies have issued a number of decrees and circulars to implement the Land Law. In addition, the main legislation governing the acquisition of land use rights includes the following:

- Decree No. 43/2014/ND-CP, as amended in 2017, 2018 and 2019.
- Decree No. 44/2014/ND-CP, as amended in 2017 and 2018.
- Decree No. 91/2019/ND-CP.
- Circular No. 07/2019/TT-BTP.

Restrictions on lease terms

The maximum term applicable to the lease (or use) of agricultural land in most cases is 50 years. For large investment projects with a slow recovery of capital, or projects in areas with difficult socio-economic conditions which require a longer term, the term of a land lease must not exceed 70 years (*Article 126, Land Law*).

Transferring land use rights

In theory, any individual or organisation who has a right to use land can:

- Exchange, assign, lease, sublease, bequeath and donate land use rights.
- Mortgage, guarantee and contribute capital using land use rights.

However, due to the lack of clarity in the legislation on the enforcement of land users' rights and the weakness of the enforcement mechanism, these rights cannot be enforced in practice.

Foreign enterprises. A foreign enterprise that holds a land use right based on annual rent payments cannot transfer the land use right to other entities and individuals. However, the following foreign enterprises can transfer land use rights to other entities and individuals:

- Enterprises renting land from the state based on lump-sum payments for an entire lease term.
- Enterprises that have been allocated land based on a land use levy to implement projects.

Transfers of land use rights between individuals and organisations. If rights to use agricultural land are transferred between individuals and organisations themselves, the general conditions are that the:

- Transferor must have a certificate of land use rights for the relevant land use right issued by the Land Use Right Registration Office under the DONRE where the land is located.
- Land must be dispute-free.
- Land use rights must not be attached to ensure the enforcement of a judgment.
- Land use term must be valid.

Households and individuals using agricultural land can only exchange their agricultural land use rights with other households and individuals in the same commune, ward or township, to facilitate agricultural production (*Article 190, Land Law*).

Specific restrictions on transfers of land use rights. There are also restrictions on the transfer of a right to use agricultural land in certain cases, such as:

- Economic organisations cannot acquire the rights to use paddy land from households or individuals, except for a change in land use purpose in accordance with the approved master plans and land use plans.
- Households and individuals not directly engaged in agricultural production cannot receive a transfer or donation of paddy land use rights.

- Households and individuals cannot receive a transfer or donation of agricultural land use rights relating to land in protective forests, strictly protected zones and ecological rehabilitation zones in special-use forests, if they do not live in those protective forests or special-use forests.

(Article 191, Land Law.)

Special acquisition procedures

11. Are there any compulsory tendering or prior approval procedures required for a sale of agricultural land? Briefly set out these procedures and any approvals required. Are there mandatory minimum land prices if the government sells agricultural land?

In Vietnam, land (including agricultural land) is owned by the state and cannot be sold and purchased. Only a right to use agricultural land can be transferred from the state to individuals and organisations or between local individuals and organisations. Foreign organisations can only be leased land use rights from the state or from local individuals and organisations. The Land Law does not contain any requirements on compulsory tendering or prior approval procedures for a transfer of rights to use agricultural land. However, the law imposes some conditions on a transfer (*see Question 10*).

There are no specific minimum prices for agricultural land use rights. Prices are determined on a case-by-case basis, according to certain principles, such as the following:

- The lawful land use at the time of valuation.
- The term of the land use.
- The:
 - popular market price of transferred land types with the same land use;
 - winning auction price, if applicable; or
 - income from the use of the land.
- At a given time, adjacent land parcels with the same land use, profitability and income from the use of the land must have the same price.

(Article 112, Land Law.)

Decree 44/2014/ND-CP sets out methods for land valuation, including in relation to:

- Direct comparison.

- Elimination.
- Income.
- Surplus.
- Land price adjustment co-efficient.

12. In which circumstances can the government authorities expropriate agricultural land?

Under the Land Law, the government authorities can withdraw and expropriate agricultural land for the following reasons:

- National defence or security, or socio-economic development for the national or public interest.
- Violations of the Land Law.
- Termination of a land use right in accordance with the law, a voluntary return of land, or a risk threatening human life.

The government authorities can also expropriate agricultural land in cases of extreme necessity to perform national defence and security missions, in war or emergency circumstances, or to prevent and combat natural disasters.

Water controls

13. Is the abstraction of water controlled by licence or quantities? Briefly set out the main provisions, legislation and regulatory authorities.

The abstraction of water can be carried out through a licence (*Article 15.1, Decree 201/2013/ND-CP*).

The term of a licence for the exploitation/use of:

- Surface water or seawater is from five to 15 years, renewable for periods from three to ten years.
- Groundwater is from three to ten years, renewable for periods from two to five years.

(*Article 21.1, Decree No. 201/2013/ND-CP*.)

A licence for the exploitation and use of water is not required in the following cases:

- Household purposes.
- Manufacturing activities, trading activities or providing services on a small scale, as set out in the Law on Water Resources, including for surface water

exploitation with the capacity of 0.1 cubic metre per second or less for agricultural production and aquacultural farming purposes.

- Seawater for salt production.
- Cultural, religious or scientific research activities.
- Firefighting, emergency response to environmental incidents, epidemics and other emergency circumstances, in accordance with the laws on states of emergency.

(Article 44.1, 2012 Law on Water Resources.)

Depending on the importance and/or scale of the exploitation and use of water, licences are granted by the Department of Water Resources Management under the Ministry of Natural Resources and Environment or the provincial Departments of Natural Resources and Environment (*Articles 28 and 29, Decree 201/2013/ND-CP*). The timeline for receiving a water licence, if the application is approved, is one to two months.

Licences for abstraction of water are governed by the following main laws:

- Law on Water Resources 2012, as amended in 2017 and 2018.
- Decree No. 201/2013/ND-CP dated 27 November 2013 of the Government implementing the Law on Water Resources, as amended in 2017 and 2018.
- Circular No. 27/2014/TT-BTNMT dated 30 May 2014 of the Ministry of Natural Resources and Environment on registration for exploitation of groundwater, and standard forms for the granting, renewal, amendment and re-granting of water resources licences, as amended in 2018.

A fine of up to VND250 million and remedial measures is imposed on a case-by-case basis for extracting and using water resources without a licence (if a licence is required).

Tax

14. Which taxes apply to the sale and transfer of land ownership or usage rights?

Land in Vietnam (including agricultural land) is owned by the state and ownership cannot be sold or transferred. A transfer of land use rights is only subject to taxes on income (personal income tax or corporate income tax) and is not subject to transfer tax (VAT).

Taking security

15. How is security over agricultural land typically created and perfected to raise finance?

Land in Vietnam (including agricultural land) is owned by the state and security cannot be taken over ownership rights.

Security over agricultural land use rights is typically granted by a mortgage. A mortgage of land use rights must be created in writing, notarised or certified and registered, and will take effect from the time of registration in the cadastral book. Mortgages of land use rights are registered by the Land Registration Office and its branches under the provincial Department of Natural Resources and Environment where the land plot is located. In provinces where Land Registration Offices have not been established, registration is carried out by the Land Use Registration Offices at the provincial or district level (*Article 9.3, Decree 102/2017/ND-CP; Article 23.3, Circular 07/2019/TT-BTP*).

Generally, an application to register a mortgage of rights to use agricultural land must include the following documents:

- Request for mortgage registration.
- Lawfully notarised or certified contract for the following, where applicable:
 - a mortgage of land use rights;
 - a mortgage of land use rights together with assets attached to the land;
 - or
 - a mortgage of land use rights together with assets attached to the land to be specified in the future.
- Certificate of land use rights and ownership of assets attached to the land.
- Certified copy of the authorisation document, where the mortgage registration applicant is an authorised person, except if the applicant produces the original authorisation document, in which case only a copy is required.

Crop seed business

16. State the approvals/licences that are required to import new plant species or varieties and crop growing technologies. Briefly outline the approval process, legislation and regulatory authorities.

Legislation

The main domestic laws and regulations governing the crop seed industry are:

- Law on Crop Production 2018.
- Law on Plant Protection and Quarantine 2013.
- Law on Foreign Trade Management.
- Decree No. 07-CP of 1996.
- Decree No. 88/2010/ND-CP.
- Decree No. 69/2018/ND-CP.
- Decree No. 94/2019/ND-CP.
- Circular No. 17/2019/TT-BNNPTNT.

Regulatory authorities

National level. The Ministry of Agriculture and Rural Development (MARD) enforces state management of plant seeds nationwide, including (*Article 20, Decree 7/1996*):

- Collecting and conserving gene funds.
- Researching, selecting and crossbreeding seeds.
- Experimenting, putting on trial production and recognising new seeds.
- Producing, trading, importing, exporting, assessing, examining, quarantining and controlling the quality of plant seeds.

Provincial level. Provincial Departments of Agriculture and Rural Development enforce the management of plant seeds through the MARD's state management system.

Import control

The procedure for importing plant varieties (that is, seeds, tubers, fruits, roots, trunks, branches, leaves, saplings, grafts, buds, flowers, tissues, cells, spores, spawns, weeds, algae and microalgae) changed when the Law on Crop Production came into effect in early 2020, replacing the Ordinance on Plant Varieties. This has placed an extra burden to some extent on importers.

Recognition of circulation or self-declaration of circulation. All plant varieties belonging to main crop species (as specified in Circular No. 17/2019/TT-BNNPTNT), must obtain a decision on recognition of circulation before being produced or traded in, exported from, or imported into Vietnam (*section 2, Law on Crop Production*). Requirements for this include the following:

- The plant variety's name must be available.
- Trial results must show the distinctness, uniformity and stability of the plant variety.
- Trial results must show that the plant variety complies with national standards on its value for cultivation and use.
- Samples of the plant variety must be kept by a qualified testing organisation.
- A declaration of information about the plant variety and its cultivation processes by an organisation or individual must be included in the application for recognition.

For other plant varieties, permission for a self-declaration of circulation must be submitted to the Department of Crop Production for publishing on its website, and set out the following requirements:

- The plant variety's name must be available.
- The plant variety must have value for cultivation or use that complies with the relevant national standards for plant species obtaining permission for a self-declaration of circulation. In the absence of national standards, standards created and applied by the entities themselves apply.
- A declaration of information about the plant variety and its propagation processes by a self-declaring organisation or individual.

These requirements do not apply if the plant variety is for research, a trial, advertising, an exhibition, international exchange, or production of hybrid seeds for export. In these cases, the importer must obtain a permit from the MARD) to import the variety into Vietnam (*Article 28, Law on Crop Production, Section III of Appendix III of Decree No. 69/2018/ND-CP*).

For plant varieties satisfying the above circulation requirements, but which are not listed as permitted for trading and production by the MARD, or are subject to plant quarantine and pest risk analysis (PRA), the importer must also obtain an import permit from the MARD (*see below, Plant quarantine*).

Plant quarantine. Plant varieties subject to quarantine as announced by the MARD must be quarantined at the first border-checkpoint. Varieties that have not yet been listed as permitted for trading and production by the MARD are also subject to plant quarantine after importation. In general, an imported consignment subject to plant quarantine must meet the following requirements (*Article 26, Law on Plant Protection and Quarantine*):

- A phytosanitary certificate issued by the competent authority of the exporting country.
- Be free from regulated pests.
- For plant varieties subject to a PRA (*see below, IPPC compliance*), a phytosanitary import permit must be obtained from the Plant Protection Department, a department of the MARD.
- Imported packaging materials must undergo treatments in accordance with Vietnam's technical standards.

IPPC compliance. In 2010, Vietnam commenced full implementation of IPPC regulations (that is, Decision No. 34 and Decision No. 48) and strictly follows WTO procedures. All plant commodities must have information proving that it has undergone a PRA (if required) under current phytosanitary regulations before it is imported into Vietnam.] The Plant Protection Department has confirmed that this information must be formally provided by the National Plant Protection Organisation in the exporting country (and not by the individual importer), accompanied by a formal request for technical market access.

The importing of some plant varieties is subject to specific regulation by the MARD (that is, quarantine, inspection of food safety (*see [Question 28](#)*), inspection of quality or border-gate regulations). Imports of these plant varieties must be quarantined and/or meet food quality and safety requirements. Plant quarantine and food quality and safety control testing and inspection are based on or formulated on one or more of the following grounds (*Article 13, Law on Standards and Technical Regulations*):

- International, regional and foreign standards.
- Scientific and technological research results, and technical advances.
- Practical experience.
- Results of evaluation, assay, testing, checking and inspection.

Export control

Plant varieties that have obtained a recognition of circulation or permission for self-declaration of circulation, and are not on the list of genetic resources of plant varieties prohibited from export, can be exported without an export permit.

For plant varieties and hybrid seeds of plant varieties which have not yet obtained such a decision or permission, and are not on the above list, the exporter must obtain an export permit and can only export them for non-commercial purposes

(for example, research, testing, advertising, exhibition and non-commercial international exchange purposes) (*Article 28, Law on Crop Production, Import control*).

In addition, there is a list of plant varieties banned from export, including a number of rice varieties and some industrial tree varieties. However, for scientific research, exhibition, and international co-operation purposes or gifts, an exporter can obtain permission from the MARD to export them (*Appendix I Decree 94/2019/ND-CP*).

17. Briefly outline any additional approvals/licences that are required for:

- **Setting up R&D centres and test plots for new crops.**
- **Crop seed production.**
- **Commercial crop production.**
- **Distribution of seeds or crops (wholesale, retail and e-commerce).**

R&D centres and test plots for new crops

Research on selection and creation of genetic resources of plant varieties in Vietnam is permitted, and must comply with the Law on Crop Production and legislation on science and technology, technology transfer and biodiversity (*Article 10, Law on Crop Production*) (see [Question 21](#) and [Question 22](#)).

New plant varieties selected or created from main crop species (including rice, corn, coffee, oranges, pomelos and bananas under Circular No. 17/2019/TT-BNNPTNT) must have been assayed by a qualified testing organisation before being granted recognition of circulation (*Article 13, Law on Crop Production*) (see [Question 16](#)).

Assay of new plant varieties. Assay of new plant varieties covers the following areas:

- Distinctiveness, uniformity and stability.
- The value of cultivation and use.

Recognition of circulation and self-declaration of circulation. Under the Law on Crop Production, all plant varieties belonging to main crop species must be granted a recognition of circulation before being produced or traded in, exported from, or imported into Vietnam. There are limited exceptions, including for research purposes (see [Question 16, Import control](#)).

Crop seed production

A licence is in theory required for the production of plant seeds, and production activities must be in accordance with the licences granted and are subject to inspection by the quality control agency of the MARD (*Article 14, Decree 7/1996 on Management of Plant Seeds*). However, the MARD has not issued any guidelines detailing the requirements and procedures for obtaining a licence. Therefore, in practice, crop seed production can be carried out without a specific licence. However, only plant varieties satisfying the regulations on recognition or self-declaration of circulation can be produced (*see [Question 16, Import control](#)*).

Production of plant varieties must be carried out using propagation methods in compliance with the relevant national standards of plant variety production. In the absence of national standards, the enterprise's own standards apply (*Article 23, Law on Crop Production*). Seed producers are responsible for the quality of seeds under the Law of Crop Production regulations and other legislation on the quality of products and commodities (*Article 25, Law on Crop Production*). All acts of producing fake seeds, seeds of poor quality, mixed seeds, seeds with pest or disease germs, or seeds which have not been certified, are strictly forbidden (*Article 13, Decree 7/1996*).

Commercial crop production

To produce major plant varieties (that is, commonly planted in large quantities with a high economic value, which must be strictly managed) for commercial purposes, producers must have the following:

- Plant varieties with a recognition of circulation or a self-declaration of circulation, (or authorisation from the owner of such varieties).
- A location equipped with facilities, staff, and so on complying with national or local standards of production of plant varieties.

Distribution of seeds or crops

Organisations and individuals trading plant varieties must set up a legitimate business location and ensure that the origin of each plant variety batch of seeds or crops can be traced. Before operating business activities, a trader must send a notice by email or post to the provincial Department of Agriculture and Rural Development, with the following information:

- Address of the business location.

- Information about the legal representative/owner of the business (for example, name and phone number).

Traders in plant varieties must keep records of all their plant varieties, including contracts, invoices, documents relating to plant quality, labels, applicable standards, and plant quantities). All acts of trading fake seeds, seeds of poor quality, mixed seeds, seeds with pests or disease germs or seeds which have not been certified are strictly forbidden (*Article 13, Decree 7/1996*).

Plant variety rights

18. What are the legal conditions to obtain a plant variety right (PVR) and which legislation applies?

Requirements for protection

Vietnam applies almost the same requirements for protection of a plant variety as those in the International Union for the Protection of New Varieties of Plants (UPOV) (www.upov.int/portal/index.html.en). To be eligible for plant variety right (PVR) protection, the variety must be:

- Selected and bred or discovered and developed.
- On the list of protected plant species promulgated by the Ministry of Agriculture and Rural Development.
- Novel, distinct, uniform, and stable.
- Designated by proper denominations.

(*Article 158, IP Law.*)

In particular:

- A plant variety is deemed novel if reproductive materials or harvested materials of that variety have not yet been sold or otherwise distributed for the purpose of exploitation within Vietnam within one year before the filing date of the PVR application, or for exploitation outside Vietnam, six years before the filing date of the application for timber trees or vines, and four years for other plant varieties.
- Distinct means it is clearly distinguishable from any other variety that is commonly known at the time of filing the application or on the priority date, as the case may be.
- Uniform means it is sufficiently uniform in its relevant characteristics, subject to variation that may be expected from the particular features of its propagation.

- Stable means its relevant originally described characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.

Vietnam ratified the UPOV, 1991 version, on 24 December 2006. Since then, the number of applications for protection has increased sharply because applicants have trusted the Vietnamese plant variety protection system and over 300 PVR protection certificates have been granted.

19. How is a PVR obtained in your jurisdiction?

Typically, the registration of a PVR follows the following process:

- The applicant or the applicant's registered agent files a PVR application with the New Plant Variety Protection Office (PVPO) under the MARD. If the applicant is claiming a priority right, the applicant must enclose documents attesting to the priority right.
- The PVPO decides whether the application meets the formal requirements. If not, the PVPO normally requires the applicant to provide further information. If the application is sufficient, the PVPO will accept the application and request the applicant to provide samples of the plant variety to do technical tests. If the applicant submits the results of an assay of distinctiveness, uniformity and stability (DUS) carried out in another UPOV country, the PVPO will move to a substantive examination without conducting a DUS assay, within 90 days from the date of receiving the assay results.
- The PVPO publishes the application in a specialised magazine and proceeds with a substantive examination. During the examination, the PVPO examines the novelty and proper denomination of the plant variety and the results of the technical tests. If the plant variety meets the criteria for protection (*see [Question 18, Requirements for protection](#)*), the PVPO will issue a PVR certificate and record it in the National Register of Plant Varieties.

20. How long does PVR protection last? Are there restrictions on the rights of the PVR holder or exemptions, such as farmer's privilege?

A PVR certificate will take effect from the date of the grant of rights, for a period of 25 years for trees and grapes and 20 years for other species.

Restrictions on the rights of the holder

Using a protected variety for the following does not infringe a PVR:

- Personal and non-commercial purposes.
- Experimental purposes.
- Creating a distinctive plant variety.
- Farmer's privilege (*see below, [Farmer's privilege](#)*).

A PVR does not extend to acts relating to materials of the protected plant variety which are authorised to be sold (or otherwise brought onto the Vietnamese or overseas market) by the PVR holder or its licensee, except for acts relating to:

- Further propagation of the plant variety.
- Export of propagative materials of the plant variety to countries where the genus or species of the plant variety is not protected, except where those materials are exported for consumption purposes.

(*Article 190.2, IP Law.*)

Farmer's privilege

A farmer can use harvested materials of a protected plant variety to self-propagate and cultivate in the next season on land belonging to the farmer (*Article 190.1(d), IP Law*). However, farmers cannot trade or share seeds of the variety with other farmers.

In Vietnam, the cultivation land area of local farmers is quite small. Therefore, in practice, farmer's privilege does not cause much harm to PVR holders.

21. Which legal actions are available to owners of PVR in the event of PVR infringements?

Administrative action

Administrative actions are cost-effective and time-efficient, and are the most common way for most companies in Vietnam to stop an ongoing infringement.

Typically, to initiate the action, the PVR owner must file a complaint with the competent authorities, such as the State Inspectorate in the field of agriculture and rural development. Other bodies (such as the police, the market control force, and so on) can initiate administrative actions under the Law on Handling Administrative Violations 2012.

The relevant authority examines the request and raids the infringer, if appropriate. If an infringement is found, the competent authority imposes sanctions on the

infringer. The most serious fine is VND50 million for individuals, and VND100 million for organisations.

Civil action

The PVR owner can bring a civil action to claim remedies such as the following:

- A compulsory cessation of the infringement.
- A public apology.
- Compensation for the infringement.

The PVR owner can also commence a civil action to claim damages based on evidence collected in a previous administrative action.

However, most IPR holders, including PVR holders, do not normally bring a civil action against an infringer due to the Vietnamese courts' lack of IP expertise. In practice, the Vietnamese courts have dealt with few IP cases. To the best of the authors' knowledge, no case on PVR infringement has been filed with the local courts.

Genetically modified (GM) crops

22. Set out the legislation and regulatory authorities in relation to genetically modified (GM) crops. Has your jurisdiction ratified the Cartagena Protocol on Biosafety 2002? What is your government's policy in relation to GM crops?

Regulations on approving GM crops are generally provided in:

- Decree No. 69/2010/ND-CP as amended by Decree 108/2011/ND-CP and further amended by Decree 123/2018/ND-CP (Decree 69) on biosafety for genetically modified organisms, genetic specimens and products of genetically modified organisms.
- Circular No. 08/2013/TT-BTNMT guiding the order and procedures for granting and withdrawing biosafety certificates for genetically modified crops.

Vietnam ratified the Cartagena Protocol on Biosafety 2002 on 21 January 2004 (<http://bch.cbd.int/about/countryprofile.shtml?country=vn>).

Generally, domestic policy with respect to GM crops is in line with the Cartagena Protocol. Vietnam is committed to implementing biodiversity treaties and expanding co-operation on biodiversity conservation and sustainable development

with other countries, territories and foreign organisations and individuals (*Article 69.1, Law on Biodiversity*). In particular, Article 4.5 of the Law on Biodiversity provides general principles for the conservation and sustainable development of biodiversity, that ensure management of risks to biodiversity from GM organisms and specimens of them.

Organisations and individuals can only carry out research, experiments, production, trade in, use, importation, exportation, storage and transport of GM organisms and their products if they are included in the list established by the Law on Biodiversity, and must fully comply with its conditions and procedures (*Decree 69*).

23. Set out the permit/licensing requirements and prohibitions in relation to GM related activity and the key legislation and regulatory authorities.

Biosafety certificate for GM crops

GM crops must obtain a biosafety certificate from the Ministry of Natural Resources and Environment (MONRE), certifying that the GM organisms are safe for the environment and biodiversity and can be released into the environment under specific conditions.

To be granted a biosafety certificate, GM organisms must satisfy the following conditions:

- They have been tested under Vietnam's specific conditions and the MARD recognises their test results as satisfactory.
- The Biosafety Council concludes that they are safe for the environment and biodiversity.

(*Article 22, Decree 69.*)

GM crops for use as food and feed

Regulations on safety evaluations before GM crop commercial market entry are generally provided in Decree 69 and Circular No. 02/2014/TT-BNNPTTN, as amended by Circular No. 06/2015/TT-BNNPTNT regulating the order and procedures for issuing and revoking the certificate of genetically modified plants eligible for use as food and feed (Circular 02).

- To be used as food and feed, a GM crop must obtain a certificate stating that the crop can be used as food and feed. The Department of Science, Technology and Environment under the MARD grants these certificates.

To qualify for a certificate, GM crops must satisfy at least one of the following conditions:

- Being permitted for use by at least five developed countries as food and feed without any risk in these countries.
- After reviewing the application, the Council of Food and Feed Safety concludes that the GM crops have no uncontrollable risks for human and animal health.
- The application is for a certificate for use as feed, and the GM crops have a certificate for use as food.
- The crops result from traditional hybridisation from two or more single transformation events, and those events have certificates for use as food and feed.

Applications for certificates are submitted to the MARD. Within seven working days after receiving the application, the MARD sends a written notice to the applicant acknowledging receipt of a complete application or requiring further information.

If the application is complete, the MARD will publish information and a summary of a risk assessment report, which is provided by the importer/product owner and reviewed by the MARD, on its website to gather public opinion within 30 days. The MARD then sets up a committee to evaluate the application. The MARD decides whether to issue a certificate within 30 days from receiving the evaluation from the committee.

There is no maximum term for a certificate but it can be revoked on one of the grounds set out in Articles 29.1 and 34.1 of Decree 69.

Testing of GM organisms

Article 14 of Decree 69 imposes requirements for restricted tests and wide-area tests of GM organisms, including for cultivation, growing and purposeful release into the environment:

- Test zones must be a stipulated distance from conservation zones and densely populated areas.
- Restricted tests must be conducted under isolation conditions.

- Wide-area tests must be conducted in different eco-zones requiring appropriate management and supervision measures, but not isolation conditions.

To test GM organisms, a licence for testing must be obtained from the MARD. MARD must issue the licence within 45 and 60 working days. Tests must be performed by a testing institution that has received a certificate from MARD authorising it to carry out GM organism testing in Vietnam.

After receiving the test results, the MARD reviews the required documents and decides whether to grant a certificate of biosafety for the GM plant (timelines are not available).

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GM labelling

Decree 69 (Article 43) and Decree No. 43/2017/ND-CP impose labelling requirements for goods containing GM organisms or products.

Organisations and individuals that circulate on the market goods containing GM organisms or products that exceed 5% of their ingredients must show information related to GM organisms on the goods' labels. For GM food, the phrase "Genetic Modification" must be included next to the name of the GM ingredient. Failure to meet these requirements can be subject to administrative sanctions, including a monetary fine.

Penalties for non-compliance

Prohibited acts include illegally importing or releasing GM organisms and genetic specimens of GM species (*Article 7, Law on Biodiversity*).

Article 8.3 of Decree 69 provides penalties for failing to manage the risks of GM organisms to the environment, biodiversity and health of humans and domestic animals. Organisations and individuals that fail to comply with risk management measures will, depending on the severity of their violations, be administratively punished, examined for liability or ordered to pay compensation. Decree No. 155/2016/ND-CP provides details on the administrative penalties.

Animal and animal welfare issues

Importing animals

24. Briefly outline the import/export control measures for animals and related genetic resources.

To import animals or animal products into Vietnam, the importer must declare the importation in advance with the competent animal quarantine agencies of Vietnam.

The animal quarantine agencies will issue a certificate for the importer to undergo customs procedures and take the animals and/or animal products to isolated quarantine areas or establishments if the following requirements are met:

- The quarantine dossiers are valid.
- The animals are healthy.
- The animal products do not show signs of degeneration or carry no disease pathogens.

The animal quarantine procedure typically takes several days, and the animal quarantine certificate typically lasts 30-60 days.

Animals and animal products imported into/exported from Vietnam, including genetic resources (sperm, embryos, breeding eggs, larva and breeding genomes), must be quarantined if they are on the list of animals and animal products that must be quarantined (*Chapter III on quarantine of animals/animal products, Law on Veterinary Medicine 2015; Article 3.1, Ordinance On Livestock Breeds 2004*).

Organisations and individuals can only import livestock breeds that are on the list of livestock breeds permitted for breeding and trading (*Article 30, Law on Animal Husbandry*) (see [Question 27](#)). The import of sperm and embryos requires the MARD's permission.

Organisations and individuals can import livestock breeds that are not on this list for the purposes of research, assay, inspection or in other special cases but must obtain prior permission from the MARD.

Animal welfare

25. Briefly outline the regulatory regime for animal welfare.

Animal welfare in Vietnam is governed by the Law on Veterinary Medicine 2015 and the Law on Animal Husbandry 2018. Both laws prohibit the ill-treatment of

animals, and the Law on Animal Health 2015 imposes a duty of care to animals on their owners.

Various departments in the MARD have primary responsibility for animal matters. For instance, the Vietnam Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) authority deals with wildlife and bears, the Department of Animal Health deals with rabies and animals in farming, and the Department of Livestock Production deals with livestock policy. The Ministry of Natural Resources and Environment also has a role in protecting animals, especially rare and endangered species.

26. Does the law of your jurisdiction allow for patentability of livestock genes on the grounds of isolating and purifying them? Is there legal protection for animal breeding know-how and a resulting animal nucleus?

Plant varieties and animal breeds are excluded from patent protection in Vietnam (*Article 59.5, IP Law*). However, genes and GM animals/plants, if modified by humans, can be patented (*Article 25.3.b(i); Circular No. 01/2007/TT-BKHCHN, amended by Circular No. 16/2016/TT-BKHCHN*). Therefore, isolated and purified livestock (for example, genes) and isolated gene sequences are patentable. Further information on patents in Vietnam is available at the IP Office website (http://ipvietnam.gov.vn/en_US/web/english/patents).

The state protects traditional knowledge copyright to genetic resources and encourages and supports organisations and individuals to register it (*Article 64, Law on Biodiversity*). The relevant copyright register in Vietnam is the Copyright Office of Vietnam. Article 64 also provides that the Ministry of Science and Technology has prime responsibility for providing guidance on registration, and co-ordinates with concerned ministries and ministerial agencies on this. However, the Ministry has not issued a regulation on this issue yet.

27. Are there legal or practical restrictions on the introduction of new breeds/species, the breeding of certain animal species or certain breeding practices?

There are no general regulations on or list of banned breeds. New livestock breeds are only recognised when their test results are:

- Obtained from establishments for testing new livestock breeds.
- Assessed by a specialised scientific council, set up by the MARD, which then proposes recognition of the new livestock breed.

(Article 26, Law on Animal Husbandry.)

After the MARD's decision, the recognised new livestock breed is added to the list of livestock breeds permitted for breeding and trading, including importing (*see Question 24*).

Detailed regulations on research into, selection, creation, testing and recognition of new livestock breeds are also provided in the Law on Animal Husbandry.

Agricultural safety and product liability

Standards

28. Summarise the system of food safety standard setting, the main regulator(s) and regulations. If industry input on the standards is possible, indicate how this is conducted.

Legislation

Goods quality and food safety is mainly governed by the:

- Law on the Quality of Products and Goods.
- Law on Standards and Technical Regulations.
- Law on Food Safety.
- Law on Protection of Consumers' Rights.

The Law on Quality of Products and Goods states that manufacturers and traders (including retailers) are liable for the quality of goods that they manufacture or trade, including food and food products, to ensure safety for humans, animals, plants, property and the environment.

The Law on Food Safety provides a general legal framework on the:

- Rights and obligations of organisations and individuals in ensuring food safety.
- Conditions for ensuring the safety of:
 - food and food production;
 - trading, import and export;
 - food advertising and labelling;
 - food testing; and
 - prevention, stopping and remedying food safety incidents.

Regulatory authorities

The Ministry of Health (MOH), the Ministry of Industry and Trade (MOIT), and the MARD are the major authorities responsible for food safety management.

Under the Law on Quality of Products and Goods, the Ministry of Science and Technology (MOST) has overall responsibility for the management of the quality of goods.

Food standards

Generally, product quality is controlled on the basis that the establishment in charge of the products (the local producer, importer, distributor or manufacturer's representative office in Vietnam) must declare that it complies with the applicable technical:

- Regulations, which are technical characteristics and management requirements that products, goods, services, processes, the environment and other objects in socio-economic activities must comply with to:
 - ensure safety, hygiene and human health;
 - protect animals, plants and the environment; and
 - safeguard national interests and security, consumer interests and other essential requirements.

They are issued by the competent state agency and are mandatory.

- Standards for classifying and appraising products, goods, services, processes, the environment and other objects in socio-economic activities, to improve the quality and effectiveness of these objects. They are applied voluntarily by organisations and individuals.

All food products, additives, and processing aids sold and consumed in Vietnam must be declared to the relevant authority or self-declared, by the establishment in charge of the products, for compliance with technical regulations, or food safety regulations (however, there is no national technical regulation of these).

The Vietnam National Codex Committee (VNCC) is managed by the MOH. The leaders of the VNCC are from the MOH, MOIT, MARD and MOST. The legislation shows that Vietnam has adopted the standards of the Codex Alimentarius (www.fao.org/fao-who-codexalimentarius/en):

- Food products for which Vietnam does not have food safety regulations must be declared for compliance with regulations of the international food standard committee (*Codex*).

- The VFA may consider, on a case-by-case basis, allowing the use of food additives or food processing enhancers which are not in the list permitted for use in Vietnam managed by the VFA, but are in the list prescribed by the Codex or are permitted for use in production in reliable foreign countries.

Liability

29. Set out the legal requirements to establish the liability of producers and suppliers for defective or contaminated food ingredients that cause damage, in relation to tort and product liability.

Tort

There is generally no tort law in Vietnam but there are some general provisions on tort liability in the Civil Code 2015, requiring persons who infringe on the life, health, property rights or other legitimate interests of another party to pay compensatory damages (*Article 584, Civil Code*).

Product liability

The Law on Food Safety provides general provisions on the liability of producers and suppliers for defective or contaminated food. The producer must pay compensation for damage caused by unsafe food it has produced, and the food supplier must pay compensation for damage caused by unsafe food it has supplied. However, this law does not provide specific provisions on how producers or suppliers pay compensation if they are jointly or severally liable.

The Law on Protection of Consumers' Rights imposes further liability for defective goods, including food, food ingredients and food products. Defective goods are defined as goods which:

- Fail to ensure safety for consumers.
- Endanger consumers' lives or health.
- May cause loss and damage to consumers' assets.

The liable parties are liable for the quality and safety of products and for all actual damage directly caused by defective goods, regardless of intent, even if unaware of, or not at fault in, causing the defect. The liable parties include the:

- Manufacturer.
- Importer.
- Holder of trade marks affixed to the goods.
- The retailer, if the above parties cannot be identified.

30. Which defences are available to the producer and/or supplier to avoid liability? For instance, is market-entry prior government approval a legal defence against product liability and under which conditions?

Tort

Liability may be reduced to the extent that the victim is partially at fault in causing the damages (*Article 585.4, Civil Code*).

Product liability

Producers and/or suppliers can disclaim liability if they prove that the defect in the goods was undiscoverable by scientific or technical standards at the time the supplier supplied the goods to the consumer (*Article 24, Law on Protection of Consumers' Rights*).

For products that are not defective, the burden is on the defendant to prove it was not at fault for causing the loss and damage.

31. Which types of damage are generally compensated by civil courts in food safety liability cases? For instance loss of value, reparation costs, loss of revenue, and personal injury. Are punitive damages available?

Compensation claims for property damage, personal injury or loss of life or damage to other legitimate interests are generally handled by civil courts in food safety liability cases (*Article 26, Civil Procedure Code 2015; Article 584, Civil Code; Article 41, Law on Protection of Consumers' Rights*).

Damages for personal injury or loss of life can include:

- Reasonable medical, rehabilitation and caregiver expenses.
- Lost income incurred by the victim and his or her caregiver.
- Compensation for mental suffering, funeral expenses in the case of death and support allowances for the victim's legal dependants.

Compensation for property damage can include:

- Actual losses to property, and the interests associated with the use or exploitation of the property.
- Reasonable expenses for preventing, mitigating or remedying the damage caused.

Punitive damages are not available under Vietnamese law.

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