

More administrative regulation for foreign legal practicing organisations

By **Bui Minh Hoang**



On November 20th, 2012 the National Assembly passed Law No. 20/2012/QH13 amending and supplementing a number of articles of the Law on Lawyers No. 65/2006/QH11 (the Law). The Law takes effect on July 1st, 2013. By enacting the Law, the Government has increased the administrative burden for foreign law firms and other legal practicing organisations.

In addition to the conditions set forth in the Law on Lawyers, any foreign legal practicing organisation in Vietnam must:

- (i) commit to have at least two foreign lawyers, including the branch manager and the directors of the foreign law firm present and practicing in Vietnam at least 183 days in any given consecutive 12 months; and
- (ii) ensure that the branch manager and director of the foreign law firm have at least two consecutive years of experience in practicing law.

The Law also supplements the regulations for partnership law companies established by a foreign legal practicing organisation and a Vietnamese law firm. The procedure to renew the legal practicing license of foreign lawyers, which was absent from the pre-amended Law on Lawyers, is also supplemented in this Law under Article 82.

Another substantial change in the Law is that foreign legal practicing organisations are prohibited from appointing their employed Vietnamese lawyers to participate in legal proceedings at court. In particular, under Article 70 of the Law, foreign law firms and branches practicing in Vietnam must not appoint their Vietnamese lawyers to participate in proceedings as representatives, advocates or protectors of the lawful rights and interests of litigants at Vietnamese courts. This amendment creates difficulties for foreign law firms representing foreign clients in litigation in Vietnam. It means that the brand name law firms operating in Vietnam will no longer be able to represent their clients in court. Consequently, it can be said that the provision takes from foreigners the reasonable right in choosing their advocates when participating in proceedings in Vietnam.

Furthermore, when a Vietnamese law firm enters into a joint venture or partnership with a foreign legal practicing organisation, it will be considered a foreign law firm and as a result, the right to appoint Vietnamese lawyers to participate in legal proceedings of such Vietnamese law firm shall be abrogated. This will create a chilling effect on Vietnamese law firms entering into joint venture or partnership relationships with foreign firms. This seems to be in opposition to the developing tendency of the Vietnamese legal services market.

Considering the development of the legal service market of Vietnam, law makers should reconsider establishing the provisions in a more appropriate way, balancing the benefits of litigants who are Vietnamese as well as foreigners. Thus, our recommendation is that:

- (i) The Law should allow foreign lawyers to enter into court proceedings in which foreign features appear, especially foreign litigants. As such, to protect the correctness of the Vietnamese legal system as well as the policies of the Socialist Party of Vietnam and the State of Vietnam, any foreign lawyers who want to participate in court proceedings must be qualified accordingly. From this view point, instead of prohibiting, law makers should administrate activities of foreign lawyers by establishing the conditions which they must satisfy.
- (ii) The Law should allow Vietnamese lawyers to engage in court proceedings despite working for foreign legal practicing organisations. Since the State of Vietnam encourages Vietnamese law firms to associate and cooperate with foreign legal practicing organisations, it would be more suitable if the Law consider that involved Vietnamese law firms reserve all of their functions, including the function of engaging in court proceedings, which is their most competent function.

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