

Zen & The Art of Legal Networking

INSIGHTS & COMMENTARY ON RELATIONSHIP BUILDING WITHIN THE INTERNATIONAL LAWYERS NETWORK

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Vietnam Lawyers Federation and Legal Practice in Vietnam with Mr. Nguyen Van Thao



During the ILN's 2011 Asia Pacific Regional Meeting in Hanoi, Vietnam, we had a very interesting presentation with Mr. Nguyen Van Thao, the Vice Chairman of the Vietnam Lawyers Federation. He treated the group to a fascinating history of legal practice in Vietnam, and the current state of the legal industry. After a welcome from our chairman, our local host lawyer, Mr. Phan Nguyen Toan, translated the presentation for us.

Mr. Thao is the current and permanent Vice Chairman for the Vietnamese Lawyers Federation, which is the national organization for all practicing Vietnamese lawyers. He began with some information about the establishment of the Vietnamese legal association, and the current status of Vietnamese lawyers.

History of the Legal Field in Vietnam - Pre-1987

Vietnam was a longtime colony of France, since before 1945. At that time, they had two small groups of lawyers - one in Hanoi and one in Ho Chi Minh city. But those lawyers were made up of only French lawyers - there were some members who were Vietnamese and had studied French law, but they were only paralegals or support staff for the French

lawyers.

These early Vietnamese lawyers were the pioneers of the legal market in Vietnam. In 1945, Vietnam declared that they would set up a republic democratic country. on the 10th of October, 1946, then president Ho Chi Minh signed the decision to set up the Vietnamese legal organization.

Under this regulation, those Vietnamese lawyers who had the license to practice before 1945 and wanted to become lawyers had to have a legal education. However, just after this period, Vietnam entered into a long war with France and the west, so they were not concentrating on developing the legal profession.

During that time, instead of having lawyers, they maintained a sort of "people jury" system. In order to become part of the people jury, the person in question had to have legal knowledge and voluntarily protect the legitimate right of the party involved in the litigation case.

Until 1981, the Ministry of Justice was responsible for issuing the decisions to set up the organization of the people jury in each city and province. Until 1981, they had people juries available in about thirty provinces or cities.

Generally, those invited to become part of the people juries were retired judges, prosecutors, police officers and legal professionals. However, when Mr. Thao worked to set up the Hanoi people jury, despite their best efforts, they could only find 16 qualified people.

1987 Ordinance

In 1986, Vietnam began to open the door to try to introduce reform policies, and from that time, they were encouraged to set up the private legal practice association. In 1987, the government issued the ordinance on lawyers - it was a long time from 1945 to 1987 to officially have a new regulation.

The qualification to become a lawyer under the 1987 ordinance was quite simple - that person had to have a legal degree or equivalent, and have good morality. Under this ordinance, many people were disqualified because they didn't have a legal degree, so the first generation of lawyers was a very small group.

With regard to the organizational structure under the 1987 ordinance, each province or city has its own bar association. The very interesting nature of the ordinance on lawyers is that the bar association under that ordinance is the professional association of the lawyers. But the association itself was a law firm. During that time, they didn't have any concept of the law firm, partnership, etc. They only had one bar association in each province and city to serve as a law firm.

2001 Ordinance

In 2001, the government again revised the ordinance of 1987. However, from 1987 to 2001, there were 1,200 lawyers for the entire country, of which 100 practiced in Hanoi and 200 in Ho Chi Minh city. In 2001, under the new ordinance, Vietnam tried to open up more to the international community, and they started to negotiate and sign the US bilateral trade agreement. Therefore, their policy to revise the ordinance on lawyers meets with the international standard, to increase professionalism and the quality of legal service.

How lawyers are qualified was also upgraded and under the new ordinance, a person who wanted to become a lawyer not only had to have a legal university degree, but they were also required to go to lawyer training sessions and practice in a law firm. They were trained for six months at a judicial academy, then attended the bar exam. If they passed, they would receive a practicing license from the Ministry of Justice.

However, they were still required to practice another two years as a paralegal before being given the license to practice by the bar association.

In terms of the scope of the legal practice under the 2001 ordinance, in addition to being allowed to participate in litigation procedures, or criminal, civil, and family cases at the court, the ordinance provided for lawyers to be legal consultants and give advice to their clients, particularly in the the economic and commercial area. Vietnamese lawyers were now able to provide all legal services in all areas.

Under this ordinance, lawyers who had full licenses for the Ministry of Justice and the Bar Association were able to get together to set up a law firm or partnership. The provincial and city bar associations continued to operate the same way, but the function of the bar association was also expanded. Today, the bar association is just a social professional association, and no longer a practice of law.

Also under the new law, the government allows Vietnamese lawyers to set up their own federation. However, to have the national organization of Vietnamese lawyers, it took them some additional time before there was yet another new law on lawyers.

2006 Law on Lawyers

In 2006, Vietnam started to integrate more into the international community and in 2007, they joined the World Trade Organization (WTO). The policy of the government was to upgrade all ordinances to law, so the law on lawyers was issued in an effort to bring the service of Vietnamese lawyers up to international standards.

A point that raised a great deal of debate was that once a person gets their license and finishes their training, they can only work in a law firm as a trainee and cannot practice. The debate lasted for three years - on one side were those who said that in order to become a good lawyer, a person must be allowed to practice law. On the other side were those who wanted to protect the rights of the client by not allowing a trainee lawyer to practice law.

After five years with the new law, they have studied and reviewed this debate closely.

They have decided that the provision is not appropriate, so a new law will be issued that will allow Vietnamese lawyers to represent people outside of the litigation procedure.

In 2008, the government issued another law on claiming and denunciation. Under that law, a lawyer can represent people who want to make a claim to a governmental administrative agency. In the law on lawyers of 2006, in addition to allowing Vietnamese lawyers to open law offices and partners, they were also able to set up limited liability companies.

The new law also spent an entire chapter discussing the Vietnamese Lawyers Federation.

Under this new law in May 2009, the first ever national organization of Vietnamese lawyers was established - the Vietnamese Lawyers Federation. The Federation's main function is to protect the legitimate rights of Vietnamese lawyers as well as control and monitor the good conduct of lawyers.

During a session of their meeting last week, Mr. Thao said that they adopted the code of conduct for Vietnamese lawyers. Another function of the Federation is to create a forum for Vietnamese lawyers to make any necessary recommendations or petitions to the government to improve the practice of law. In mid-May there will be a national election to elect a new national assembly and cabinet. Mr. Thao said that they are in the process of lobbying to have at least one representative of the Vietnamese Lawyers Federation in the congress.

As was mentioned earlier, under the 1987 ordinance, there were only 1,200 lawyers.

According to their statistic data, through December 2010, they have 5,820 lawyers, with an additional 3,000 lawyers in training. This is a small number when compared to other jurisdictions, especially when you look at the total population of Vietnam.

In terms of demographic allocation, there is a big imbalance - in Hanoi, there are nearly 2,000 lawyers, and in Ho Chi Minh city, there are nearly 3,000 lawyers. So 80% of the country's lawyers are located in the two main cities. In some other remote areas, there may be just two or three lawyers, and in one province there aren't any lawyers.

However, in terms of quality, lawyers in Vietnam are much more advanced now than they were 20 years ago. 99% of Vietnamese lawyers have been trained at the judicial academy, and there is an increasing number of Vietnamese lawyers who have trained abroad or are practicing law with international firms in Vietnam. In terms of litigation skills and legal consultant services in the economic, civil, and other areas, they are almost meeting with the demands of the country.

However, with regard to sophisticated international cross-border transactions, there are very few Vietnamese lawyers who have enough experience to advise foreign clients. They can count on one hand the number of Vietnamese lawyers who can independently give good advice to international clients in those transactions.

Those lawyers work for a small number of firms, including LEADCO, YKVN, Vision &

Associates, and Invenco.

Mid-Presentation Questions

Peter Altieri of Epstein Becker & Green asked about law schools in Vietnam, particularly how many students graduate each year and how many of these go on to the judicial academy. Mr. Thao said they currently have two specialized law universities, one in Hanoi and one in Ho Chi Minh city. In other universities, however, they have law faculty members.

In terms of the number of graduates, it is roughly 5,000 per year. Out of the 5,000 that graduate each year, roughly 1,000 of them will attend the lawyer training session at the judicial academy. For reasons they're not aware of, many of those who graduate from the judicial academy will not take the bar exam afterwards. Many of them get their certificate of graduation from the judicial academy for future use.

Alex Larkin of LEADCO asked how ethics are enforced in Vietnam, and who is responsible for investigating and disciplining the lawyers. Mr. Thao said that according to the law on lawyers, the Federation is responsible for issuing the code of conduct, but in terms of implementing and supervising the code, this responsibility falls to the provincial or city bar association.

Alex then asked if a law firm can be a partnership or an LLC, can a non-lawyer own or have an interest in a law firm, or is that restricted. Mr. Thao said that according to the law on lawyers, only licensed lawyers can set up an LLC or partnership.

Irene Besido-Garcia of Kapunan Lotilla Garcia & Castillo Law Offices asked about the ratio of male to female lawyers in Vietnam. Mr. Thao said that it is something that they are concerned with, because according to their statistics, female lawyers account for just 20-25% of the total number of lawyers.

However, there are some very good female lawyers in Vietnam - for example, Invenco is owned by a very famous female lawyer and the managing partner of YKVN is a woman.

Foreign Law Firms & Lawyers in Vietnam

The key principle under the law on lawyers in 2006 provided that foreign lawyers cannot practice as lawyers in Vietnam. To become a Vietnamese lawyer, the person must hold a Vietnamese passport and be a permanent resident.

However, foreign lawyers have been present in Vietnam since early 1990. Firms such as Baker McKenzie, White & Case, Clifford Chance, Tilleke & Gibbons and Philip Cox have all opened offices in Vietnam. At that time, foreign law firms in Vietnam could only open representative offices, but could not practice law. Then, in 1998, the government issued Decree 92 which allows a foreign law firm and the practice of law in Vietnam.

Under this decree, foreign law firms can open a maximum of two branch offices in

Vietnam - one in Hanoi and one in Ho Chi Minh city. In terms of the scope of practice, foreign branch offices and provide legal consultation on international law and foreign law only. They cannot give advice on Vietnamese law or represent clients in litigation cases in court.

After this decree by 2000, there were forty branch offices of foreign law firms in Vietnam. In 2003, Vietnam signed a bilateral trade agreement with the US, so the government issued a new decree on foreign law firms, which opened the door for them.

Under the new decree, a foreign law firm can have a representative in Vietnam in the form of a branch office, in the form of a foreign law firm, 100%-foreign-owned, or a joint venture company with a Vietnamese law firm. A foreign law firm still cannot give legal advice on Vietnamese law, but if the firm employs a licensed Vietnamese lawyer, he or she can. An interesting provision under the 2003 Decree is that if a foreign lawyer graduates from a Vietnamese law university, he or she can be qualified as a Vietnamese lawyer.

However, although they had the 2003 decree, 2006 saw the new law on lawyers. Under this law, there is a new provision on foreign law firms and lawyers practicing in Vietnam. It allows that foreign law firms can represent their clients in a litigation case, provided that the lawyer who attends the trial is a Vietnamese lawyer. Mr. Thao said that he has been able to study the laws in many jurisdictions on the control and management of foreign lawyers, and he's found that Vietnamese law is more liberal than many other jurisdictions.

According to the Ministry of Justice, by the end of 2010, Vietnam had 51 branches of foreign law firms. They are mainly serving foreign clients who are investing and doing business in Vietnam. Two of these firms are doing quite well - Baker McKenzie and Freshfields. Although Tilleke & Gibbins has been in Vietnam for over 20 years, they do not do as well. Mr. Thao said that it's interesting to note that some accounting firms that provide legal services are also in Vietnam, such as Pricewaterhouse Coopers. He added that they are quite active in the legal sector.

One interesting observation that they made from having foreign law firms in Vietnam is that some large foreign law firms, after a certain period of time, will localize the office by withdrawing physically and transferring their clients to a Vietnamese law firm. For example, Clifford Chance did this, as well as White & Case. Currently, the two firms that they transferred their business to are top tier Vietnamese law firm, and last year, one of them opened its own branch office in Singapore.

Questions

C.K. Kwong from Sit Fung Kwong & Shum asked a question about foreign law firms opening offices in Vietnam, and in particular about the liability of the handler of a case for an LLC. Mr. Thao said that because the form of the practice is a limited liability company, the liability of the lawyer towards the client is limited according to their contribution of the capital.

However, under the new law on lawyers, the law firm has to buy legal professional

insurance, which can look like unlimited compensation for damage caused by the lawyer to the client. He said that most foreign law firms in Vietnam maintain legal professional insurance. Although the law on lawyers has that provision, only foreign law firms are doing this so far.

C.K. asked whether there was a requirement as to the amount of insurance to be operating. Mr. Thao said that they have the law on insurance business, and under that law, the legal profession has to maintain professional liability insurance. But under the same law in another provision, it says that the amount of liability to be insured will be governed by the Vietnamese government.

Mr. Thao tried to implement the provision and organized several international conferences inviting insurance companies. For some reason, most of them refused to provide that kind of insurance, so even though the provision exists, most Vietnamese law firms don't have professional liability insurance. Mr. Thao said that that particular situation means that the requirement and the demand for liability insurance is not urgent.

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