

Chapter II

LEGAL ENVIRONMENT FOR FOREIGN NON-GOVERNMENTAL ORGANISATIONS ' OPERATION IN VIETNAM

A. NORMATIVE DOCUMENTS RELATED TO THE OPERATION OF FOREIGN NON-GOVERNMENTAL ORGANISATIONS

Before 1989, the activities of foreign NGOs in Vietnam were limited; their aid budget was still modest; their help was mainly in kind, and its nature mostly humanitarian and emergency relief. A legal framework to regulate foreign NGO activities was not clearly identified. Acquisition and allocation of foreign NGO assistance fell in the competence of the Aid Receipt Division of the Ministry of Finance following the Government's instructions.

After 1989, especially since 1995, more and more foreign NGOs have come to operate in Vietnam. The forms, nature and approach of assistance have changed basically, from mainly in kind to funding of humanitarian and development projects/programs, resulting in increases in the total disbursed budget. To create favourable conditions and a legal environment for foreign NGOs' operation in Vietnam, on May 24th, 1996, the Prime Minister issued Decision 339 /TTg on establishing the Committee for NGO Affairs and Decision 340/TTg on issuing Regulations on the Operation of Foreign NGOs in Vietnam (see Annex 4). This was the first legal framework to regulate the operation of foreign NGOs in Vietnam. As stipulated in the Regulations, foreign NGOs are entitled to conduct development assistance and humanitarian activities in Vietnam which are not-for-profit or other purposes and have to register for permission with the Government of Vietnam in the forms of: Permit for Operation, Permit for the Establishment of Project Office and Permit for the Establishment of Representative Office. The Committee for NGO Affairs was later dissolved according to Decision 79 /TTg dated 6th July 2000 of the Prime Minister and a Committee for Foreign NGO Affairs was established under Decision 59/2001/QD-TTg dated 24th April 2001 (see Annex 4).

Permit for Operation is the official recognition and permission for foreign NGOs to conduct needs assessment and assistance planning, and implement development and/or humanitarian projects/programs in Vietnam via Vietnamese partners.

Permit for the Establishment of Project Office allows foreign NGOs to set up a project office in project locations to facilitate the monitoring of projects/programs having approved by local authorities. A Project office is the permanent technical workplace of an NGO or an NGO's representative office having projects in remote and geographically unfavorable areas; and responsible for directing, monitoring and evaluating activities of one or more projects/programs in a specific locality or region.

Permit for the Establishment of Representative Office is the official recognition of the permanent presence and representativeness of a foreign NGO in all its operations in

Vietnam.

The Regulations also include other specific issues related to the operation of foreign NGOs, such as visas for expatriate staffers, house and office renting, and the employment of Vietnamese to work in project and representative offices in compliance with the laws of Vietnam, the opening of expenditure bank accounts (in foreign currencies or Vietnam Dong with foreign currency rooting) in authorized banks. The Regulations and other nonnative documents have clearly demonstrated the policy of the Vietnamese Government in facilitating foreign NGOs' activities and offering privileges and immunities to foreign NGOs and their expatriate staff, such as exemption of income tax and of VAT on imported equipment and vehicles for project or office activities, or personal belongings of expatriate staff working in Vietnam (see Chapter 4).

Foreign NGOs operating in Vietnam shall be requested to abide by the scopes and fields of activity as stipulated in the issued Permits.

The Chief representatives of Representative Offices, or the chief of Project Offices or the person(s) authorised to represent foreign NGOs' operation in Vietnam (in case of Permit for Operation) shall be accountable for all activities of the NGOs conemed in Vietnam.

The person(s) authorized by an NGO to be its representative(s) or chief of its project office shall, every three (3) months, and the chief of a representative office every six (6) months, report in writing to the Committee on the operation of the NGO in Vietnam and shall also report and provide documentation or explanation to the Committee on matters related to the operation of the NGO whenever requested.

Other issues in relation to the operation of foreign NGOs in Vietnam that are not mentioned in the Regulations are subject to current laws and regulations of Vietnam.

B. COORDINATION MECHANISM FOR ADMINISTRATION OF FOREIGN NGO ASSISTANCE

On April 24th 2001, the Committee for Foreign NGO Affairs was established under Decision 59j2001/QD-TTg, signed by the Prime Minister, to assist the Government in directing the administration of, and solutions to issues related to foreign NGO activities in Vietnam.

The Committee has the following tasks:

1)Recommend directions and policies concerning foreign NGOs in Vietnam, coordinate with relevant agencies in providing guidance, monitoring, and oversight for the implementation of laws and policies related to the operation of foreign NGOs.

2)Consider the issuance, amendment, or withdrawal of Permit for Operation, Permit for establishing project office, or Permit for establishing representative office of foreign NGOs in Vietnam according to the Regulations on the operation of foreign

NGOs in Vietnam promulgated pursuant to Decision 340/QD-TTg, dated May 24th, 1996 of the Prime Minister.

3) Periodically report to the Prime Minister on the operation of foreign NGOs in Vietnam.

4) Carry out other tasks related to foreign NGOs as assigned by the Prime Minister.

The Committee consists of 8 members, with a Vice Foreign Minister as chairman and the President of the Vietnam Union of Friendship Organizations (VUFO) as Executive Member.

The Committee has its own legal stamp and takes the headquarters of VUFO as its office. The People's Aid Coordinating Committee (P ACCOM), the functional body under VUFO specialising in issues related to foreign NGOs, has been mandated with the following tasks: 1) Promote partnership between foreign NGOs and Vietnamese agencies and localities; 2) Facilitate foreign NGOs' activities in Vietnam and assist Vietnamese partners in their work with foreign NGOs; 3) Gather and disseminate information related to activities of foreign NGOs in Vietnam, and carry out research on issues related to foreign NGOs' operation and local needs; and 4) Recommend to the Government appropriate policies for administration of and support for foreign NGOs in Vietnam.

PACCOM functions as the focal-point agency bridging foreign NGOs and Vietnamese partners, assisting the Committee in dealing with procedures on the issuance, renewal and amendment of Permits for foreign NGOs, and providing other administrative support for the Committee.