



SOUTH-EAST ASIA IP SME HELPDESK

VIETNAM

IP Country FACTSHEET

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1) THE FACTS:

Business in Vietnam for EU Companies

- Vietnam GDP in 2022: EUR 386 billion (Source: *DG Trade*)
- Vietnam GDP growth in 2022: 8.0 % (Source: *DG Trade*)

SIZE of Market (Source: [DG Trade](#))

- EU trade exports to Vietnam in 2022: **EUR 12.7 billion**
- EU trade imports from Vietnam in 2022: **EUR 51.6 billion**
- Total trade in goods in 2022: **EUR 64.3 billion**
- Vietnam was the EU's largest trading partner among the 10 ASEAN nations (and 15th out of the EU's total trade) in 2020. Conversely, the EU was Vietnam's 4th largest trading partner (after China, South Korea, and the USA) in 2022.¹
- With a total foreign direct investment outward stock of EUR 8.0 billion (2021), the EU is one of the largest foreign investors in Vietnam. The largest sector of investment by the EU is industrial processing and manufacturing.
- The Free Trade Agreement between the EU and Vietnam (EVFTA) entered into force on 1 August 2020, while the Investment Protection Agreement (EVIPA) is pending ratification. These agreements cover tariff as well as non-tariff barriers to trade and other trade-related aspects, including public procurement, regulatory issues, competition, services, IPR, and sustainable development.
- Although Hanoi in the north is the political capital of Vietnam, Ho Chi Minh City in the south is widely considered the commercial centre, and most European SMEs choose to manage their trade and investment activities from there.

Key INDUSTRY SECTORS (Source: [DG Trade](#))

- EU exports to Vietnamese sectors are dominated by high-tech products, including electrical machinery and equipment, aircraft, vehicles, and pharmaceutical products.
- Vietnam's key export items to the EU include telephone sets, electronic products, footwear, textiles and clothing, coffee, rice, seafood, and furniture.
- Some key sectors in Vietnam requiring particular IP attention are pharmaceuticals, software, and the music and film industries.

¹ https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_vietnam_en.pdf



2) BACKGROUND: IP in Vietnam for SMEs

Intellectual Property Rights for SMEs: Why is this RELEVANT to you?

Intellectual Property Rights (IPR), as intangible assets, are a key factor in the competitiveness of all businesses in the global economy. IP is a primary method for securing a return on investment in innovation and is particularly relevant to small and medium-sized enterprises (SMEs) when they internationalise their business to areas such as South-East Asia. IP assets are not only a way to help you protect your innovations from competitors but they can also be an important source of cash flow for SMEs through licensing deals or selling IP, as well as a significant pull factor when attracting investors.

Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business. IP infringement is one of the most common concerns for businesses when dealing with ASEAN countries and could lead to loss of business, revenue, reputation, and competitive advantage, both in South-East Asia and in core domestic markets, unless you take proactive steps to protect your IP and deter potential infringers.

How does VIETNAM'S IP legal framework compare to INTERNATIONAL STANDARDS?

Prior to Vietnam's accession to the World Trade Organization (WTO) in 2007, the country issued many new laws and regulations to strengthen the protection and enforcement of IPR and to upgrade these laws to meet the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Generally speaking, Vietnam's IP legislation is now relatively comprehensive, covering most aspects of IP protection in accordance with the international standards required by the TRIPS and relevant implementing regulations. Although a sounder legal framework is now in place, the enforcement mechanisms still need to be strengthened, fines must increase to truly become an effective deterrent, and awareness of counterfeits among Vietnamese consumers' needs to be raised.

Vietnam is also a member of the following international conventions regulating IP matters: the Paris Convention for the Protection of Industrial Property, the Madrid Agreement concerning the International Registration of Marks, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Patent Cooperation Treaty, the International Convention for the Protection of New Varieties of Plants, the TRIPS Agreement, and the Berne Convention for the Protection of Literary and Artistic Works (visit the WIPO website for more information - www.wipo.int/portal/index.html.en).

Since 1 January 2017, Vietnam has been a party to the United Nations Convention on Contracts for the International Sale of Goods, which also contains provisions on Copyright and Related Rights (Neighbouring Rights), Industrial Designs and Industrial Property.

On 12 November 2018, Vietnam officially became the 7th economy to ratify **the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)**, which is a Free Trade Agreement (FTA) between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, and Vietnam (official list as of 12 July 2023). The CPTPP entered into force in Vietnam on 14 January 2019. The CPTPP emphasizes the obligations of the member countries "in the protection and enforcement of IPR," which are divided into four main groups: (i) general commitments (commitments on accession to a list of IP conventions, general principles like national treatment, transparency, and cooperation between member states in IP protection) ; (ii) commitments on IPR protection standards; (iii) commitments on specific products (notably measures relating to agricultural chemical products and pharmaceutical products); (iv) commitments related to IPR enforcement.² By becoming a member of the CPTPP, Vietnam needs to develop policies and legal regulations and amend current legal regulations to comply with the requirements, commitments, and standards set forth by the CPTPP.

² <https://trungtamwto.vn/upload/files/fta/174-da-ky-ket/175-cptpp-tpp11/177-noi-dung-hiep-dinh/Tom%20luoc%20CPTPP%20-%20Chuong%2018.pdf>

On 30 June 2019, the EU and Vietnam signed the EU-Vietnam Free Trade Agreement (EVFTA) which entered into force on 1 August 2020 and the EU-Vietnam Investment Protection Agreement (EVIPA). As of February 2022, the EVIPA had been ratified by only 12 EU Member States and cannot enter into force yet (ratification by all EU Member States is required). In addition to eliminating tariffs and non-tariff barriers, the EVFTA also contains provisions on the protection and enforcement of IPR, including Geographical Indications. The EVFTA intends to fully and effectively protect IPR, and the protection and enforcement of these rights must (i) contribute to the promotion of innovation and the transfer and dissemination of technology; (ii) serve the mutual advantage of producers and users of the technological knowledge in a manner conducive to social and economic welfare; and (iii) ensure the balance between rights and obligations. By ratifying the EVFTA, Vietnam committed to participate in IPR protection at a high level and to ensure the Vietnamese law should comply with standard requirements (some requirements set by the EU are higher, for example, regarding pharmaceuticals, fertilizers, and pesticides).

On 30 September 2019, the Government of Vietnam deposited its instrument of accession to the Geneva Act (1999) of the Hague Agreement governing the international registration of industrial designs (<https://www.wipo.int/hague/en/>). European companies and designers have been able to use the Hague System to protect their industrial designs in Vietnam since 30 December 2019.

On 1 June 2021, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest Treaty - <https://www.wipo.int/treaties/en/registration/budapest>) entered into force in Vietnam. Besides this, the WIPO Copyright Treaty (WCT - <https://www.wipo.int/treaties/en/ip/wct>) and the WIPO Performances and Phonograms Treaty (WPPT - <https://www.wipo.int/treaties/en/ip/wppt>) entered into force in Vietnam on 17 February 2022 and 1 July 2022, respectively. More recently, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled entered into force in Vietnam on 6 March 2023.

The Regional Comprehensive Economic Partnership (RCEP) is an FTA between 10 ASEAN countries and five partner countries (China, Korea, Japan, Australia, and New Zealand). The RCEP officially entered into force in Vietnam on 1 January 2022, accelerating the process for the revision of the IP Law.

On 16 June 2022, the Vietnamese National Assembly approved the amended IP Law (IP Law 2022), which entered into force on 1 January 2023, with timing exceptions for sound trademark protection (14 January 2022) and protection of test data for agricultural chemical products (14 January 2024). The IP Law 2022 focuses on seven major policy groups, significantly facilitating the process of carrying out registration procedures and establishing IPR; ensuring an adequate and balanced level of protection of IPR; enhancing the effectiveness of IP support activities; improving the efficiency of IPR enforcement activities; and ensuring full and strict implementation of international commitments in the integration process.

³ https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/vietnam_en



IP TIPS and things to WATCH OUT for in VIETNAM

- Organisations established in Vietnam, Vietnamese individuals, foreign individuals permanently residing in Vietnam, and foreign organisations and individuals with a production or trading establishment in Vietnam may file applications to register any industrial property right either directly or through a lawful representative in Vietnam.
- Foreign individuals not permanently residing in Vietnam, foreign organisations, and individuals not having a production or trading establishment in Vietnam shall file applications to register any industrial property right through a lawful representative in Vietnam.
- The Vietnamese authorities are still working towards improving training for court officials, judges, customs authorities, and other IP enforcement agencies; however, there are still some discrepancies in judicial decisions depending on the location of the court chosen for the legal action. In most cases, judges in rural areas lack the right experience and legal training to bring fair judgements in line with Vietnamese law. To maximize your chances of winning and having a fair judgement, it is necessary to carefully prepare key claims, evidence, statements, detailed arguments, document collection, etc.
- Another important area to consider is the collection of suitable evidence, which can sometimes be difficult as some evidence may need to be notarised in order to be admissible in court (e.g. evidence of sale, manufacture, import, or offer for sale of infringing items). Identification of infringements may focus on monitoring products offered for sale at trade fairs and on the internet, which can require considerable time and resources. In general, it is difficult to access evidence of the violating party. Therefore, you should also collect your own evidence regarding infringements (quotations, contracts signed and stamped by the offending party, business cards, screenshots of websites, and emails containing infringing information).
- Most IP disputes are handled by administrative authorities instead of courts. However, the authorities still lack the expertise to resolve complex disputes. In most cases, it is important to obtain expert opinions to facilitate the resolution of the case by the competent authorities.
- IP infringement has been criminalised. However, due to a lack of guidance and inconsistency in the legal system, criminal action is rarely feasible in practice.
- Because IPR enforcement in Vietnam can still be problematic, it is essential to register your rights there in order to stand a chance of defending them. IPR (i.e. patents, industrial designs, layout designs, trademarks, and geographical indications) are territorial in nature, which means that registration in one country's jurisdiction is not automatically enforceable in others, and registration in multiple countries may be necessary, particularly for businesses looking to internationalise.
- Because Vietnam is a party to the Paris Convention for the Protection of Industrial Property (see more details and a full list of members at www.wipo.int/treaties/en/ip/paris/index.html), if a trademark/patent/industrial design application is filed in a member country of the Paris Convention, you can claim priority based on this first-filed application for your subsequent applications in other member countries of the Paris Convention within a certain period (6 or 12 months, depending on the IPR). This is very useful for IPR owners because, after the first filing of the application in your home country, you then have 6 or 12 months of leeway to decide which other countries you want to seek registration in.
- In line with most ASEAN and EU countries, Vietnam operates under a 'first-to-file' system, meaning that the first person to file an industrial property right application in Vietnam will own that right once the application is granted, regardless of whether another party was the first to use such a right. This means that if a potential partner or a third party file an application for the protection of one of your IPR in Vietnam before you do so, they will be considered as the legal prior owner of your IP asset in the country.

3) THE BASICS: IPR in VIETNAM

A. Copyright

WHAT is copyright?

The kinds of works that can be protected by copyright laws in Vietnam are defined as “literary, artistic and scientific works,” which principally include the following:

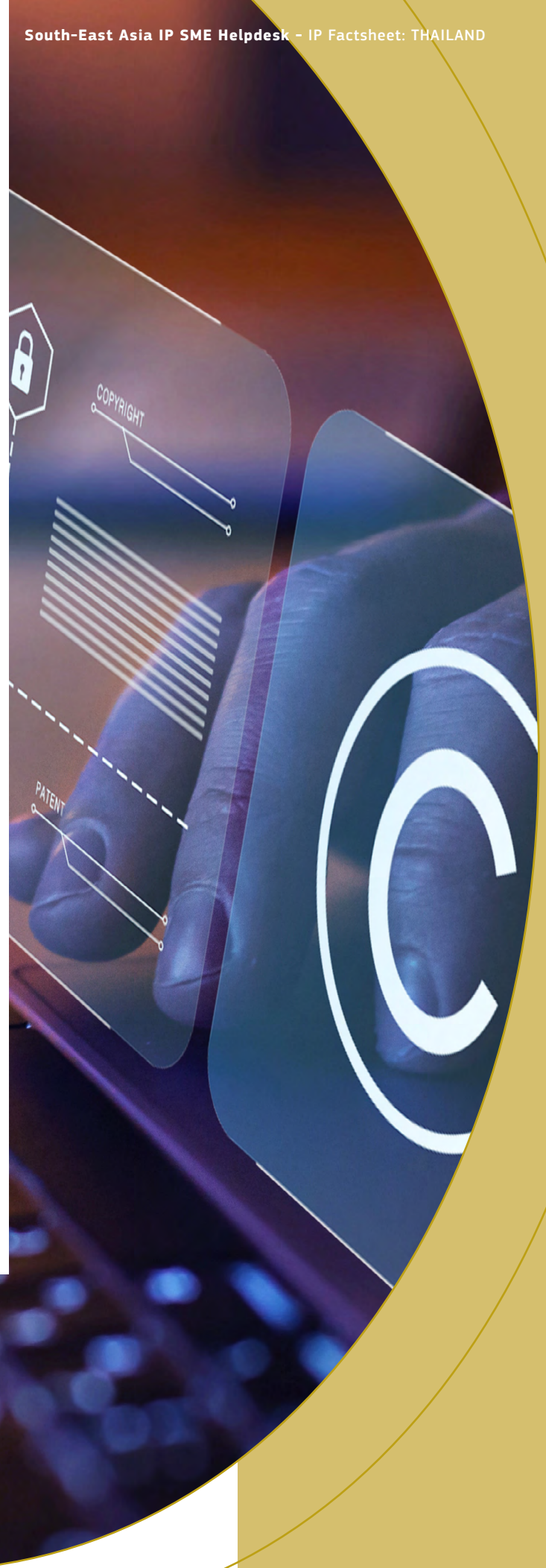
- Literary works, scientific works, textbooks, and teaching courses.
- Lectures, speeches, and press works.
- Musical, stage, photographic and cinematographic works.
- Artworks and applied artworks.
- Sketches, plans, maps, and architectural works.
- Computer programmes and data collections.

Copyright in VIETNAM: What you need to know

Copyright that is already conferred in a contracting party of the Berne Convention (which entered into force in Vietnam on 26 October 2004) will also be recognised protection in all contracting parties of the treaty. The Convention also provides that you, as the creator of a work, may automatically own the copyright without a formal registration. However, it is still advisable to register copyright in Vietnam so that it would be acceptable to the enforcement authorities as prima facie evidence of copyright ownership (see section on ‘Enforcement’).

Having been granted copyright of a work means that the copyright owner holds both the moral and economic rights to the work. By law, owning moral rights means you can name the work, attach your name to the work, publish or authorise somebody else to publish the work, and prevent others from editing the work. Moreover, you have the right to alter the work and preserve the integrity of the work. Owning the economic rights means you have the exclusive right to exploit the work personally, license it, or transfer it to a third party in exchange for remuneration.

As the copyright owner, you have the right to assign your exclusive rights, except for some moral rights, and to transfer the right to publish the work. In such case, a contract for the assignment of copyright must be made in writing and include the following mentions: the names and addresses of the assignor and assignee, the grounds for the assignment, the price and method for payment, the rights and obligations of the parties, and liability provisions for contractual breaches.



How LONG does legal protection last?

A copyright owner's moral rights are protected for an indefinite term, except for the exclusive right to publish the work or authorise somebody else to publish it. In line with the minimum requirements set out in the Berne Convention, the exclusive right to publish the work and authorise somebody else to do so last for the lifetime of the author plus 50 years (same goes for the other economic rights). However, there is a special duration of protection for cinematographic works, photographic works, applied artworks, and anonymous works, as they are protected for 75 years from the date of first publication, with no possibility of extension.

HOW do I register?

While registration of copyright is not required, it is advisable and can be made with the National Copyright Office of Vietnam (COV) or the Department of Culture and Sports in the localities where your company is located. Foreign copyright owners, however, can authorise a Copyright Service Consulting Organisation to file the registration on their behalf.

The application must comprise the following:

1. The application form (form No. 01 issued together with the Circular No. 08/2016/QĐ-BVHTT dated 2 July 2016) must be written in Vietnamese and signed by the author, the owner(s) of copyright or related rights, or the authorised person and include information of the applicant, author, owner(s) of copyright or related rights; summarised content of the work, performance, audio/video recording or broadcast; the name of the author and of the copyright owner, the work used for the creation of the derivative work if the work (when relevant); time, location and form of publication; information about the re-grant or replacement of the copyright registration certificate (if any); and a commitment to take responsibility for the data provided in the application form.
2. Two copies of the work (for works such as paintings, a 3D photo is sufficient).
3. A Power of Attorney, if the applicant is an authorised person and not the copyright owner.
4. Documents proving ownership or assignment of ownership over the creative works (i.e. creativity contract, inheritance of rights, transfer of rights).
5. Written consent of co-authors in cases of joint authorship.

The COV is required by law to notify you in writing whether the copyright has been granted within 15 working days from the date of receipt of a valid application. Copyright recordal applications can be filed by post, online via the National Public Service Portal System (<http://dichvucong.bvhttdl.gov.vn/dvc/thuTucHanhChinh?dv=511>), or in person at one of the following addresses:

National Copyright Office of Vietnam (COV)

33 Lane 294/2 Kim Ma, Ba Dinh District, Hanoi
+84 (0) 24 38234304

Copyright Office's Representative Office in Ho Chi Minh City

170 Nguyen Dinh Chieu, District 3, Ho Chi Minh City
+84 (0) 28 39308086

Copyright Office's Representative Office in Da Nang

No. 1, An Nhon 7 Street, An Hai Bac Ward, Son Tra District, Da Nang
+84 (0) 236 3606967



WHO can register?

Authors, copyright holders, and related rights holders may directly file for copyright registration or may also authorise other organisations or individuals to file for them. 'Copyright holders' are defined by Vietnamese law as organisations or individuals who hold one, several, or all of the moral and economic rights. 'Authors' are those who create an entire work or part(s) of it (moral right owners). 'Related rights holders' include organisations and individuals who "use their time, make a financial investment in, or use their materials and technical facilities" to perform or produce or broadcast an audio and visual recording.

Which LANGUAGES can I use?

The application form for copyright registration (point 1 in the list of required documents under the 'HOW do I register?' section above) must be made in Vietnamese. Vietnamese translations are also required for the Power of Attorney, the documents proving ownership, and the consent letters from co-authors and/or co-owners if such documents are filed in a foreign language (points 3-6 above).

How much does it COST?

Depending on the type of work to be protected, the typical cost of copyright registration in Vietnam (exclusive of legal fees) is between VND 100,000 and 600,000 (approximately EUR 4 and EUR 24) per certificate -. More details can be found on the Copyright of Vietnam website (see Section 6 'Related Links') and the Circular [211/2016/TT-BTC](#).

Copyright TIPS and things to WATCH OUT for in VIETNAM

- Software and book piracy are still rife in Vietnam. The Business Software Alliance found that 74% of all software in Vietnam was still pirated in 2017, compared to an average of 57% in the Asia Pacific region. In 2021, the trend was confirmed (notably by a joint survey from YouGov and Asia Video Industry Association's Coalition Against Piracy) as Vietnam had one of the highest rates in terms of online piracy in SEA.
- It may be practical to register copyright because having a copyright certificate can greatly facilitate any copyright-related disputes in court.
- Certain objects, such as logos, can be protected by both a copyright and a trademark. To qualify for this dual protection, an 'object' must meet the criteria of being 'created originally' for copyright protection and be "used in the course of trade" for trademark protection. When possible, it is advisable to register such objects for both types of IP protection, as this will give you an extra avenue to enforce your rights.

For more information on copyright protection in Vietnam, check out our **South-East Asia IP SME Helpdesk Guide to Copyright Protection in South-East Asia**, which is available to download from our website: <https://op.europa.eu/en/publication-detail/-/publication/ebe45106-ca5d-11eb-84ce-01aa75ed71a1>



B. Patents

WHAT are patents?

Patents are required to show 'inventiveness' (a new technical solution or improvement to a product or process which cannot easily be created by a person with average knowledge in the relevant field), 'novelty' (it has not been publicly disclosed by use or by means of a written description or any other form inside or outside of Vietnam, or it has not been disclosed in another invention patent or utility solution patent which was filed priorly), and an 'industrial applicability' (it is possible to perform mass manufacture or production of products or repeated application of the process which is the subject matter of the invention and achieve stable results), as is the case in most international patent systems. A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something or offers a new technical solution to a problem.

There are two types of patents available under Vietnamese law: invention patents and utility solution patents (known as 'utility model patents' in China and several EU countries, such as Austria, Belgium, Denmark, Finland, France, Germany, Italy, and the Netherlands, among others). Invention patents are granted for inventions that are novel, involve an inventive step, and have industrial applicability whereas utility solution patents do not require an inventive step (novelty and capability of industrial application are enough). However, the law still requires the utility solution patent to be something more than common general knowledge.

Regarding the 'novelty' requirement, the IP Law 2022 provides the following details:⁴

- An invention is not considered publicly disclosed if it is known to only a limited number of people who are obliged to keep it a secret.
- The novelty requirement will not be destroyed if the invention is publicly disclosed by the lawful registrant or by the person who has direct or indirect information about said invention, provided that the patent application is submitted in Vietnam within 12 months from the disclosure date.

Furthermore, the 'inventiveness' of an invention will need to be assessed through different criteria according to the IP Law 2022. Indeed, 'inventions will be considered as inventive, if, based on technical solutions that have been publicly disclosed in the form of use or written description or in any other form in Vietnam or abroad prior to the filing date (or the priority date of the patent application in case the application is entitled to priority), the invention is an innovation and cannot be easily created by a person with average knowledge about the corresponding technical field.'⁵

Patents in VIETNAM: what you need to know

As in other countries where a distinction is made between invention patents and utility solution patents, the main difference is that utility solution patents are not required to have the same level of 'inventiveness' as the invention patent, and thus the registration process is different. There are also differences in the length of protection, shown below.

In line with most Asian and EU countries, Vietnam operates under a 'first-to-file' system, meaning that the first person to file a patent in the Vietnamese jurisdiction will own that right once the application is granted, regardless of whether another party was the inventor or the first to use the invention. This means that if a potential partner or third party files your patent in Vietnam before you do, they will be the legal owner of your IP. Therefore, it is essential to make your IP registrations in Vietnam before commencing business dealings there and to be careful how much information you disclose to third parties.

Applicants for invention patents and utility solution patents are entitled to a 'right of priority' if the same filing has been made within the last 12 months in any other country also belonging to the Paris Convention.

How LONG does legal protection last?

Invention patents last 20 years from the filing date in Vietnam, with no possibility of extension/renewal (payment in due time for annuities is required to maintain the rights).

Utility solution patents last 10 years from the filing date in Vietnam, with no possibility of extension/renewal.

⁴ Vietnam IP law 2022, article 60

⁵ Vietnam IP law 2022, article 60

WHO can register?

Any individuals that have created inventions by their own labour and at their own expense may register patents. In addition, anyone who has supplied funds and materials which facilitated the creator to create the invention can also register a patent, including employers or benefactors if the work was commissioned (unless otherwise agreed by the parties; or unless patents are the results of science and technology missions funded by state budget).

Which LANGUAGES can I use?

All documents of the application must be made in Vietnamese, except for the Power of Attorney, the evidence documents (notably regarding the right to register and priority right - see points 4-6 above) and other documents supporting the application. These documents can be in another language but must be translated into Vietnamese at the request of IP Vietnam.

How much does it COST?

The basic filing fee for patent registration in Vietnam is VND 150,000 (approximately EUR 6), exclusive of legal fees. The formality examination fee is VND 180,000 (approximately EUR 7) per independent claim. The official fee for the publication stage is VND 120,000 (approximately EUR 5). The fee for information search to serve the examination process is VND 600,000 (approximately EUR 24) per independent claim. The official fee for the substantive examination stage is VND 720,000 (approximately EUR 28) per independent claim. The fee for granting stage is VND 660,000 (approximately EUR 25), including granting fee, fee for publication of the registration, recordal fee, and fee for using the patent in the first two years. All the above-mentioned fees are exclusive of legal fees. For an up-to-date fee list, please see the 'Patents Fees and Charges' section of the IP Vietnam website <https://ipvietnam.gov.vn> or *Circular 263/2016/TT-BTC*. An official English translation is available on the WIPO website [here](#).

Patent TIPS and things to WATCH OUT for in VIETNAM

- It is advisable to take civil action instead of administrative measures against patent infringements because administrative enforcement bodies' handling of patent infringement cases has not been very effective to date. However, it is worth noting also that so far, there have not been many patent dispute cases handled by the courts through civil actions.
- ASEAN Patent Examination Co-operation (*ASPEC*) is a regional patent work-sharing programme involving 9 of the 10 IP offices in the ASEAN Member Countries (only Myanmar is not yet involved). The objectives of ASPEC are to reduce complexity, save time, and improve the quality of search and examination. Reference made to an earlier examination already performed in one IP office will help an examiner in the other IP office to better understand the invention claim, reduce searches, and develop a more comprehensive examination strategy. For example, a Vietnamese patent application would, in theory, be able to take advantage of the expedited process at IPOS (the IP office of Singapore), allowing for the eventual speedier grant of patent protection. ASPEC is free-of-charge and operates in English in all ASEAN IP offices (except Myanmar). For more information on ASPEC, visit the ASEAN IP Portal at <https://www.aseanip.org/> or the websites of the IP offices in the ASEAN region.

For more information on patent protection in Vietnam, check out our [South-East Asia IP SME Helpdesk Guide to Patent Protection in South-East Asia](#), which is available to download from our website: <https://op.europa.eu/en/publication-detail/-/publication/10b7f213-8cdf-11ee-8aa6-01aa75ed71a1>



C. Industrial Designs

WHAT are Industrial Designs?

According to the IP Law 2022, an industrial design intends to protect 'the outward appearance of a product or a component for assembly of a complex product, which is embodied in three-dimensional configuration, lines, colours, or a combination of such elements and is visible during the use of the product or complex product.'⁶

The scope of protection for an industrial design has now been amended to include the external appearance of both a 'product' and 'a component for assembly of a complex product'. Furthermore, only elements which are 'visible during the normal use or exploitation of a product or part of a complex product' will be protected via industrial designs.

For an industrial design to be granted protection, the design must be new, creative and have an industrial application.

An industrial design is considered 'new' if it differs substantially from industrial designs that are already disclosed to the public inside or outside Vietnam. An industrial design is deemed 'creative' if it cannot easily be created by a person with average knowledge in the relevant field. The assessment is made by taking into account industrial designs that have already been publicly disclosed inside or outside Vietnam prior to the filing date or priority date (if priority was claimed). An industrial design is considered 'capable of industrial application' if it can be used as a model for mass manufacture of products having the 'outward appearance embodying such industrial design by industrial or handcraft methods.'

For the first time, a new mechanism allowing a third party to object to an industrial design registration application was added in the IP Law 2022.⁷ This change not only meets the commitments from the EVFTA but also meets the demand for industrial design protection in business activities.

Industrial Designs in VIETNAM: What you need to know

Industrial design cover products with a distinctive shape, pattern, or colour which can be seen during the use of a product or complex product, and which maintains novelty and industrial applicability.

Since 30 December 2019, Vietnam has become a member of the Hague System for the International Registration of Industrial Designs (full list of members at <https://www.wipo.int/hague/en/>). Design applications made in other Hague system member countries can therefore be extended to Vietnam via WIPO, meaning that application requirements and approval time may be reduced, provided that substantive requirements are met and the prescribed timing is respected.

Applicants for industrial designs are entitled to a 'right of priority' if the same filing has been made within the last six months in any other country also belonging to the Paris Convention.

The following subject matters shall not be protected as industrial design in Vietnam:

1. the appearance of a product being dictated by the technical features of the product;
2. the appearance of a civil or industrial construction work;
3. the shape of a product (or part of it) which cannot be seen during the normal use of the product.

How LONG does legal protection last?

Industrial design last five years from the filing date in Vietnam, with the option to extend two more times for consecutive five-year periods (15 years maximum protection in total).

International registration of industrial designs with Vietnam designation under the Hague Agreement is effective from the day on which IP Vietnam issues a decision to grant protection or on the day succeeding the ending date of the six-month period from the day on which the international office (WIPO) announces the registration, whichever comes first. In any case, the effective period of an international industrial design registration shall comply with the regulations and deadlines set by the Hague Agreement.

HOW do I register?

To obtain an industrial design, the application dossier must contain the following:

1. A request made in the prescribed form (as prescribed in the Circular No. 16/2016/TT-BKHCHN);
2. Documents, samples, and information identifying the design as provided for in Article 103 of the IP Law 2022 of Vietnam (e.g. a set of photos, drawings and a description of the industrial design);
3. A Power of Attorney, if the application is filed through a representative;
4. Documents evidencing the right to registration, if acquired by the applicant from another person;
5. Documents evidencing the priority right, if claimed;
6. Payment receipt of fees and charges.

Industrial design applications should be filed electronically at <http://dvctt.noip.gov.vn:8888/HomePage.do> (available in Vietnamese only), onsite, or by mail to the following address (or to one of its branch offices in Ho Chi Minh City and Da Nang):

**Intellectual Property Office of Vietnam
(IP Vietnam)**

384-386 Nguyen Trai Street, Thanh Xuan District,
Hanoi
+84 (0) 24 3858 30 69 / +84 (0) 24 3558 82 17

⁶ Vietnam IP law 2022, article 4.13

⁷ Vietnam IP law 2022, article 112a.1(b)

WHO can register?

All individuals and organisations in Vietnam and abroad having industrial designs have the right to register in Vietnam, including the author creating the industrial design and organisations or individuals investing funds and material facilities for authors under the cases prescribed by law.

Which LANGUAGES can I use?

All documents of the application must be made in Vietnamese, except for the Power of Attorney, the evidence documents (notably the right to register and priority right – see points 3-5 above) and other documents supporting the application. These documents can be in another language but must be translated into Vietnamese at the request of IP Vietnam.

How much does it COST?

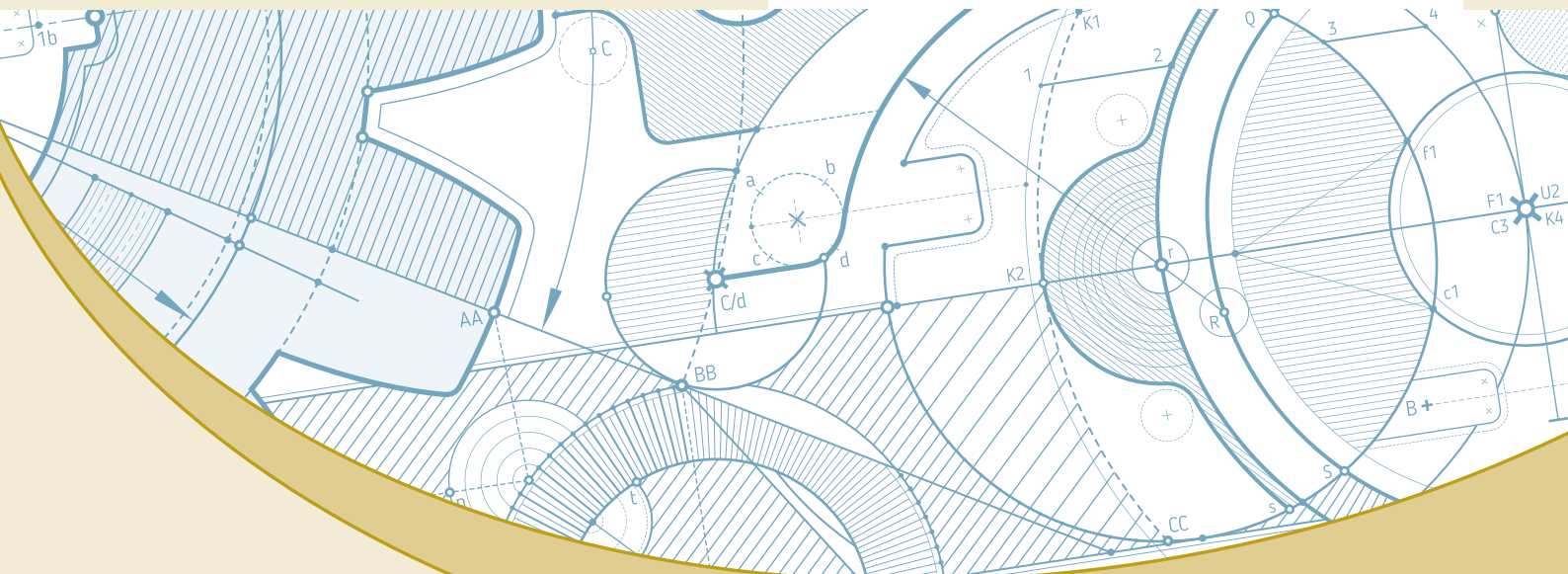
The basic filing fee for industrial design registration in Vietnam is VND 150,000 (approximately EUR 6). The official fee for classification purposes (Vietnam follows the *international classification of Locarno*) of the industrial design is VND 100,000 (approximately EUR 4). The official fee for the publication stage is VND 120,000 (approximately EUR 5), whereas the substantive examination fee is VND 700,000 (approximately EUR 26) per variant/object. The fee for looking up information to serve the substantive examination is VND 480,000 VND (approximately EUR 18) per variant/object. The official fee for the granting stage is approximately VND 360,000 (approximately EUR 14), including the granting fee, the fee for publication of the registration, and the recordal fee in accordance with Circular 263/2016/TT-BTC.⁸

Design patents TIPS and things to WATCH OUT for in VIETNAM

- Industrial design application owners can apply for a provisional right to oppose the illegal use of industrial designs while waiting for IP Vietnam to grant protection. However, this right may only arise after the application is published in the *IP gazette*.
- The use of the Hague system simplifies the registration process with several advantages (simplicity, cost-effective procedures, and easy management of protection status) through one system.
- As an additional layer of protection for your design, it is advisable to also seek copyright registration of your industrial design.

⁸ The fees mentioned are exclusive of legal fees.

For more information on industrial design protection in Vietnam, check out our [South-East Asia IP SME Helpdesk Guide on Industrial Designs Protection in South-East Asia](https://op.europa.eu/en/publication-detail/-/publication/9e9fc77a-ca5e-11eb-84ce-01aa75ed71a1), which is available to download from our website: <https://op.europa.eu/en/publication-detail/-/publication/9e9fc77a-ca5e-11eb-84ce-01aa75ed71a1>



D. Trademarks

WHAT are trademarks?

A trademark is a sign that allows consumers to distinguish goods or services of one producer from those of another (i.e. the distinctive character). Trademarks are eligible for protection under Vietnamese law provided that these are visible signs in the form of letters, words, drawings or images, holograms, or a combination of these, represented in one or more colours. For the first time, a sound may be protected as a trademark under the Vietnam IP Law 2022 (now complying with Article 18.18 of the CPTPP, of which Vietnam is a member).

A trademark is distinctive if it consists of one or more easily noticeable and memorable elements or of many elements forming an easily noticeable and memorable combination for the consumer.

The law provides a number of circumstances under which a trademark is not eligible for protection, such as when it is identical with or confusingly similar to national flags, national emblems, national anthems of Vietnam and other countries, The Internationale (international anthem), names of political organisations and real names, or would cause misunderstanding or confusion as to the origin, properties, quality, or other characteristics of the goods or services. It also cannot be identical or confusingly similar to a third party's trademark already registered or used for identical goods or services. Besides, any sign that has the inherent shape of a product, or a shape that results from the technical properties of the product, or contains a copy of a work that is not permitted by its owner cannot be protected as a trademark.

Trademarks in VIETNAM: what you need to know

Vietnam is a member state of the Madrid Protocol (see more details and a full list of members at www.wipo.int/treaties/en/registration/madrid_protocol/). Trademark applications made in other Madrid Protocol member countries can therefore be extended to Vietnam via an international registration route carried out by the WIPO, meaning that application requirements and approval time may be reduced. As of today, Myanmar is the only country from the ASEAN region that is not an official member of the Madrid Protocol.

Because Vietnam is a party to the Paris Convention, applicants for trademark applications in Vietnam are entitled to a 'right of priority' if the same filing has already been made in any other contracting country of the Convention within a six-month period prior to the filing date in Vietnam.

As with patents, Vietnam operates under a 'first-to-file' system for trademark registration. It is therefore very important to register early, before entering into the market, so as to diminish the risk of trademarks being registered by someone else first, or in other words, registered 'in bad faith' or 'hijacked'.

How LONG does legal protection last?

How LONG does legal protection last?

Trademark protection lasts for 10 years from the filing date in Vietnam, with the option to extend for consecutive 10-year periods an unlimited number of times (provided renewal fees are paid in due time)

HOW do I register?

Trademark applications can be filed directly before IP Vietnam (national route) or via the Madrid system (international route).

Trademark applications should be filed before IP Vietnam, and the formality examination of the application shall be completed within the first month after receipt. Following this, there will be a publication stage (after two months) and substantive examination (after 9-12 months).

The application dossier must contain the following documents:

1. A request made in the standard form provided by IP Vietnam.
2. Documents, samples, and information identifying the trademark.
3. Payment receipt of fees and charges.
4. A Power of Attorney, if a representative is making the filing on your behalf.
5. Documents demonstrating that you own the right to registration, if the trademark has been acquired from another person.
6. Documents demonstrating the priority right, if claimed.

Trademark applications should be filed either electronically at <http://dvctt.noip.gov.vn:8888/HomePage.do> (available in Vietnamese only) or onsite at the following address (or to one of its branch offices in Ho Chi Minh City and Da Nang):

Intellectual Property Office of Vietnam (IP Vietnam)

384-386 Nguyen Trai Street, Thanh Xuan District, Hanoi
+84 (0) 24 3858 30 69 / +84 (0) 24 3558 82 17



Trademark

WHO can register?

Any organisation or individual has the right to register marks for goods that they produce or for the services provided. This includes products you put on the market that are manufactured by others (provided that the manufacturer does not already use the trademark for their own products and does not object to the registration).

Which LANGUAGES can I use?

All documents of the application must be in Vietnamese, except for the Power of Attorney, the evidence documents (regarding the right to register and priority right - see points 4-6 above) and other documents supporting the application. These documents can be in another language but must be translated into Vietnamese at the request of IP Vietnam.

How much does it COST?

Vietnam accepts trademark applications for multi-classes of goods/services. This means that a single application can be filed to cover more than one class of goods/services. Accordingly, the trademark registration fee will vary depending on the number of classes and the number of goods/services in each application.

The basic fee for registering a trademark in one class with up to six goods/services is VND 1,360,000 (approximately EUR 53). In case you wish to register a trademark for multi-classes and/or more than six goods/services in each class, it is required to pay additional fees of VND 830,000 (approximately EUR 32) for each additional class and VND 150,000 (approximately EUR 6) for each additional good/service in excess of 6 in one class. If the priority date is claimed in the application, the corresponding official fee will be VND 600,000 (approximately EUR 23). These costs represent only the official fees charged by IP Vietnam in case of a smooth registration procedure (no refusal of protection issues, no opposition filed) and do not include legal fees (if any).

Trademarks TIPS and things to WATCH OUT for in VIETNAM

- Because Vietnam is a 'first-to-file' system for trademark registration, third parties that register your trademark before you do so will become the legal owners of that trademark. These 'bad faith' registrations are not uncommon, and in many cases, the original trademark owner is required to buy back the trademark at an inflated price.
- In Vietnam, protection for 'well-known trademarks' exists; however, in practice, it can be difficult to prove that this applies to your trademark before a court. The Vietnam IP Law 2022 brought a clearer definition of well-known trademarks (i.e. trademarks widely known by the relevant sectors of the public throughout the territory of Vietnam). However, there are currently no specific guidelines on how to assess specific elements from this definition (for example, it is still difficult to have a clear definition of «the relevant sectors of the public»).
- Since 2023, Vietnam IP law allows the filing of opposition and cancellation actions against trademark applications/registrations on the ground of bad faith. Another way to cancel a bad-faith trademark registration is by proving that the trademark was unused for a period of 5+ years after registration (in such case, you can file non-use cancellation action) or that the registered trademark has become a common name for designating the protected goods or services.
- Before filing a trademark application, it is highly recommended to conduct a prior trademark search to check the registration availability of the sign you want to protect as a trademark (i.e. to find out if there are any existing filed/registered similar or identical trademarks or any other prior rights in the country of interest which will block the registration of your trademark). You can run a trademark search at the [national database of IP Vietnam \(WIPOPUBLISH\)](#), the [database of the Vietnam Intellectual Property Research Institute \(VIPRI\) \(IPPLATFORM\)](#), or other multinational portals, such as [Global Brand Database](#), [ASEAN TMview](#) or [EUIPO TMview](#).

For more information on trademark protection in Vietnam, check out our [South-East Asia IP SME Helpdesk Guide to Trade Mark Protection in South-East Asia](#), which is available to download from our website: <https://op.europa.eu/en/publication-detail/-/publication/de7b634e-4bc5-11ea-8aa5-01aa75ed71a1>

E. Geographical Indications (GIs)

WHAT are GIs?

A product's quality, reputation, or other characteristics can be determined by where it comes from. For example, agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.

A geographical indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities, a reputation, or characteristics that are essentially attributable to that place of origin. In other words, a GI informs consumers that a product comes from a certain place and has special qualities due to that place of origin.

Unlike a trademark, it may be used by all producers who make their products in the place designated by a GI and whose products share specified qualities.

GIs in VIETNAM: what you need to know

Since the IP law in 2005 (amended in 2009, 2019, and 2022), GIs are recognised per se and can be registered in Vietnam.

According to Article 4.22 of the IP Law 2022, "Geographical indication (GI) means the sign that indicates the geographical origin of the product from a specific area, region, territory or country". Following the definition, GIs includes geographical names, signs, symbols, and images.

The following subject matters shall not be protected as GIs:

- names or indications which have become generic names of goods according to the perception of relevant consumers in the territory of Vietnam;
- GIs of foreign countries where they are not or no longer protected or no longer used;
- any GI that is identical or similar to a registered trademark or pending registration trademark with an earlier submitting or priority date, the use of which may cause confusion over the commercial origin of goods;
- GIs which mislead consumers as to the true geographical origin of products bearing such GIs.

In addition, the IP Law 2022 updated the list of what is considered an act of unfair competition, including the act of possessing or using a domain name that is identical or confusingly similar to a GI.

The aim is to prevent any malicious intent of use or any mean to take advantage of the reputation of a GI to gain illicit profits.

Besides, the EVFTA created a strong and effective GI protection system for both Vietnamese and EU IPR holders by providing a streamlined GI registration process and by strengthening enforcement measures to prevent and handle violations. Following the ratification of the EVFTA, a list of GIs was directly and automatically recognised protection in both the EU (39 Vietnamese GIs) and in Vietnam (169 EU GIs) without any need for further registration.

How LONG does legal protection last?

Once obtained, these rights will last continuously without the need to renew the registration every 10 years.

HOW do I register?

The GI application shall consist of the following documents:

1. A registration request made with the standard form provided by IP Vietnam;
2. Documents, samples, and information identifying the GI (e.g. a description of particular characteristics and quality of products bearing the geographical indication and a map of the geographical area; for homonymous GIs, documents describing the use conditions and presentation of the GIs to ensure their distinctiveness);
3. A Power of Attorney, if the application is filed through a representative;
4. Documents evidencing the right to registration, if acquired by the applicant from another person;
5. Payment receipt of fees and charges.

The application for a GI registration must be filed electronically at <http://dvctt.noip.gov.vn:8888/HomePage.do> (available in Vietnamese only), onsite, or by mail to the following address (or to one of its branch offices in Ho Chi Minh City and Da Nang):

Intellectual Property Office of Vietnam (IP Vietnam)

384-386 Nguyen Trai Street, Thanh Xuan District,
Hanoi
+84 (0) 24 3858 30 69 / +84 (0) 24 3558 82 17

WHO can register?

The State of Vietnam has the right to register GIs of Vietnam. Vietnamese authorities may allow organisations and individuals producing goods bearing GIs in Vietnam and collective organisations representing such organisations or individuals or administrative management agencies of localities to which such GIs pertain to exercise the right to register. Subjects who exercise the right to register GIs shall not become owners of such rights.

Foreign organisations and individuals holding foreign GIs rights under the law of the country of origin shall have the right to register such GIs accordingly in Vietnam.

Foreign individuals not permanently residing in Vietnam, and foreign organisations and individuals not having a production or trading establishment in Vietnam, shall file applications for GI registration through a lawful representative in Vietnam.

Which LANGUAGES can I use?

All documents of the application shall be in Vietnamese. Other documents supporting the application can be made in another language but must be translated into Vietnamese at the request of IP Vietnam.

How much does it COST?

The official fee for filing a GI application in Vietnam is VND 150,000 (approximately EUR 6). The official fee for the publication stage is VND 120,000 (approximately EUR 5). The official fee for the substantive examination stage is VND 1,200,000 (approximately EUR 48). The official fee for granting registration, issuing the registration certificate, and the publication of the granting decision is VND 120,000 (approximately EUR 5) per type of fee.

For an up-to-date list of fees, please see the 'Geographical Indications – Fees and charges' section of the IP Vietnam website or [the Circular 263/2016/TT-BTC \(English version available here\)](#).

GI TIPS and things to WATCH OUT for in VIETNAM

- Rights to a GI are not assignable. In addition, the right to use a GI is not transferable.
- GI registration certificates have indefinite validity from the date of issue.
- A description of the specific nature, quality, and reputation of the product must be provided together with documents proving that the information about the quality, nature, and reputation is well-founded and true (for example, test results, research, survey, etc.).
- A map of the geographical area of a GI must contain sufficient information to accurately identify the geographical area where all-natural conditions exist that create the unique characteristics, quality, and reputation of the product.
- If it is a foreign GI, it is necessary to provide documents translated into Vietnamese to prove that the GI is being protected in the origin country where the GI is located. The format of this document will depend on the legal system of each country.
- In Vietnam, signs linked to a specific geographical origin may also be protected via certification trademarks (a trademark which is authorised by its owner to be used by other organizations or individuals in order to certify the origin, materials, raw materials and methods of goods production or manner of provision of services supply, quality, accuracy, safety or other characteristics of goods or services bearing the trademark) or collective trademarks (a trademark used to distinguish goods or services of members from those of non-members of an organization that is the owner of the trademark).



F. Trade Secrets

WHAT are trade secrets?

Trade secrets are defined by Vietnamese law as 'information obtained from financial or intellectual investment activities, which has not been disclosed and is applicable in business'. A piece of information falls under the definition of a trade secret when the information:

1. has not been made to the public and is not common knowledge;
2. gives its owner a business advantage;
3. remains secret because the owner takes necessary measures to protect the confidentiality of the information.

Typically, trade secrets include new products or business models, special techniques, customer and supplier lists, technical know-how, etc.

Trade secrets in Vietnam: what you need to know

The following information may not be protected as trade secrets:

- Personal status secrets;
- State management secrets;
- National defence and security secrets; and
- Other confidential information which is not relevant to the business.

Trade secrets are generally protected before any authorities in Vietnam without registration as long as such trade secrets are lawfully acquired and confidentially secured. A trade secret that has been acquired by an employee or other party carrying out their assigned duties in the job belongs to the employer/duty assignor unless it has been agreed otherwise. While the Vietnamese IP Law recognizes the protection of trade secrets (since the IP Law 2005), the Vietnamese

Labor Code further refers to 'technology secrets,' in addition to trade secrets, without any proper definition. Besides, it seems that the competent authorities still have limited experience in dealing with trade secret infringements.

How LONG does legal protection last?

Because there is no formal registration process for trade secrets in Vietnam, these are often referred to as 'unregistered rights', meaning that they can theoretically last forever – as long as they remain secret. Despite being unregistered rights, trade secrets are now recognised in Vietnam and can therefore be enforced provided you can prove that they are non-public, have commercial value, and that you took measures to protect their confidentiality, such as by limiting employee access to information, marking documents confidential, including confidentiality clauses in employment agreements, etc. (see points 1-3 above).

Trade secret TIPS and things to WATCH OUT for in THAILAND

- Sanctions for handling violations of trade secrets are still ineffective and not highly deterrent; therefore, it is advisable that owners of trade secrets be proactive and have strategies in place for protection.
- One way to secure secrecy and confidentiality is by drafting and signing Non-Disclosure Agreements (NDAs) and Non-Compete Agreements with employees and partners.
- Setting up a robust data protection system (such as decentralizing access, encryption, firewall, etc.) and implementing cybersecurity measures is highly recommended for businesses.
- It is also recommended to determine the scope of information disclosure and to classify the level of information protection to build a corresponding protection mechanism.

For more information on trade secret protection in Vietnam, check out our [South-East Asia IP SME Helpdesk Guide to Trade Secret Protection in South-East Asia](https://op.europa.eu/en/publication-detail/-/publication/ebe78558-ca5d-11eb-84ce-01aa75ed71a1), which is available to download from our website: <https://op.europa.eu/en/publication-detail/-/publication/ebe78558-ca5d-11eb-84ce-01aa75ed71a1>



G. Plant Variety Rights

According to the IP Law 2022, all new plant varieties can be registered in Vietnam under the procedures of plant variety registration if they meet the following conditions:

1. having been selected and bred or discovered and developed, and
2. being new, distinct, uniform, stable, and
3. designated by proper denominations.⁹

To be protected in Vietnam, the new plant varieties now do not need to be on the list of plant species protected by the State issued by the Ministry of Agriculture and Rural Development (in accordance with a commitment in the International Union for the Protection of New Varieties of Plants for a period of 10 years since Vietnam joined the Union in 2006). Notably, the IP Law 2022 added a rule that prohibits the plant variety holder or any third party from registering a registered plant variety name as an exclusive trademark.¹⁰

How LONG does legal protection last?

New plant variety registrations in Vietnam last 20 years or 25 years for timber trees and vines.

Where do I register?

Applications for plant varieties should be filed at the following address:

New plant variety protection office (PVPO)

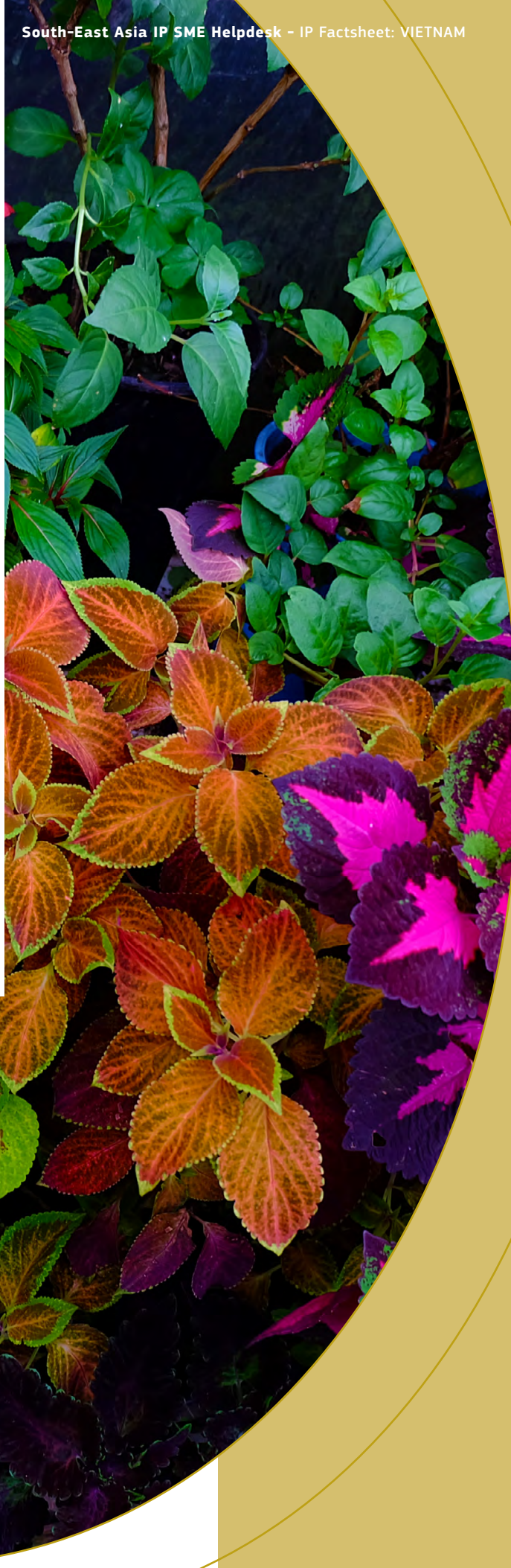
2 Ngoc Ha Street, Ba Dinh District, Hanoi

Tel: + 84 (0) 243-8234651

Website: <http://pvpo.mard.gov.vn>

⁹ Vietnam IP law 2022, article 158.

¹⁰ Vietnam IP law 2022, article 74.2(o).



4) Using CUSTOMS to Block Counterfeits

WHAT are Customs?

Vietnamese customs law prohibits the import of goods that infringe IPR, and Vietnamese customs have the authority to impose fines on infringers and confiscate infringing goods for imports. There are no specific provisions on specific sanctions that may be applied in case of detecting infringing goods for export. If the infringement of IPR exceeds a certain threshold, the customs authorities can also arrange for criminal proceedings to be brought against the infringing party.

Border control can be an effective means for enforcing your IPR in Vietnam and serve the purpose of pre-empting and suppressing IP counterfeits of your products at Vietnam's borders. Border control has gained more attention over the past few years from business owners wishing to protect their IP in Vietnam.

Customs in VIETNAM: what you need to know

Although registering with Vietnamese customs is not mandatory, it is advisable to add yourself to their database as it will help the customs authorities to recognise counterfeit versions of your product and improve the chances of such suspect items being blocked at the border. If you know of a suspected illegal shipment of your products, you can also work together with Vietnamese customs to detain such shipments.

WHAT can be registered?

Although legally, Vietnamese customs are obliged to monitor all types of IPR, in practice, this usually applies only to trademarks, GIs, and copyright and related rights.

IP owners may request measures to control imported and exported goods protected by IP with Vietnamese customs. Besides, Vietnamese customs are now empowered to proactively take measures such as suspending customs procedures if, during inspection, supervision, and control period, the officers detect clear grounds to suspect that exported or imported goods are infringing IPR (new mission granted by the IP Law 2022).

How LONG does legal protection last?

A request for Customs inspection and supervision measures for goods protected via IPR will last two years from the day on which the customs authority accepts the request. A time extension may be granted for another two years without exceeding the duration of protection of the relevant IPR.

HOW do I register?

In order to monitor the flow of infringing goods crossing Vietnam's borders, you will need to initiate customs recordal by filing a request with the General Department of Customs via the corresponding [online system](#) (available only in Vietnamese).

A request for recordal must contain the following mandatory documents:

1. certified copies of your IP certificates of registration (e.g. trademark registration certificate);
2. documents relevant to the goods you wish to register with customs, including: a list of authorised importers/exporters, the mode of importation/exportation of genuine goods, a description of how to distinguish the genuine goods from infringing ones, documents on the origin of genuine goods, and pictures of genuine goods;
3. a notarised and legalised Power of Attorney (if you are filing through a local IP agent).

In addition, the applicant should submit the following supporting documents (if available):

1. information on estimated time and venue of import and export;
2. expert opinions on infringing goods; and
3. sanctioning decisions made by enforcement agencies in previous cases of infringement of the goods you are registering (if applicable).

The customs office should notify you whether your application has been accepted or rejected no later than 20 days from the receipt of the request. More details can be found on the Vietnamese customs [website](#).

For special cases (i.e. if the online system is not working), requests should be filed at the following address:

General Department of Vietnam Customs
No. 9, Duong Dinh Nghe Street, Cau Giay District,
Hanoi, Vietnam
Tel: (+8424) 39440833
Email: webmaster@customs.gov.vn

WHO can register?

Vietnamese IPR holders may file a request before the General Department of Customs directly or the Customs Sub-Department (in case you wish to file written requests for postponement of customs formalities). Foreign IPR holders must file a request via a local IP agent.

Which LANGUAGES can I use?

Even though the official forms provided by the General Department of Customs are issued in both English and Vietnamese, the application must be prepared and filed in Vietnamese.

How much does it COST?

The official fee for inspection, supervision, or suspension of customs procedures for exported and/or imported goods protected by IPR is VND 200,000 (approximately EUR 8) per application.

Customs TIPS and things to WATCH OUT for in VIETNAM

- Infringers are demonstrating increasingly sophisticated counterfeiting methods and are finding new ways to try to outwit customs and other IP enforcement authorities, such as ‘transshipment’ whereby goods are first shipped to an intermediate location in order to hide the point of origin. In turn, customs agencies in Asia and globally are improving enforcement methods, such as more comprehensive databanks of information about products and trademarks filed by companies and more sharing of such information between international customs authorities.
- Piracy and counterfeiting are still widespread in Vietnam, and the customs registration process is relatively simple but can be very effective. It is therefore recommended that European businesses register their rights before the Vietnamese Customs.
- On 30 January 2015, the Ministry of Finance promulgated Circular No. 13/2015/TT-BTC, which entered into force on 15 March 2015. This circular defines inspection, supervision, and temporary suspension of customs procedures for exported and imported goods that are subject to IPR, as well as control of goods infringing IPR. This measure should strengthen IP enforcement. On 6 March 2020, Circular No. 13/2020/TT-BTC was issued to amend and clarify Circular No. 13/2015/TT-BTC. Circular No. 13/2020/TT-BTC was developed to overcome inadequacies in the protection of IPR at the border and to facilitate IPR holders or lawful representatives by notably simplifying dossiers and documents, enhancing the transparency of administrative procedures, complying with the Customs Law, the IP Law 2022, and international commitments (especially the CPTPP). Thanks to the control and monitoring of customs, SMEs can prevent counterfeiting goods from entering or exiting the country. Customs are a very effective and relatively cheap way to enforce IP.
- Temporary suspension of goods is an option for urgent cases where you need to file a specific request with the help of IP agents.



5) ENFORCING your IP

If your IP assets are being infringed in Vietnam, you may consider four main avenues of enforcement which are outlined below: administrative actions, civil litigation, criminal prosecution, and customs seizures (already described in Section 4 above). In many cases, however, private mediation via legal professionals is more effective and should be considered as a viable option.

Administrative actions

Administrative actions are both cost-effective and time-efficient, and this is certainly the most common route for most companies when infringement is discovered. It is a good way to deal with small-scale infringers and to gather evidence for larger-scale infringers, and it is the best option if the IPR holder's main priority is to immediately stop an ongoing IPR infringement.

Depending on the value and nature of the case, different governmental bodies may be involved in the action and will be able to issue different penalties, such as issuing Cease and Desist orders, revoking business licences, issuing monetary fines, or the confiscation and destruction of infringing goods.

The following authorities are competent to conduct administrative procedures and to apply provisional sanctions against IPR infringements:

- **The Economic Police (EP):** EP is the most powerful force. Its officials, however, will only undertake cases which involve serious infringements of a large stock and on a large scale or cases of manufacturing counterfeit goods. They prefer to handle cases that may be subject to criminal prosecution rather than administrative sanctions.
- **The Market Surveillance Agency (MSA)** (the General Department of Market Surveillance under the Ministry of Industry & Trade at the national level, and MSA teams under the Department of Market Surveillance at provincial levels): MSA teams cover the markets throughout the country, and they will undertake raid actions concerning any goods at the market level. They are less powerful than the EP.
- **The Inspectorate of Science and Technology and/or Inspectorate of Information and Communications** (under the Ministry of Science and Technology and/or Information and Communications and Departments of Science and Technology and/or Information and Communications at the provincial level). This entity has a better knowledge of industrial property, and its officials will be able to deal with complicated infringement issues such as patent, industrial design, GI infringements, etc. However, they usually liaise with the EP or the MSA as they require manpower and practical assistance in any action.

While administrative fines are generally not as harsh as penalties that can theoretically be awarded under civil litigation or criminal prosecution, in practice, administrative actions may offer a more realistic chance of stopping infringers quickly and, in some cases, obtaining damages.

A request to apply administrative measures against IP infringement should be filed with a relevant enforcement authority and include the following documents:

1. document evidencing the ownership of the infringed IPR;
2. proof of damages caused by the infringement;
3. evidence of infringement (e.g. samples or photographs or the counterfeit/infringing goods);
4. expert's opinion (if available); and
5. a Power of Attorney, if the request is filed by an IP agent.

The authority will examine the request within one month from the filing date. When the request and its accompanying documents are found to be satisfactory, the relevant authority will then raid and seize infringing goods without prior notice to the infringer. If infringement is found, the relevant authority will impose sanctions upon the infringer.

Consequences of administrative cases may include the following:

- Primary sanctions, which include either a warning or a fine up to VND 500 million (approximately EUR 19,000). This fine must be paid to the State Treasury.
- Additional sanctions, which include confiscation and/or destruction of infringing goods, as well as means for producing the infringing goods, and the suspension of business licenses.
- Other consequences include: the removal of infringing elements from a product; withdrawal of domain name and/ or company's name containing infringing elements; recall of infringing goods already on the market; recovery of illegal profit which the infringer makes from the infringement; compulsory distribution or use of infringing goods (as well as the means of production such as the machinery used) for non-commercial purposes, as long as this does not influence the IPR holder's commercial activities, nor harm the health of humans, domestic animals, plants and environment; and forcible submission of falsified documents to the competent authorities or persons that issued such documents.

Illegal profits recovered will go to the State Treasury. IP holders who want to claim damages must pursue civil litigation against the infringer.

Civil litigation

Civil litigation is more suited to addressing larger-scale infringements and, in practice, very few civil litigation cases are brought to court in Vietnam.

This is due to several reasons, such as the length of time required to bring a case to court, a lack of proper IP training and human resources within the judicial system, the inexistence of an IP specialised court in Vietnam (at the time of writing) and the fact that conciliation is a compulsory process.

Damages are often based on the total amount of lost sales or the infringer's profits; however, if the actual amount of damages owed cannot be determined, the maximum amount the court can award in damages is VND 500 million (approximately EUR 19,000). The Vietnamese authorities are still working towards improving the training of court officials, judges, customs authorities, and other IP enforcement agencies by cooperating with other international organisations (like WIPO) and government agencies.

By taking civil actions, IPR holders can request provisional measures (preliminary injunctions) and claim remedies available under law (especially claims for damages). To initiate a lawsuit, you need to file a petition along with the necessary documents before the court within two years from the date on which you discover that your rights have been infringed.

As of 30 September 2022, the courts accepted 180,620 civil cases and settled and tried 136,534 cases, reaching the rate of 75.6%; in which, for first-instance procedures, 166,464 cases were accepted and 123,889 cases were settled and tried; for appellate procedures, 13,443 cases were accepted and 12,006 were settled and tried; for cassation and reopening procedures, 713 cases were accepted and 639 cases were settled and tried.¹¹

¹¹ Source in Vietnamese only: <https://tapchitoaan.vn/nam-2022-so-luong-chat-luong-giai-quyet-xet-xu-cac-loai-vu-viec-dat-va-vuot-cac-chi-tieu-yeu-cau-de-ra7749.html>



Criminal prosecution

The Vietnamese Criminal Code of 2015, amended by the Law on Amendments to the Criminal Code (2017)¹² provides several important provisions, such as criminal liability of individuals and juridical persons for violating copyright and related rights or manufacturing and trading IPR infringing goods.

Criminal prosecutions are not common for IPR infringements; however, criminal courts have the power to impose harsh penalties. Criminal charges in Vietnam can be brought for the infringement of copyright or related rights (see Article 225 of the Criminal Code) as well as for infringements of industrial property rights (see Article 226 of the Criminal Code).

Penalties for copyright and industrial property rights infringement for individuals include a monetary fine of up to VND 1 billion (approximately EUR 37,600) and imprisonment of up to three years.

Criminal sanctions applicable to juridical persons may include monetary fines of up to VND 3 billion (approximately EUR 113,000) for copyright infringement and up to VND 5 billion (approximately EUR 188,200) for industrial property right infringement, suspension of business operations (from six months to two years), a prohibition on doing business, operating business in certain areas or raising capital (from one to three years).

The cost of criminal prosecution is borne by the authorities, and a favourable ruling could be a valuable deterrent to potential future infringers. For a criminal case, it may take from six months to two years to complete (from investigation to prosecution to hearing). IPR holders who are victims/related parties may also take part in the hearing and may request compensation for damages (caused by the crime) as a civil part of the criminal judgment.

¹² An English translation of the Vietnam Criminal Code 2015 can be found here: <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf> which was amended by the Law on amendments to the Criminal Code (2017) that can be found here: <https://www.wipo.int/wipolex/en/text/585383>.

Enforcement TIPS and things to WATCH OUT for in VIETNAM

- Although the legal framework in Vietnam is relatively sound, the main IP issue remains the enforcement of these laws, as is the case across the majority of Asian countries. Piracy and counterfeiting are widespread; however, relatively few IP cases are brought to court because, often, the amount of damages awarded does not warrant the investment necessary to engage in litigation.
- The success of an administrative action greatly depends on the choice of enforcement authority.
- Criminal action may be taken against infringement of copyright, trademarks and GIs.
- The Amended Criminal Code (2017) brought some important changes regarding IP-related issues that will allow more thorough and effective investigation and prosecution against IPR infringers. The most important ones are a more detailed explanation of the constituents of the crime of manufacturing and trading counterfeit goods and the crime of violating industrial property rights (Article 226 of the Criminal Code).
- To prove your rights to compensation, you need to provide documents proving the actual damage suffered by your company as a result of the infringement, as well as documents proving a decrease in income and profits due to the infringement (a direct comparison of income levels, actual profits before and after the infringement occurred; a decrease in the number of goods provided before and after the infringement occurred; the loss of money, the loss of business opportunities and income loss due to the infringement) and documents proving other reasonable costs to prevent and overcome the damage caused by the infringement acts (if any). In addition, evidence should also prove who is the legal owner of the violated object.



6) Useful links

- South-East Asia IPR SME Helpdesk website
www.sea-iphelpdesk.eu
- Confidential enquiry service email address
expert@sea-iphelpdesk.eu
- Helpdesk blog —
https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/south-east-asia-ip-sme-helpdesk/blog_en for related articles on IP in South-East Asia
- Regional Helpdesks
https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks_en
- Delegation of the European Union to Vietnam
http://eeas.europa.eu/delegations/vietnam/index_en.htm
- European Chamber of Commerce in Vietnam (EuroCham)
<https://eurochamvn.org/>
- World Intellectual Property Organisation (WIPO)
<https://www.wipo.int/portal/en/>
- National Copyright Office of Vietnam (COV)
<http://www.cov.gov.vn/>
- Intellectual Property Office of Vietnam (IP Vietnam)
<http://www.noip.gov.vn/en/web/english/home>
- Vietnamese Customs
https://www.customs.gov.vn/index.jsp?ngon_ngu=en
- ASEAN IP Portal — <http://www.aseanip.org/>

The South-East Asia IP SME Helpdesk provides free, confidential, business-focused advice to small and medium enterprises (SMEs) in the European Union (EU) and the other countries of the Single Market Programme (SMP)¹³ relating to Intellectual Property Rights (IPR) in SEA.

Enquiry Helpline:

IP-related questions can be submitted to the Helpdesk via email (expert@sea-iphelpdesk.eu). Our experts will reply with tailor-made advice within three working days.

Training & Live Webinars:

The Helpdesk regularly organises training sessions (onsite or virtually) on IP-related topics in SEA. Training may be conducted across Europe or within SEA, tailored to the needs of SMEs and relevant stakeholders.

Publications:

Business-focused guides, country factsheets, and training materials on IP issues in SEA are all free and downloadable from the online portal.

Website & Newsletter:

Our website (www.sea-iphelpdesk.eu) provides easy access to a wide range of material, and the monthly Newsletter selects the latest news and articles from the IP landscape in South-East Asia.

IP Business Tools

Available on our website, these are free services designed to guide SMEs in the European Union and SMP countries in IP-related cost management and to assess IP management readiness and maturity.

¹³ At the time of publication, the Single Market Programme countries are all EU member states plus Norway, Iceland, Liechtenstein, Turkey, Ukraine, North Macedonia, Kosovo and Bosnia and Herzegovina.

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