

MEMORANDUM

Fundraising Activities by Not-for-Profit Organizations under Vietnamese Law *Ho Chi Minh City, November 2012*

Background

In order to operate, not-for-profit organizations (NPOs) need to seek and secure funding from legal sources, including individuals, businesses, local and international organizations, intergovernmental organizations, as well as local, national, and foreign governments. While some legal guidance exists, such as procedures for receiving funds from overseas; overall, such guidance is limited. As such, there is uncertainty about what is and what may not be permitted. With the goal of providing clarification for NPOs operating in Vietnam, the LIN Center for Community Development (LIN) collaborated with legal experts and NPO practitioners to prepare this memo on fundraising by not-for-profit organizations in Vietnam.

To prepare this memo, LIN first engaged Ms. Hoang Thi Thanh Thuy, a Vietnamese Lawyer and Member of the Ho Chi Minh City Bar Association. Upon receipt of a comprehensive overview of the existing legal framework for fundraising, LIN engaged a *pro bono* team from YKVN law firm to analyze and summarize this information.¹ With a more firm understanding about the legal framework, LIN surveyed thirty-three (33) local and international NPOs that are actively raising funds in Vietnam to learn from their experiences.² Follow-up interviews were conducted with thirteen of these NPOs.³ In some cases, LIN reached out to local authorities to help answer questions arising from this primary and secondary research.

This memo is divided into two parts: (I) the legal framework for NPO fundraising, and (II) recent NPO fundraising experiences. We also attached an appendix, which offers complimentary information and resources to support compliance with existing procedures for NPOs to fundraise in Vietnam.

I. Introduction: Legal Framework for NPO Fundraising

In this memorandum we discuss the permissible and impermissible fundraising activities of not-for-profit organizations (“NPOs”) under Vietnamese Law. This memorandum focuses on the broad rules applicable to the fundraising activities of NPOs and does not seek to identify every license, permit or approval that may be required for an NPO to implement a specific fundraising activity or

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² The sample included a variety of NPOs, including: Volunteer Groups (13), SREs (6), INGOs (4), STOs (3), Associations (2), Fund (1) and other (4).

³ Follow-up interviews were conducted with a variety of NPOs, including: Volunteer Groups (4), STOs (3), SREs (2) and Funds (1).

program. Accordingly, in the first section, we list the forms of NPOs that may be established in Vietnam. In the second section, we describe the process for the establishment applicable to each form of NPO. Finally, in the third section of this memorandum, we describe the permissible and impermissible fundraising activities applicable to each form of NPO.

In preparing this Memorandum, we have reviewed and relied on the legal documents listed in Annex 1.

1. Several Forms of NPOs Operating in Vietnam

There is no specific definition given to the term NPO under Vietnamese law. Rather, based on the various regulations that regulate the establishment and operations of organizations with non-profit purposes, it is possible (perhaps even reasonable) to conclude that Vietnamese law allows for the establishment and operation of the following forms of NPOs:

- (i) Social relief establishments (including Stated-owned and privately-owned establishments) (“**SRE**”);
- (ii) Social and charitable funds;
- (iii) Associations;
- (iv) Scientific and technological organizations (“**STO**”); and
- (v) International non-governmental organizations (“**INGO**”).

The NPOs listed above are the NPOs specifically contemplated by Vietnamese law. However, in practice, we understand that NPOs in Vietnam also exist in the forms of other voluntary groups and clubs, which also perform various charitable and non-profit functions, but which are not formally organized under the law. Voluntary groups and clubs may, in practice, gather contributions from their members and then directly give these contributions to beneficiaries, who may include, without limitation, SREs, social funds, charitable funds, associations, STOs and INGOs that are duly established. However, as one might expect, Vietnamese law is generally silent on specific provisions applicable to these informal NPOs. Likewise, this memorandum will not specifically address the legal environment applicable to the fundraising activities of informal NPOs.

2. Establishment/Operation Approval for Each Form of NPOs Operating in Vietnam

NPOs must be granted with an appropriate establishment license and/or operational approval by a competent authority in order to operate in Vietnam. A brief overview of the process is described as below for each respective type of NPO. For a comprehensive review of criteria and procedures for establishment, please refer to “Forms of Not-for-Profit Organization Establishment in Vietnam”, a memo prepared for LIN by Russin & Vecchi International Legal Counsellors.⁴

a. Social Relief Establishments (“SRE”)

SREs must be formed pursuant to a Decision on Establishment. The competent authority for issuing the approval, subject to the scope of operation of an SRE and/or type of an SRE, shall be:

- (i) the Minister, or Head of a ministerial equivalent agency for an SRE that is under the direct management of such agencies; or
- (ii) the Chairman of the provincial Peoples’ Committee for an SRE that operates throughout a province; or

⁴ <http://www.linvn.org/cms/upload/FCKFile/file/R&V%20Memo%20-%20Forms%20of%20NPO%20Establishment%20in%20Vietnam%20%28revised%29%20Jun2012.pdf>

- (iii) the Chairman of the district Peoples' Committee for an SRE that operates solely in a particular district of a province.

The regulatory time line for issuing the decision to establish an SRE is 30 working days from the date of the competent authority's receipt of a complete application dossier. Notably, a foreign organization or individual can establish and operate an SRE in Vietnam.

b. Social Funds and Charitable Funds

Social Funds and Charitable Funds (“**Funds**”) must be formed pursuant to a Decision on Establishment. Notably, the Decision on Establishment for a Fund also operates to formally approve the organization's operational charter. The competent authority for issuing the approval, subject to the scope of operation of a Fund, shall be either of:

- (i) the Minister of Home Affairs, for a Fund that operates (a) throughout Vietnam or (b) in at least two provinces or (c) within a province and receives contributions from foreign individuals/organizations in cooperation with Vietnamese individuals/organizations; or
- (ii) the Chairman of the district Peoples' Committee, for other Funds.

The regulatory time line for issuing the decision to establish a Fund is 40 working days from the date of the competent authority's receipt of a complete application dossier.

Upon the issuance of decision on establishment, a Fund can only begin to operate on the condition that: (a) it has obtained a letter issued by the bank where the Fund opens its account certifying that the funds contributed by the founding members and the ownership over such other assets have been transferred to the Fund; and (b) it has announced its establishment in three consecutive editions of a newspaper.

A foreign organization or individual cannot solely establish a Fund in Vietnam. Instead, foreign organizations and individuals must cooperate with one or more Vietnamese individuals or organizations to establish a Social or Charitable Fund.

c. Associations

Associations must be formed pursuant to a Decision on Establishment. The competent authority for issuing the approval, subject to the scope of operation of an Association, shall be either of:

- (i) the Minister of the Home Affairs, for an Association that operates (a) throughout Vietnam or (b) in at least two provinces; or
- (ii) the Chairman of the district Peoples' Committee, for an Association that operates within a province.

The regulatory time line for issuing the decision to establish an Association is 30 working days from the date of the competent authority's receipt of a complete application dossier.

By law, an Association's membership is limited to Vietnamese individuals or entities, which includes foreign-invested enterprises. However, Vietnamese law is silent on whether foreign entities or individuals are permitted to participate in or establish an Association in Vietnam.

d. Scientific and Technological Organizations (STO)

STOs must be formed pursuant to a Decision on Establishment. The competent authority for issuing the approval, subject to the type of STO, shall be:

- (i) the Government, for an STO at the central-level;
- (ii) the Prime Minister or the Minister or provincial-level People's Committee chairperson as authorized by the Prime Minister, for an STO at the provincial level;
- (iii) the competent authority as stipulated in the Law of Organization of the National Assembly, the Law of Organization of the Supreme People's Court and the Law of Organization of the Supreme People's Procuracy, for an STO under the National Assembly, the Supreme People's Court or the Supreme People's Procuracy;
- (iv) the central-level political organizations or socio-political organizations, for an STO established by decisions of central-level political organizations or socio-political organizations;
- (v) the Ministers, the Heads of ministerial equivalent agencies, agencies under the Government, the People's Committee chairpersons of provinces at the central-level, for STOs under their management; or
- (vi) other entities/individuals (including foreign entities/individuals) satisfying certain conditions including foreign-invested STOs, for other STOs under their management.

Upon establishment, and prior to commencing operations, an STO must also register with either the Ministry of Science and Technology [applicable to those STOs set forth in (i) - (v) of this section (e) above] or the Provincial Department of Science and Technology (applicable to other STOs). The regulatory time line for registration of the operation of the STO is 15 working days from the date of the competent authority's receipt of a complete application dossier.

A foreign organization or individual may, upon the satisfaction of certain requirements, solely establish an STO.

e. International Non-Governmental Organizations (INGO)

An INGO, as an international non-governmental organization rather than a Vietnamese organization, is, by its very nature, initially established outside of Vietnam. The operation of INGOs in Vietnam is supervised by the People's Aid Coordination Committee ("PACCOM"), a State body. PACCOM has officers who are in charge of INGOs from particular geographic areas (e.g. Europe, North America, and the Asia-Pacific region). PACCOM's headquarters are in Hanoi, and it has a branch office in Ho Chi Minh City.

An INGO must obtain an Operational Permit from PACCOM in order to legally operate in Vietnam. After that, subject to its form for operation in Vietnam, an INGO is required to obtain either (i) a Permit to set up a Project Office; or (ii) a Permit to establish a Representative Office.

The regulatory time line for PACCOM to issue each type of approval is 45 working days from the date of its receipt of a complete application dossier. The term of a Permit to Operate is 3 years from the date of issuance, whereas the term of a Permit to set up a Project Office or a Permit to set up a Representative Office is 5 years from the date of issuance.

3. Permissible and Impermissible NPO Fundraising Activities in Vietnam

Vietnamese law does not specify the types of fundraising activities that an NPO is permitted to undertake or not permitted to undertake. Furthermore, Vietnamese law does not provide any definition for "fundraising activities". Instead, Vietnamese law provides broad rules that establish the activities that an NPO is permitted to undertake, which include, among others, fundraising activities. For instance, all NPOs (for the INGOs, please refer to our analysis in section 3(e) below) have the right to receive funds from their members and from both domestic and foreign

organizations and individuals. Further, all NPOs ((for the INGOs, please refer to our analysis in section 3(e) below)) are permitted to receive foreign non-governmental aid.

In addition to the direct receipt of fundraising resources from members and organizations, and upon the obtainment of appropriate permits and approvals, some NPOs may organize cultural activities including art performances, fashion shows and festivals for charitable purpose.⁵ Notably, Vietnamese law does not specifically characterize such kinds of activities as fundraising activities. Accordingly, like all cultural activities, art performances, fashion shows and festivals undertaken in Vietnam by any organization or individual, such cultural activities, even when undertaken for non-profit and humanitarian purposes, are subject to Vietnam's regulatory regimes applicable to such activities. Accordingly, an NPO wishing to undertake cultural programming for charitable purposes must ensure compliance with certain prohibitions; for instance, the contents of such cultural programming cannot: (a) tend to incite people to oppose the State of the Socialist Republic of Vietnam; (b) undermine the unity of the Vietnamese people, inciting violence, propagandizing wars of aggression, sowing hatred between nations and peoples; or (c) disseminate reactionary ideas and cultures, depraved lifestyles, criminal acts, social evils, superstitions, acts against fine customs and habits, harming the health and deteriorating the eco-environment.

Further details on the permissible and impermissible fundraising activities of each NPO are described as below.

a. Social Relief Establishment (SRE)

The purpose of an SRE is to assist individuals experiencing social difficulties, such as: orphans, abandoned children, HIV/AIDS-infected children, elderly persons, seriously disabled persons, HIV/AIDS-infected persons in poor households, victims of domestic violence, sexually abused victims, trafficking victims, and victims of forced labor and some other groups of persons in difficult circumstances that may qualify for such assistance.

An SRE is entitled to carry out the following activities:

- (i) receive funds provided by domestic and foreign individuals and organisations (including their members);
- (ii) receive, use and manage funds (including those in kind) contributed by organisations and individuals for charity purpose and must ensure for using such contribution for this purpose;
- (iii) receive and mobilise foreign non-governmental aid;
- (iv) provide social work, including the establishment of plans to raise funding resources through programs and projects;
- (v) mobilise organisations and individuals to provide funds to bring up and take care of individuals being assisted by the SRE. The SRE is required to manage and use the funds in accordance with law.

Vietnamese law is silent on specific activities that are impermissible for an SRE to undertake.

b. Social Funds and Charitable Funds

A Social Fund is a fund that is established for non-profit purposes to support and encourage the development of culture, education, health, sport, science, and other public development purposes while a Charitable Fund is a fund that is established for non-profit purposes to remedy difficulties

⁵ Please refer to Annex 4 for legal guidance on obtaining a permit to organize a fundraising event.

caused by acts of God, fire, and other adverse problems, as well as to help terminal patients and others persons in difficulty.

In respect of permissible and impermissible activities, Charitable Funds are governed by the same regulations and law applicable to Social Funds. Both Social Fund and Charitable Funds are entitled to carry out the following activities:

- (i) mobilise financial contributions and aid for the fund;
- (ii) receive assets donated or sponsored or otherwise by domestic and foreign organisations and individuals in accordance with the fund's objectives and provisions of law;
- (iii) mobilise and receive foreign non-governmental aid; and
- (iv) call for and mobilise organisations and individuals to contribute cash or goods to support people affected by acts of God, fire or serious incidents.

The operation of a Social Fund and a Charitable Fund must be in compliance with the following principles: its operations and establishment are not-for-profit; it is voluntary, self-financing, and it is responsible for its undertakings; it operates under a charter that has been recognized by the agency that licenses it; it makes public all revenues and expenditures and is financially transparent; and its assets must not be divided during its operation.

Although the law is silent on specific activities that are impermissible for a Social Fund and a Charitable Fund to undertake, Vietnamese law does strictly prohibit them from engaging in any of the following activities:

- (i) money-laundering, supporting terrorist and unlawful activities;
- (ii) infringing on the social ethics, national habits, customs, tradition and character of the Vietnamese people; and
- (iii) infringing on the legitimate rights and benefits of individuals, organizations and the community, and causing an adverse impact on the interests of the nation, national defense or national unity.

c. Associations

An Association is a voluntary organization of Vietnamese citizens or organizations conducting the same business, having the same interests, or united by a common goal. An Association operates to protect and advance the lawful rights and interests of its members and the community. Associations may exist for various reasons (e.g. animal/environmental protection, cultural activities, educational activities, professional activities, or sports activities).

An Association is entitled to carry out the following activities:

- (i) mobilise funds from membership fees and revenues from its business and services in accordance with the law to cover its operational expenses;
- (ii) receive aid and donations from domestic and foreign individuals and organizations; and
- (iii) mobilise and receive foreign non-governmental aid.

It should be noted that unlike an SRE or a Social or Charitable Fund, the law does not specifically indicate that an Association may mobilise funds domestically from individuals and organizations other than from its members. This may lead to the interpretation that an Association cannot conduct fundraising activities. However, an Association is allowed to (i) receive aid and donations from both domestic and foreign individuals and organizations, and (ii) mobilise foreign non-

governmental aid. Consequently, it is reasonable to conclude that an Association is permitted to carry out fundraising activities in Vietnam, albeit in a more limited form than other NPOs.

An Association is specifically not allowed to distribute the funds that it has raised and/or mobilized to its members.

d. Scientific and Technological Organizations (STO)

STOs are categorized into: (i) scientific research organizations, (ii) scientific research and technology development organizations, and (iii) scientific service and technology organizations. STOs in categories (i) and (ii) may be institutions, centers, laboratories, research and observation stations, or experimental stations; whereas, STOs in category (iii) may be centers or offices.

An STO is entitled to carry out the following activities:

- (i) receive aid and donations from domestic and foreign individuals and organizations for the purpose of carrying out scientific and technological activities;
- (ii) mobilise and receive foreign non-governmental aid;
- (iii) joint venture, affiliate, making capital contributions, execute business cooperation contracts with domestic and foreign individuals to do business in accordance with the law;
- (iv) organize the manufacture and business of products/works resulting from the research's results and of scientific and technological services in relation to the functions of such STO.

Based on the foregoing, it is unclear under Vietnamese law whether an STO is permitted to raise funds from domestic individuals and organizations.

Guidance from VUSTA

The Vietnam Union of Science and Technology Associations (VUSTA) is an umbrella organization to many not-for-profit STOs. Members of VUSTA receive a handbook that provides guidance on member activities and operations. With a reference to Decision 818/QĐ/LHH, dated 22 December 2011, the handbook provides some guidance in this matter. In Chapter IV, Article 15, financial resources that VUSTA members are explicitly permitted to access include:

- Capital from the contribution of members;
- Money collected from activities;
- Loans from bank or credit organizations following the Vietnamese law;
- Funds from organizations and individuals both in and out the country;
- Other legal income resources.

e. International Non-Governmental Organizations (INGO)

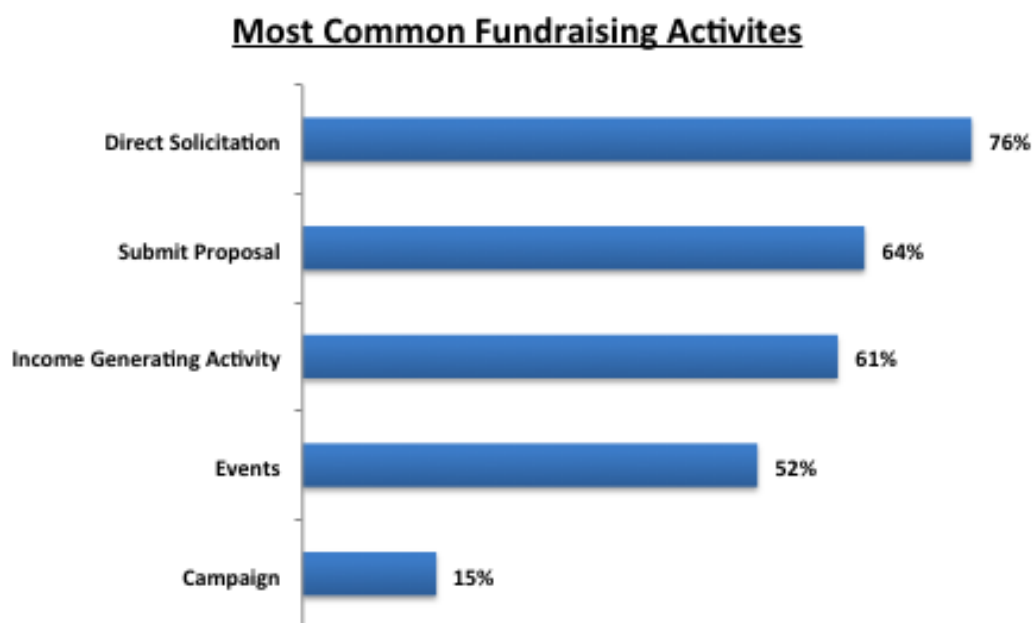
The law is silent on whether an INGO can carry out fundraising activities in Vietnam including the right to receive funds from domestic individuals and organizations. Regulations on management and usage of foreign non-governmental aid state clearly that the allowed aid receivers can only be organizations established in Vietnam. However, it also provides an open regulation applicable to other organizations that “with respect to other organizations, the receipt of aid will be submitted to the Government for its consideration and determination”. Thus, this may give the INGOs the grounds to receive foreign non-governmental aid. However, by law it is understandable that an INGO can only carry out such activities if the Operation Permit from PACCOM or a specific approval on a case-by-case basis has been granted for an INGO to engage in fundraising activities.

II. NPO Experiences with Fundraising in Vietnam

In September 2012, after reviewing the first draft of the legal memo on NPO fundraising, LIN sent out a short survey to not-for-profit organizations in its network. The survey asked NPOs and INGOs to indicate the types of fundraising activities they are undertaking, domestically, to support their programs. Thirty-three organizations responded to this survey, including: 6 SREs, 1 Foundation, 2 Associations, 3 STOs, 4 INGOs and 13 Volunteer Groups. LIN conducted one-on-one interviews with thirteen organizations including 2 SREs, 1 Fund, 3 STOs, 3 INGOs and 4 Volunteer Groups. What follows is a summary of the survey results, quotes and stories shared during in-depth discussions with NPO and INGO representatives based in Ho Chi Minh City.

a. Survey Results

When asked what types of fundraising activities NPOs undertake, the most popular response was by way of direct solicitation - over three-quarters of our respondents stated that they go directly to individuals and companies to ask for financial support or sponsored items.



NPOs also proved to be active in submitting proposals to grant-making organizations (64%) and engaging in income generating activities, such as selling organizational paraphernalia (T-shirts, cards, calendars, etc.), to raise funds for their programs (61%). At least half of the NPOs said that they organize fundraising events.

There were some differences across different types of organizations. For example, two SRE respondents reported raising funds by inviting foreign visitors to tour their shelters. Meanwhile, established local and international NPOs said they were able to raise funds by participating in bazaars or festivals organized by others.

And, although most organizations were able to engage in fundraising activities, a small number said that they struggled with fundraising, due to restrictions that may have been related to their legal status or lack thereof.

“It seems to me that the laws are not suitable to organizations like [our NPO]. We ought to be able to raise funds and receive funds for our work but we are restricted. The law is clear for companies. It is also clear for mass organizations. But it is not clear for organizations like [ours]... With our current license we are unable to establish a formal MOU with an INGO and receive funds from them. We tried to do this before, but no one was willing to sign off on the MOU. [The government offices we approached] said they could not sign off on such a document. Under these circumstances, we can only receive funds from sources that do not require this approval process.” (Respondent #13 – SRE)

b. NPO experiences obtaining a license/permit for fundraising events

Among the seventeen organizations that had experience organizing fundraising events (including performances, sports, art auctions or other events), less than half reported having applied for a license/permit from the local authorities. Two organizations stated that an agreement with the event venue itself was all that was necessary. Two others said that partnership with a mass organization meant they did not need to obtain an event permit. Another one said, “no one seemed to care whether or not we had a license”. Among those that did not obtain a license, more than half were Volunteer Groups.

Following are quotes and stories from different NPOs and INGOs regarding their experiences obtaining a license to hold a fundraising event.

Quotes from NPOs that Obtained a Permit

“We directly or indirectly obtain a license for all of the public events organised by [our INGO], because these affect the community... We obtain a license, directly, for any gathering in a public space. For other events, we may partner with a venue or service provider (e.g., a travel agency) and they would obtain the necessary permits for the event... If the event is limited to a specific audience, permission may only require a verbal agreement with the local authority.” (Respondent #12 – INGO)

“We organized the same event three years running. The first two years, we partnered with registered organizations to obtain the event license. On both applications, [our NPO] was listed as a project partner and the process took two to three weeks. The third year, we did not ask for a license.” (Respondent #1 - Volunteer Group)

“Organizations must obtain a license to organize any event involving foreigners. If there are only small groups of locals involved (organizing and attending), a license is usually not required. Event licenses are granted by the Department of Culture, Sports and Tourism. It generally takes two to three weeks for approval...If the event involves fundraising for charity, a license from the Department of Labour, Invalids and Social Affairs must also be obtained, which could take three to four weeks.”⁶ (Respondent #3 – Volunteer Group)

⁶ LIN was surprised when this respondent indicated the requirement to obtain a license for a fundraising event form DOLISA as such requirement is not stated in the law pertaining to that activity. For this reason, LIN asked Respondent #3, “How would an organization know they must obtain permission from DOLISA if this if it is not stated in the law?” Respondent #3 replied, “People should be self-aware. Particularly because fundraising is sensitive.” To learn more about this requirement, LIN visited the HCMC Department of Labour, Invalids and Social Affairs (please refer to Appendix 3 for details from LIN’s Q&A with DOLISA).

CASE 1:

Charity Cabaret Committee (CCC)

A Volunteer Group Obtains a License to Organize a Fundraising Event in HCMC

A group of expatriates came together (voluntarily) to organize a fundraising event two years in a row (2010 and 2011). In both years, a permit was obtained, the event was held, funds were raised and those funds were allocated to pre-selected charities. The event involved entertainment, a silent auction and raffle ticket sales. Vietnamese not-for-profit organizations were beneficiaries of funds raised at both events.

The Charity Cabaret Committee engaged a local legal expert to help obtain a license for their event, both years. The LIN Center for Community Development was engaged to manage the allocation and oversight of funds. In the first year, one of the CCC member's companies served as the "Qualified Entity" on behalf of the group. In the second year, LIN served as the group's "Qualified Entity". Both years, the application for an event permit was submitted to the Department of Culture, Sports and Tourism.

The CCC was advised to obtain a Diplomatic Note, which is not required but was intended to help expedite the approval process. Because the group decided to include the Note, and because foreigners were involved in the event (as organizers, performers and guests), a copy of the application also had to be sent to the Department of External Affairs (a.k.a. ERO), Ministry of Foreign Affairs (MOFA).

In the process of applying for a license from DOCST, it was suggested that CCC may need to apply for approval from DOLISA as well. As the group was unsure whether or not such an approval from DOLISA was necessary, and given they were concerned about timing, it was decided that they would instead submit a letter to DOLISA, "notifying" the Department of the group's proposed event and related charity activities.

Documents Requested

CCC was asked to submit two (2) copies each of the following documents, all signed and chopped:

- Application to DOCST using official header of the Vietnamese Government, and including:
 - Event description (purpose, date, venue);
 - Estimated number of guests at the event;
 - Full name and title of an authorized representative from the licensed, applicant organization (must have a seal);
 - Signed, margin sealed with applicant organization's chop ("dong dau giap lai")
- Appendix (documents/information requested by DOCST):
 - Copy of licensed, applicant organization's operating license (margin sealed with applicant organization's chop);
 - LIN Referral Letter;
 - Diplomatic Note, originals in both Vietnamese and English (note: this was not required, but it was thought that it would help to expedite the process);
 - List of organizers and performers (including their Name, Nationality, Company and Passport numbers);
 - Music lyrics (for all songs that would be played during the show); and
 - Final program of the event (agenda, music, stories, etc.).
- Submitted to DOCST and DOLISA (though only required by DOLISA):
 - Name and a brief summary of each of the projects (NPOs) that were pre-selected for funding, along with an overview of their core activities;
 - Soft copies of letters sent to notify the selected beneficiaries;
 - Application of beneficiaries (sealed with LIN's chop on the first page);
 - Official letter to selected beneficiaries (signed and sealed with LIN's chop);
 - Working minutes/MOUs with the selected beneficiaries [Note: LIN sent email exchanges only as the MOUs would not be signed until after the event – once the amount of money raised could be confirmed.]; and

- Template or Draft Grant Agreements [Note: the agreements could not be finalized until after the total grant amount raised was confirmed, after each event.].
- Requests for additional information (after the first submission to DOCST):
 - Two sets of color pictures of the costumes that would be used in the show;
 - Two copies of the contract signed with the event venue; and
 - List of guests (required by DoCTS).

Note: CCC was not able to provide a complete list of guests as tickets were still being sold at the time the application was submitted and also because companies and individuals purchased entire tables and would invite their own guests without informing the CCC members. As such, it was not possible for CCC to know all of the guests that would come. DOCST permitted CCC to provide a list of possible guests - a description of the people to whom the CCC was marketing the event.

CCC completed their application just over three weeks prior to their scheduled event. For this reason, a Diplomatic Note from a foreign consulate was included in the application, in hopes that it would help ensure timely processing of the application. One week after the application was submitted, the CCC's advisor checked-in with DOCST to find out if further information might be needed. There was about a week of "back-and-forth" exchange. CCC was asked to prepare additional information requested by DOCST and a second, final application was submitted one week later (two copies of all required documents, signed and stamped as detailed above). After that, CCC checked-in regularly, asking for the status of their application.

"Because we submitted our application later than recommended, we called to check-in almost every day, the week before the event, which was not ideal," noted the CCC Advisor. He added, "It is best to submit an application as soon as possible. The department is small and they may not want to help you next time if you wait too long before applying."

CCC was not required to submit an event report to the DOCST, ERO or DOLISA. Voluntarily; however, they announced the results of their event (e.g., funds raised, beneficiaries of those funds) via their website and press releases.

CASE 2:

Anonymous INGO

INGO Experience Obtaining a License to Organize a Fundraising Event

This registered INGO applied for a license to organize a large, fundraising event, involving entertainment, the sale of entry tickets and raffle tickets and including local and foreign individuals and companies. The process took approximately three months. The INGO's primary government contacts included the Department of Sports, Culture and Tourism (DOSCT) and the Ministry of Foreign Affairs' External Relations Office (ERO). In addition, the INGO was also recommended to follow-up with the local Police Department (for event security).

Collection of the information required to obtain the license began in month one. The application was submitted in month two, along with DOCST's application processing fee (VND 500,000). The INGO did not receive a list of required documents; however, they were asked to provide the following information with the application:

- Introduction to the event, including: an introduction to the INGO, the purpose of holding the event, how the money raised would be used – an outline about the program/project the funds raised will support (*note: The introduction provided an overview, it did not go into specific details*);
- Copy of the INGO license to operate in Vietnam;
- Number and description of expected guests;
- List of artists and detailed information about each one, including: names of all performers, ID

number/Passport No., flight schedules (*note: because travel was not confirmed at the time the application was submitted, the INGO included planned flight schedules and later followed up with the actual schedules*);

- Lyrics to songs that would be performed at the event;
- List of event planning committee members;
- Samples of event advertisements (posters, tickets, fliers, etc.); and
- Diplomatic Note (*note: this was not required but thought to be helpful*)

When the application was hand-delivered to DOCST and ERO, the INGO representative asked if the government representative could review the contents and inform them if anything was missing. At that time, no requests were made. One month later, the INGO called DOCST to learn the status of their application. The DOCST representative stated that there were formatting issues and requested a couple pieces of missing information. The INGO was asked to modify, amend and re-submit two copies of their application in month three, including the following additional information:

- Table of contents for the application; and
- Final flight schedules for performers coming from out-of-town.

“We had to ask questions [to DOCST staff] in multiple ways to try and get helpful answers. The answers typically given were often vague,” explained the individual that was in charge of overseeing the application process.

The official permit was received three days before the event, which took place in month four. DOCST called the INGO, which came to pick up the license that same day. As suggested by DOCST, a copy of the event license was hand-delivered to the District and Ward level Police Departments where the event would take place.

The Process of Applying for a Permit

For NPOs that had never before applied for a permit, the process and required information was not clear. Even for NPOs that had applied again, they discovered that the process and requirements could change. Several NPOs identified challenges they faced in the process, suggestions for improving the process of applying for a license and alternatives to obtaining the permit themselves. Some examples are explained in the following quotes:

“We used only informal networks and passed-on experiences in order to find out what we needed to provide and what to expect from the process. We were not aware of any official information sources aside from asking the officials directly.” (Respondent #12 – INGO)

“Applicants cannot call to ask questions. Often staff do not answer the phone. Instead, the applicant must go to the office and ask their questions, face-to-face. The [DOCST] representatives are good about answering questions. You do not need to set up a meeting in advance. You can usually meet and talk with someone within fifteen to thirty minutes after arrival at the office.” (Respondent #3 – Volunteer Group)

“It would be better if we could get the approval in a more timely matter and problems with the application could be made known sooner. [It seems that] requests change. One year they wanted more details, compared with the year before.” (Respondent #9 – INGO)

“If you want to organize a public event, you should cooperate with the government... Hiring an outsource service is also a good alternative... [Our NPO] always organizes big awareness raising events at government venues for the following reasons: it limits bureaucracy and helps us avoid legal troubles; these venues are often the most suitable for large events (offering a big space in a convenient location); and we have been able to receive a discount on the venue rental and related services... In order to work with these government venues, we must only obtain approval from the location manager. We only

need to provide the location manager with a copy of [our NPO's] operating license and a description of the proposed event.” (Respondent #5 – STO)

“DOCST asked us to pay for a supply of security, ambulance and nursing staff but we told them we had over 50 volunteers, plus a sponsored ambulance, doctor and nurse available to ensure safety at the event and [they eventually agreed that we could handle the security and health risks with our volunteer team]... On the day of the event, as we were setting up, the local police showed up and started to ask questions about safety and whether we needed police support, for which we would need to pay. We showed the police our event license, which outlined that we had taken every measure to protect the public. Eventually, the police left. However, they returned during the event to inspect whether we followed through with our proposed safety measures.” (Respondent #12 – INGO)

c. Additional Permits (Advertising and Trading)

In applying for an event license, several NPOs discovered that separate license were required in order to promote their events or to sell food and beverages at the event. Such requirements were not known to most NPOs.

“In order to advertise or promote the event publicly, one would need a separate license from DOCST; however, only VN companies are allowed to advertise. This would be impossible for events organized by foreigners or NPOs.” (Respondent #3 – Volunteer Group)

CASE 3:

Saigon Children’s Charity (INGO)

Applying for licenses to promote the event and to sell food & beverages

In applying for a license for one of the organization’s annual events, Saigon Children’s Charity (SCC) learned that it would additionally need to obtain approval, separately, if it wanted to hold a press conference, post banners at the event venue and/or allow the sale of food and beverages during the event.

As explained by Ms. Frederikke Lindholm Head of Fundraising for SCC, “We applied for a license to hold a press conference from the Center for Information and Culture. Since our event was a sporting event we could go directly to the Department of Culture, Sport and Tourist of Ho Chi Minh City (Sở Văn Hóa Thể Thao & Du Lịch Thành Phố Hồ Chí Minh) to request this license. For the ability to post banners at the venue, which was a public venue, we applied to the HCMC People’s Committee (Ủy Ban Nhân Dân Thành Phố Hồ Chí Minh). And for a trading license we applied to the Department of Industry and Trade of Ho Chi Minh City (Sở Công Thương Thành Phố Hồ Chí Minh).”

Though the process of applying for a trading license, SCC also learned that its food and beverage vendors would each have to apply for a trading license, themselves, if they wanted to sell their goods at the event. SCC addressed this issue by advising vendors they could avoid applying for the trading license if they were to give their food and beverages away for free, rather than for sale. One vendor decided to go through the licensing procedure and was able to obtain the required permit. SCC suspected this was not difficult to do because the vendor stated, in its application, that all profits from sales would go to the charity.

SCC paid approximately USD \$95 to obtain a permit to post a banner plus USD \$30 to speed up the licensing process and ensure the approval was received ahead of the event date.

d. Unclear or No Permit Required

When asked, many NPOs revealed that they were unclear about the conditions and requirements for obtaining a permit to organize a fundraising event.

“One of our donors wants to organize a [fundraising] event [in another Province] but we are worried... We don’t know if we are allowed to do this and we do not want to get into trouble. We prefer to err on the side of caution when it comes to fundraising. Probably, we will not do this event...” (Respondent #6 – INGO)

“We are sometimes invited to public and private bazaars where we can set up a booth, inform people about our work and sell our [paraphernalia] to raise funds for our organization. We assumed that the organizer of this event would obtain the necessary permits but I do not know whether they did or not.” (Respondent #12 – INGO)

Quite a few organizations informed LIN that an event permit was not necessary. The organizations falling into this category included STOs and Volunteer Groups. The STOs interviewed stated that the event fit into their core activities or approved projects, which is why a separate license was unnecessary. Some Volunteer Groups reported that they partnered with registered NPOs/INGOs or mass organizations, which either obtained the necessary permits on their behalf or were thus exempted from having to obtain a permit.

“We organized the same event three years running. The first two years, we partnered with registered organizations to obtain the event license... The third year, we did not ask for a license. After two years, it did not seem important that we obtain an event license. The venue did not ask for it.” (Respondent #1 - Volunteer Group)

“We organize small events, such as events around the holidays to raise funds for disadvantaged children in one of our project areas... It was not necessary to obtain a license as the event was related to our projects, which are already approved by [our umbrella organization]. Besides, this is not considered a major source of income for our [NPO]. In fact, these funds are intended for others, for charitable purposes. At these events, we solicit support from both local and international individuals and organizations.” (Respondent #10 – STO)

“An event license is not necessary because we are holding the event in a public park, there is no need for a license. We only need a permit from the park manager. [However, in order to obtain the permit]... we must pay 10 to 12 million VND per event, which includes the venue rental fee (approximately VND 6 to 8 million/event) and a park conservation fee (approximately VND 4 million/event). [In addition,]...we must collaborate with a registered organization that is able to sign the contract.” (Respondent #2 – Volunteer Group)

CASE 4:
Blue Dreams Volunteer Group
Obtaining Permission to Organize a Fundraising Event

In September 2012, Blue Dreams Volunteer Group organized a fundraising event to purchase bicycles for poor children in Long An Province. The event venue was an outdoor space at one of the Youth Union’s downtown offices. The Volunteer Group said it was not necessary for them to obtain an event license.

“We only needed to inform the Manager of the Youth Union,” explained the Founder of Blue Dreams Volunteer Group. He added, “We wrote up a project proposal and sent it to the Manager of the Youth Union. This proposal was approved, stamped and returned prior to the

event.”

e. Writing Proposals and Direct Solicitation of Funds

Writing proposals and directly soliciting funds from an organization or corporation were the two most frequently cited fundraising activities among NPOs in the survey. Relating to this activity, there were differences among NPOs when it came to local vs. foreign sources of income.

“Our primary source of income is grants because we are focused on implementing big, long-term projects. We used to rely more on income from consultation and training services. But this income is becoming less significant.” (Respondent #10 – STO)

“As an INGO, we are not allowed to solicit directly from local individuals and companies [in Vietnam]. When we obtain a grant from a multinational corporation or a foreign company, usually there is a pre-existing relationship with the headquarters of those companies.” (Respondent #6 – INGO)

“We do not refuse money from Vietnamese companies and individuals but we do not actively chase it down.” (Respondent #12 – INGO)

When it came to writing proposals or soliciting funds from organizations, Volunteer Groups faced bigger challenges compared with registered organizations likely due to the donors’ respective risk management guidelines.

“Some corporations that we approached required that their donation be transferred to an official (organizational) bank account. Our group does not have a license and we do not have a bank account. [If a transfer needs to be made] we just use a personal bank account. Sometimes, for certain donors, we were able to collaborate with a mass organization that agreed to receive funds on our behalf. They did not charge us any fee to do that.” (Respondent #11 – Volunteer Group)

f. Other Fundraising Strategies

Several NPOs employed less traditional strategies for raising funds, with varying degrees of success and effort. Two SREs found benefits in welcoming tour groups to their work sites, one INGO found an innovative way to partner with retail outlets. A volunteer group engaged with a public school while another offered guaranteed outcomes in order to attract corporate support.

Respondent #8 (SRE) has a close friend who works in the tourism industry. The friend sometimes refers interested clients to pay a visit to the NPO. “We invite them to experience the work we are doing. And when people come to visit the shelter, they often make donations.”

“We often receive requests from groups of visitors to Vietnam (from Korea or Japan, for example) that want to visit our shelter. We must always request permission, in advance, from the District People’s Committee. We have always managed to obtain that permission but it takes time, sometimes months, to gather the required information and receive their approval.” (Respondent #13 – SRE)

“[Our INGO] is officially not allowed to sell anything without a license. We are also not able to release red invoices. We have partnerships with Points of Sale who agree to take on that responsibility and report all funds back to us.” (Respondent #12 – INGO)

“One time, we partnered with a local primary school to raise funds for our Piggy Bank Project. By the end of the project, the children at the school filled over one thousand piggy banks. The school manager then asked us to give half the money that was collected

back to the school. We had no choice; we had to do what they asked. But, we decided we would never again partner with the schools.” (Blue Dreams Volunteer Group)

“Most of our funding comes from INGOs but we do raise some funds from corporations. From the beginning, it was difficult to raise funds because we had no reputation, no track record. One year later, we were facing the same challenge. So we decided to change our strategy. That is when we came up with the idea to promise prospective corporate sponsors that we could attract a set number of participants at our events. If we are able to deliver on our promise, the company makes a donation to our organization. The promise of attendees helped to solve our problem.” Is this an IGA, sounds like a fee for service? (Respondent #2 – Volunteer Group)

g. Income Generating Activities

A number of NPOs have employed various strategies for generating “earned income” to support their not-for-profit activities. Several (INGO, Volunteer Groups and STOs) order and then sell organizational paraphernalia (i.e., t-shirts, hats, mugs) for a profit; some engage beneficiaries in the creation of products that can be sold to the public; and others offer professional consulting services for a fee.

“We sell t-shirts online and at our events. The profits go towards scholarships. We collaborate with a local manufacturer who offers us a low price. We sold over 2,000 shirts in one year. This year, the cost to produce the t-shirts was reduced so the profit margin is higher. We do not have to pay taxes because we do not ask the manufacturer for a VAT invoice.” (Respondent #11 – Volunteer Group)

“During the Mid-Autumn festival, [we sold holiday items] to orphanages, shelters for children, children with disabilities and charity groups. We purchased [these items] from a local manufacturer, at a discounted rate, and the profit from selling those lanterns supported our projects.” (Respondent #4 – STO)

“We collect old calendars and donate them to blind children so they can use the paper for writing braille. We sell the remainder to waste collectors and the money raised goes towards our charity activities for children.” (Blue Dreams Volunteer Group)

“A local restaurant helped to raise funds for [our NPO] by exhibiting and selling some of our children’s paintings.” (Respondent #13 – SRE)

“[We] are able to raise some funds by offering consulting services: research, project evaluation, training and [other] services.” (Respondent #4 – STO)

h. Future Plans for Fundraising in Vietnam

All of the organizations that were interviewed cited a need to improve their fundraising efforts. For many, the threat of decreased foreign aid was real and presented a risk to the organization’s future.

“International funding is down due to the fact that Vietnam is now moving from a low-income to a middle-income country.” (Respondent #6 – INGO)

“[Until now, most of our funds have come from foreign organizations. With Vietnam now becoming a middle-income country... we have a plan to look for domestic sources of funding. We are looking into the possibility of holding an [entertainment] event to raise funds from local [people]... We would work with an event management company, which would handle all logistics and obtain the necessary licenses for such an event.” (Respondent #5 – STO)

“Vietnam is becoming a middle income country, which means that some of the current international donor organizations are or will likely decrease their investments into Vietnam. For this reason, [our NPO] is looking for alternative sources of funding from both local and foreign sources. For example, we are looking to find NGOs and companies that share our mission. [We have] a plan to put together a list of companies that are paying attention to community issues and which are located closest to our projects.” (Respondent #4 – STO)

Suggested improvements included formalizing fundraising strategies, testing out new fundraising strategies and targeting new groups of prospective donors.

“Before, there was no need to fundraise. [This NPO received core project funding from the same two donors for over ten years.] Now, because we want to introduce a new program, there is a need to raise funds and we are going to try.” (Respondent #8 – SRE)

“We need to come up with more fundraising strategies. We’re thinking about online fundraising, but in order to do this, we may need to become established as an official NPO or use another channel... At our current scale of operations, we do not now need a license. We may need to hire administrative staff if we decide to set-up an NGO. It will be more challenging.” (Respondent #1 - Volunteer Group)

“We want to raise more funds, from other sources; however, we want to first develop the foundation – management and programs - so it can be sustainable... As such, we are not focusing on fundraising right now and we have no staff assigned to the task of fundraising.” (Respondent #7 – Fund)

“We have the great advantage of receiving support from registered VNPOs and INGOs. When we propose a project, they help us a lot. They provide useful information, technical, financial support and even legal support... I am currently conducting a research on how and whether to register [our NPO] officially. I am meeting with registered organizations (local and international) to understand the registration process and the requirements of registered organizations. It is not yet clear to me that [we] should seek an official license. There are many burdens/disadvantages associated with registering the group.” (Respondent #2 - Volunteer Group)

Several NPOs reported a growing interest in changing their target from foreign companies and organizations to local companies and local individuals. This was perceived, by one NPO, to be a more viable option in the South of Vietnam, compared with the North.

“We would like to fundraise locally but we do not want to rock the boat. So, we err on the side of caution... Our programs employ people in Vietnam, thus there would be benefits to the economy if we were able to raise funds domestically. Moreover, by being able to fundraise locally, we are able to contribute to building a local culture of philanthropy and encouraging greater buy-in and local involvement in the planning process (as donors become more invested in the direction of the program). We do not view ourselves as a charity. We are a development organization. We want to get beyond the current thinking that ‘there is no benefit for me or my company to donate or volunteer,’ and move towards providing donor/volunteer education. INGOs are not doing enough to explain why we are doing the work we are doing... we should be talking about this with the local people and local companies to make our work more sustainable.”(Respondent #6 – INGO)

“Until now, all of our events have mostly been geared towards expatriates but the target group of our sponsors is changing. So, we have to change our approach and this will be interesting... Our biggest challenge is knowing, in the back of our heads, that our primary fundraising target is multinational corporations and foreign companies and that there is increasing competition among NGOs for support from these companies.” (Respondent #12 – INGO)

“There is an opportunity to obtain funds from within the local community. Currently, this is not a major source of funding for local NPOs. But, gradually, we will need these funds. If we are able to do this, it will make our projects more sustainable. I think it is also more viable in the South, compared with the North. In the North, funding from business and individuals is kind of strange... soliciting funds for charity is mostly done by government. Maybe people give because they feel pressured to do so. For example, [our NPO] once requested a referral letter from [a Minister] to help us raise funds for charitable purposes. I think that letter helped us raise funds.” (Respondent #10 – STO)

A couple organizations expressed concerns and questions regarding their right to fundraise in Vietnam:

“With regards to fundraising, the biggest issue is the legal framework. For example, [we have] a plan to fundraise for scholarships through the Internet; however, in order to be able to do this [we] will need to add this function to our license.” (Respondent #5 – STO)

“[Our NPO] would like to understand the legal framework for fundraising activities in Vietnam. Once we understand the legal framework, we will develop a plan for fundraising... Also, we are weak when it comes to fundraising - event organization and fundraising from corporates. We do not have anyone on staff who is responsible for fundraising and our existing staff have received no training in fundraising.” (Respondent #4 – STO)

i. Reporting on funds raised domestically

The majority of NPOs interviewed for this memo said they were not required to report to the government on funds raised domestically. Nevertheless, STOs said they regularly report on their overall financial situation, at least twice a year, to their respective umbrella organizations. All NPOs and INGOs interviewed said they report on funds raised to their project partners and sponsors. In a few cases, the recipients of these reports included government offices; however, the decision to share information with the local government was made voluntarily.

“We report to the Youth Union after each event,” explained Mr. Hai, Founder of the Blue Dreams Volunteer Group. “Our reports are not monthly,” he added, “the timing depends on when our programs take place. After a program is completed - we always use up all the money that was raised for each program, we submit a report.”

“We report, twice a year, to the local People’s Committee. PACCOM told us once that we do not need to report to the Ho Chi Minh Union of Friendship Organizations (HUFO) but we received mixed messages from both so we just decided to report to both of them.” (Respondent #13 – SRE)

“After the [fundraising] event, our contact person for the license called to check on our fundraising total but this did not seem to be an official part of the process... We only have to report what we spend on programmes and administration, not what we fundraise... We also send PACCOM our audited financial statements; however, this is not a requirement.” (Respondent #12 – INGO)

One NPO pointed out one of the challenges they would face if they were required to report on funds raised domestically:

“...it would be hard to break down the source of funds obtained domestically through, for example, an event. If people are buying tickets at the door or raffle tickets during the event, it would be difficult to know how much came from locals versus foreigners, companies versus individuals.” (Respondent #10 – STO)

CASE 5:
Centre for Management and Sustainable Development (MSD)
Reporting on Funds Raised by an STO

MSD is not required to report on funds raised domestically. However, when receiving funds from international sources, MSD must get advance approval from VUSTA (its umbrella organization) and the local authorities. MSD must also report on those funds to VUSTA, to the local authorities and to the Ministry of Finance.

- *Approval to Receive Funds from International Sources*

Ms. Nguyen Phuong Linh, MSD Director, explained, “the report processes are quite clear so we do not meet many difficulties.” She added, “However, it is a little bit complicated to get funds for capacity building projects for CSOs from bilateral and multilateral organizations such as UN or international governments. Projects receiving funds coming from these sources must be reviewed by the Ministry of Public Security (MPS), and other relevant authorities, to get approval. This review process is managed by VUSTA. Therefore, the approval can take a couple of months. While waiting for the approval, we can begin the groundwork on our projects (i.e., research, logistics); however, we cannot hold an official launching ceremony until the approval comes through. We have had a couple experiences where [that] we had to delay the launch ceremony by two months...”

- *Reporting on International Funding*

“Under VUSTA’s new system, if funding comes from an international donor, reporting is quite complicated. The form sent by VUSTA is so different from our own financial management system. It is also different from the reports requested by our donors and the Ministry of Finance. These are all different reports that we have to prepare relating to the same funds. So it takes time and we do not understand why VUSTA has to conduct this audit as an independent auditor already does it [for MSD].”

While STOs report regularly to the local Tax authorities, these reports do not include funds raised. And, although STO expenses are allegedly eligible for VAT refunds, the procedures required for an NPO to obtain a VAT refund were considered time-consuming and burdensome.

“We are not required to report on funds raised to the local tax authorities. Reporting to the local tax authorities would present a dilemma for [our NPO]: If we report this income, the tax authorities may require us to pay taxes (they may not know or understand about NPOs - what we do or how we are different from companies, which could create trouble for us). However, if we do not report to the local tax authorities, we cannot claim VAT refunds. One of our donors wants us to try and claim the VAT refund. But we have no experience doing this and we are concerned.” (Respondent #10 – STO)

Among the three STOs that were interviewed for this memo, not one had ever attempted to obtain a VAT refund.

APPENDIX

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- 5. Application for issuance of license to foreign individuals and/or art groups to perform in Vietnam**
- 6. Application for issuance of license to Vietnamese oversea individuals to perform in Vietnam**
- 7. Application for issuance of license to foreign actors/actresses currently living in Vietnam to perform in Vietnam**
- 8. Application for issuance of fashion show license**
- 9. Application for issuance of license for organization of festival**
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ANNEX 1
LIST OF REVIEWED LEGAL DOCUMENTS

GENERAL

1. Civil Code of the National Assembly dated June 14, 2005.
2. Law on the Organisation of Peoples' Councils and Peoples' Committees of the National Assembly dated November 26, 2003.
3. Decree No. 103/2009/ND-CP of the Government dated November 6, 2009 issuing regulations on cultural activities and trading in public cultural services (as amended by Decree 01/2012/ND-CP dated January 4, 2012).
4. Circular No. 04/2009/TT-BVHTTDL dated December 16, 2009 as amended by (i) Circular No. 07/2011/TT-BVHTTDL of the Ministry of Culture, Sport and Tourism dated 7 June 2011, and (ii) Circular 05/2012/TT-BVHTTDL dated May 2, 2012.
5. Decree No. 93/2009/ND-CP of the Government dated 22 October 2009 issuing regulations on management and use of foreign non-governmental aid ("**Decree 93**").
6. Circular No. 07/2010/TT-BKH of the Ministry of Planning and Investment dated March 30, 2010 guiding the implementation of Decree 93.

SREs

7. Decree No. 67/2007/ND-CP of the Government dated April 13, 2007 on policies to support social relief subjects.
8. Decree No. 68/2008/ND-CP of the Government dated May 30, 2008 on conditions and procedures for establishing, operating, and liquidating social relief establishments ("**Decree 68**").
9. Circular No. 07/2009/TT-BLDTBXH of the Ministry of Labour, Invalids, and Social Affairs dated March 30, 2009 implementing Decree 68.
10. Decree No. 81/2012/ND-CP of the Government dated October 08, 2012 amending and supplementing Decree 68.

Social/charitable funds

11. Decree No. 30/2012/ND-CP of the Government dated April 12, 2012 on the organization and operation of social funds and charitable funds.
12. Circular No. 09/2008/TT-BNV of the Ministry of Home Affairs dated December 31, 2008 implementing Decree 148/2007/ND-CP of the Government dated 25 September 2007 on the organization and operation of social funds and charitable funds.⁷
13. Circular No. 10/2008/QD-BTC dated February 12, 2008 of the Ministry of Finance promulgating the regulation of financial management of social funds and charitable funds.
14. Decree No. 64/2008/ND-CP dated May 14, 2008 on mobilizing, receiving, distributing and using voluntary contributions to support people to overcome difficulties due to acts of God, fire, serious incidents and patients with serious deceases ("**Decree 64**").
15. Circular No. 72/2008/TT-BTC of the Ministry of Finance dated July 31, 2008 guiding Decree 64.
16. Decree No. 31/2011/QD-TTg of the Prime Minister dated June 2, 2011 on making public and transparent, checking and inspection of compliance with regulations on social security.

⁷ Although Decree 148 was repealed by Decree 30, in absence of a new circular implementing Decree 30, Circular 09 is still applied in practice.

17. Decision No. 192/2004/QĐ-TTg of the Prime Minister dated November 16, 2011 on making public financial condition of State entities, State owned enterprises, funds receiving contributions of people.
18. Circular No. 03/2005/TT-BTC of the Ministry of Finance dated January 6, 2005 guiding regulations on making public financial condition with respect to State budget levels and regime to make report making public financial condition.
19. Circular No. 21/2005/TT-BTC of the Ministry of Finance dated March 22, 2005 guiding regulations on making public financial condition with respect to State budget forecast entities and organisations funded by the State budget.

Associations

20. Decree No. 45/2010/NĐ-CP of the Government dated April 21, 2010 on establishment, operation, and management of associations (“**Decree 45**”).
21. Decision No. 33/2012/NĐ-CP of the Government dated April 13, 2012 amending Decree 45.
22. Circular No. 11/2010/TT-BNV of the Ministry of Home Affairs dated November 26, 2010 guiding the implementation of Decree 45.

STOs

23. Law on Science and Technology of the National Assembly dated June 9, 2000.
24. Decree No. 81/2002/NĐ-CP of the Government dated October 17, 2002 implementing the Law on Science and Technology.
25. Circular No. 02/2010/TT-BKHCN of the Ministry of Science and Technology dated March 18, 2010 providing guidance on the establishment and registration of STOs.

INGOs

26. Decree No. 12/2012/NĐ-CP dated March 1, 2012 on registration and management of operation of INGOs in Vietnam.
27. Decree No. 93/2009/NĐ-CP of the Government dated 22 October 2009 issuing regulations on management and use of foreign non-governmental aid (“**Decree 93**”).
28. Circular No. 07/2010/TT-BKH of the Ministry of Planning and Investment dated March 30, 2010 guiding the implementation of Decree 93.

ANNEX 2
QUESTION AND ANSWERS WITH HCMC TAX DEPARTMENT

From July to October 2012, LIN reached out to local government offices and websites and NPO umbrella organizations to ask specific questions about fundraising by NPOs in Vietnam. On 11 July 2012, LIN met with three representatives from the HCMC Tax Department. After that meeting, the LIN team drafted up our notes, in a question and answer format, and sent it back to our primary contact at the Tax Department to ensure accuracy. We received minor edits and include the revised version herein.

LIN Meeting with the HCMC Tax Department

11 July 2012

Question 1: Are the funds raised by VNPOs tax-exempt? If not, how should the VNPO record this money in reporting to the local tax authorities?

Answer 1: If the VNPO has an annual operating license, they just need to report to their umbrella organization/licensing unit. They do not have to pay taxes on the money gained through fundraising. They also do not need to report to the tax authorities.

Question 2: Can VNPOs raise “unrestricted” funds by selling paraphernalia or NPO memorabilia (e.g., holiday cards, printed mugs)? Some may call this activity “earned income” fundraising.

Answer 2: Before selling goods to raise funds, the organization must apply for permission from the licensing agency under which it is established. After the sale, the organization must declare and pay taxes in accordance with regulations. There are no regulations relating to business activities that offer an exemption from tax... Any goods that are sold are required to be declared and tax must be paid.

Question 3: Can a foreign organization, not registered to operate in Vietnam, ship items to Vietnam, for sale in Vietnam so that the proceeds could be used for charitable purposes?

Answer 3: The foreign organization would need to obtain permission from the city People's Committee, where the sale would be organized.

Question 4: Are the costs associated with fundraising (e.g., marketing, advertising, meetings) by VNPOs tax deductible?

Answer 4: Assuming costs are expended in accordance with the terms and purposes of the organization, the tax authorities would not intervene.

Question 5: Under the Corporate Income Tax law (CIT), are corporate contributions to VNPOs and/or INGOs tax deductible?

Answer 5: Article 4, Sections 2.21 - 2.24 of Circular 130/2008/TT-BTC indicates the types of corporate contributions that are deductible expenses, including: funding for education, funding for healthcare, disaster recovery and building of gratitude houses by Qualified Entities. This Circular does not mention contributions to NPOs or INGOs.

Question 6a: Under the Personal Income Tax law (PIT), are individual contributions to VNPOs and/or INGOs tax deductible?

Answer 6a: Individuals are eligible for tax exemption when they make contributions to organizations that are established under Decree 68 (SRE) or Decree 148 (Fund). *[Note: after this meeting, Decree 148 was replaced by Decree 30.]* Organizations established by Decree 68 or Decree 148 (now Decree 30) would need to provide a certificate to the donor(s), which indicates their establishment as a Decree 68 or Decree 148 (now Decree 30) organization.

Question 6b: Does the Tax Department maintain a list of organizations established under

Decree 68 and Decree 148 (now Decree 30)?

Answer 6b: No. The Department does not have such a list. Since there are many different agencies that allow the establishment of these two types of organization, it is difficult to gather this list. When an individual requests a tax deduction, he/she must provide documents that identify organizations they contribute to are established under Decree 68 or 148 (now Decree 30).

Question 7: What is the maximum/minimum deduction that can be claimed?

Answer 7: The maximum deduction would be equal to the maximum taxable income for that person in the year the contribution was made. For example, if the individual's taxable income is VND 1 billion, and that person contributes VND 1.5 billion to charity in that year, the maximum deduction is VND 1 billion.

Question 8: Does the Tax Department provide any guidance / training to organizations and individuals regarding payment of taxes and eligible deductions?

Answer 8: Yes. Before promulgating new policies or regulations on taxes, the Department invites businesses to attend training on those new policies. We are also willing to train companies, if there is a request.

ANNEX 3
QUESTION AND ANSWERS WITH
HCMC DEPARTMENT OF LABOUR, INVALIDS AND SOCIAL AFFAIRS

On October 19 and 23, LIN met with representatives from the HCMC Department of Labour, Invalids and Social Affairs to ask specific questions about fundraising by NPOs in Vietnam. After the informational meetings, the LIN team drafted up our notes in a question and answer format and submitted it back to our contact at the Department to ensure accuracy and to obtain permission to include this Q&A in our memo.

LIN Meeting with the Department of Labour, Invalids and Social Affairs
19 and 23 October 2012

Question 1: Under what conditions would a local organization need to apply for a fundraising event license from DOLISA?

Answer 1: Every local organization must have a (license) from DOLISA. Because DOLISA is in charge of all events that involve activities that are related to raising money for a charitable purpose. Every local organization must submit all event document to DOLISA, DOLISA will evaluate the event, and make a recommendation to the HCMC People's Committee. The HCMC People's Committee will then decide whether or not to approve of the event.

Question 2: Can you tell us what law, or guiding document, provides further information about this requirement so LIN and our NPO partners can continue to build our understanding?

Answer 2: There is no law. The local organization just needs to get approval from the agency under which it is licensed to operate and then submit their event plan to DOLISA for approval.

Question 3: When an approval from DOLISA is required, what information would the local organization need to provide to you as part of the application dossier?

Answer 3: The required documents include:

- Cover Letter (directed to DOLISA, with information about the NPO, the main content of event, and the purpose of event). There is no template / form for the cover letter.
- Event Plan: the meaning of the event, who will participate, when, where, media, donors, estimated money to be raised, entrance tickets, etc.
- Organizer's License (e.g., NPO's registration license)

If the event is related to music or art, the local organization should obtain permission from DOCST (it was recommended to do this at the same time).

Question 4: Is there any procedure for organizing an event to raise money?

Answer 4: No, there is no document under DOLISA describing this procedure. However, at DOCST, there is a procedure for this.⁸

Question 5: Can volunteer groups apply for permission from DOLISA?

Answer 5: Every local group/organization has a right to apply for permission for such an event if they are legal (that is, they are registered under a government agency and have a license to prove it). This means that volunteer groups may only apply if they partner with an organization that is licensed to operate in Vietnam (including, but not limited to: SRE, STO, Fund, Association, Business, INGO, State University, Mass Organization).

⁸ LIN found detailed procedures on both the HCMC DOCST and the Binh Duong DOCST websites, which referenced Decrees, Decisions and Circulars on procedures for obtaining permits for cultural, art and musical performances/exhibits.

Question 6: How would the application requirement and/or process change if the event target audience includes foreigners?

Answer 6: If the foreigners are staff of the local organization, DOLISA will contact with HUFO to ask for their opinion. If the foreigners are just taking part in the event, DOLISA will contact with the Department of Foreign Affairs to ask for their opinion as to whether or not foreigners can join such an event. This step would also apply if any foreigner were scheduled to present at such an event, which would also require that the organization submit a CV or biography for any foreigner that is scheduled to present along with a summary of what they will talk about during the event.

Question 7: How long will the procedure take in order to obtain approval from DOLISA?

Answer 7: Typically, the process takes about 3 weeks (but it can take more time).

Question 8: Which department and/or person at DOLISA is responsible for such permits?

Answer 8: You just need to send all documents to DOLISA. DOLISA will designate a person to read the dossier and send it to the right department.

Note: DOLISA further advised that the NPO putting together a fundraising event should have already raised funds to cover all event costs. If, in the organization's Event Plan, it is indicated that "the NPO will sell tickets to help cover the costs to organize the event" such an application would not be approved by DOLISA.

ANNEX 4 OBTAINING A PERMIT TO ORGANIZE A FUNDRAISING EVENT

As discussed in Part I, Section 3, Paragraph 2, the requirements and procedures to obtain a licence would be entirely subject to the type of fundraising activities to be conducted by the NPOs and whether or not the regulations governing such activities requires a licence to be obtained. Below is a discussion of events commonly associated with raising funds for charitable or humanitarian purposes, and the requirements and procedures to obtain the necessary licences and permits for such events.

I. Professional Art Performances and Fashion Shows

Under Decision 47, professional art performances are defined to include various types of art performances (e.g. music, dance, classic drama, etc.) performed by professional actors/actresses.⁹ While it is not entirely clear that this would include fashion shows, both the Hanoi and HCMC departments of culture, sport and tourism (*DOCST*) appear to take a view that the organisation of fashion shows would be also subject to regulations applicable to the organisation of professional art performances as discussed below.¹⁰

Under Decree 103 and Decision 47, the organisation of professional art performances should be subject to a performance licence (*Performance Licence*) issued by the Art Performance Department (under the MOCST) or the local DOCST.

Exceptional cases

At law, professional art performances organised by the following entities shall be exempt from a Performance Licence provided that such entities however are not permitted to advertise, sell tickets or collect money under any form (which appears to suggest that the collection of money for not-for-profit purpose would be also prohibited),¹¹ and can only use songs, music or performances which are permitted for performance:¹²

- (A) owners of hotels, restaurants, guest house, or public entertainment locations who organise professional art performances at its business registration location;¹³ and
- (B) State authorities, economic, political, cultural and social organisations (which should include the NPOs) that organise professional art performances for internal purposes.¹⁴

⁹ Article 5 of Decision 47.

¹⁰ Decision 30/2010/QĐ-UBND of the Hanoi PC dated 21 July 2010 guiding the professional art performances and professional fashion shows in Hanoi suggests that the same regulations applicable to the organisation of professional art performances would also apply to the organisation of fashion shows. Our informal and no name basis discussion with an official of the HCMC DOCST (i.e. Ms Tran Thi Tuyet – Dossier Receipt Department – Tel: 08.3 822 3915 (*Ms Tuyet*)) also reveals that the same regulations are also applied in Ho Chi Minh City.

¹¹ Article 11.2.1 of Decision 47.

¹² Article 8.1 of Decree 103.

¹³ The organisation of professional art performances by such owners within their registered offices would be also subject to the fact whether such offices are permitted to organisation of such performances. If they are not permitted to organise such events in their offices, then they will need to obtain necessary licences and permits as discussed in section II – Annex 4.

¹⁴ Article 8.1 of Decree 103 and Article 11.2 of Decision 47. While the law is not clear, I understand from an informal discussion with Ms Tuyet reveals that such organisations can only organise professional art

However, if there is any foreign/Vietnamese overseas actors/actresses joining the performances, the relevant entities need to:

- (C) obtain a permit from the MOCST (with respect to Vietnamese overseas actors/actresses) or the provincial People's Committee (PC) (with respect to foreign actors/actresses) allowing such actors/actresses to perform in Vietnam (see procedures to obtain such licences in Step 1 - section II.2 below); and
- (D) register the performances with the local DOCST three days prior to the performance.¹⁵ While the law is silent on procedures for such registration, under the MOCST's informal guidelines published on a website guiding administrative procedures in Vietnam¹⁶ suggests that in order to register, the applicant only needs to submit a written registration to the local DOCST. After 7 working days,¹⁷ if the DOCST has no opinion, the applicant may organise the performance. If the DOCST does not agree with the registration, they need to issue a written response. In practice, in absence of specific implementing regulations, it appears that each province would have its own guidelines for the procedures.¹⁸ Nothing at law requires that the applicant pay a fee to request such registration.

Charitable art performances

If the performance is organised by an NPO to raise income which will be used for a social and charity purpose, Decision 47 requires such NPO to comply with Article 10 of Decision 47, which suggests that: (i) only certain licensed entities are permitted to organise a professional art performance [e.g. enterprises having business registration line of organisation of professional art performances (*Qualified Entities*)], (ii) the Qualified Entities need to obtain a Performance Licence from the Art Performance Department or the local DOCST,¹⁹ as the case may be, and (iii) the

performances for internal purpose at their registered offices. If they are not permitted to organise such events in their offices and must organise in another place, then requirements discussed in section II – Annex 4 will apply.

¹⁵ Article 11.2.1 of Decision 47.

¹⁶ http://csdl.thutuchanhchinh.vn/ho_so_tthc/bo_van_hoa_the_thao_va_du_lich/b_bvh_029362_tt.

¹⁷ While Decision 47 only requires the applicant to register the performance 3 days prior to the performance, it appears from the MOCST's informal guidelines that the applicant should register at least 7 days prior to the performance.

¹⁸ For instance, the DOCST of Binh Duong publishes such procedures on its website:

http://csdl.thutuchanhchinh.vn/ho_so_tthc/binh_duong/t_bdu_117232_tt and requires submission of one set of the following documents:

- Application for registration of performances, indicating clearly: time, location and contents. (Certain provinces specifically require the applicant to use the prescribed notice form No. 2 issued together with Circular 05. In this case, the application must specify the name of the program or performance, agenda, list of authors, director, choreographer, musician, artist, actors/actresses, time and location for the performance (http://csdl.thutuchanhchinh.vn/ho_so_tthc/ben_tre/t_btr_204655_tt).
- Copy of establishment decision; and
- Permit issued by the MOCST or the provincial People's Committee allowing foreign/Vietnam overseas actors/actresses to participate the performances.

The DOCST of Binh Duong province shall issue a written approval within 3 working days from the date of receipt of a complete application dossier, but in practice, as the licensing authority has its own discretion to determine if an application dossier is complete, this period may be longer than that prescribed by law.

¹⁹ The Art Performance Department will issue a Performance Licence to social – political organisations at central level. The local DOCST will issue a Performance Licence to the remaining social – political organisations.

Qualified Entities need to obtain a written acknowledgment²⁰ for performance issued by the DOCST where the performance is to be performed (if the location for organisation of a performance is different from the entity's registered office).

II. Obtaining a permit to organize different types of art performances

1. *Non-Professional Art Performance*

At law, the organisation of non-professional art performances by a local organisation within the office of such entity and for internal purpose is not subject to a Performance Licence. However, if the performance is organised outside the office of the entity, it will be required to notify the Cultural and Information Office of district where the performance is to be organised at least 7 days prior to the organisation. The notice must specify objectives, scope, contents of the performance, time and location of performance.²¹

2. *Professional Art Performance*

Assuming that the NPO which is planning to organise a professional art performance for social and charity purpose has no function to carry out such organisation, in order to obtain necessary licences, it would need to engage a *Qualified Entity* to arrange the organisation and obtain all necessary licences.

There are three steps to obtaining the necessary licence to organise a professional art performance: (1) Obtain a permit for foreign/Vietnamese overseas actors/actresses to join the performance (if applicable); (2) Obtaining Performance Licence; and (3) Obtaining a written acknowledgement for performance issued by the DOCST where the performance is performed.

Step 1: Obtain a permit for foreign/Vietnamese overseas actors/actresses to join the performance (if applicable)²²

Application Documents

- *With respect to foreign actors/actresses*

The Qualified Entity shall submit (directly or by post) one set of the following documents to the MOCST (through the Art Performance Department) or the provincial PC²³ (through the DOCST):²⁴

- (E) Application (in a prescribed form as attached in Annex 5 (in Vietnamese only));²⁵
- (F) Contents²⁶ of the program, items,²⁷ performances,²⁸ list of participating members of the performance (e.g. directors, actors, actresses, etc.) indicating their name, title and occupation;

²⁰ “*Giấy biên nhận*” in Vietnamese. Literal translation should be “receipt”. This is not a Performance Licence but should serve as an acknowledgement by the local DOCST that the performance shall be permitted to be performed in the locality.

²¹ Article 5 of Circular 05.

²² Although the law is not clear, since Decision 47 only regulates the organisation of professional art performances which are performed by professional actors/actress, it appears that the requirement to obtain a permit for foreign/Vietnamese overseas actors/actresses to join the performance should only apply to professional actors/actresses.

²³ The MOCST shall issue an approval to an organisations at central level. The provincial PC will issue an approval to the remaining organisations (Article 19 of Decision 47).

²⁴ Article 16 of Decision 47 and Article 2.II.1.3 of Circular 07.

²⁵ Prescribed form of the application is issued by Circular 07 (Form 2).

²⁶ *Nội dung* in Vietnamese.

- (G) Agreement between the Qualified Entity and the foreign actors/actresses;
- (H) Disk (Video-VCD-DVD) recording program, item or performance to be performed in Vietnam (if requested by the licensing authority); and
- (I) Agreement or power of attorney from the NPO to the Qualified Entity.²⁹

- *With respect to Vietnamese overseas actors/actresses*

The Qualified Entity shall submit (directly or by post) one set of the following documents to the MOCST (through the Art Performance Department):³⁰

- (A) Application (in a prescribed form in Annex 6 (in Vietnamese only)),³¹
- (B) Contents of the program, items, performances, list of participating members (name, title and occupation);
- (C) Agreement between the Qualified Entity and the Vietnamese overseas actors/actresses;
- (D) Written opinion of the Vietnamese embassy or diplomatic agency in the relevant country regarding the performance of the Vietnamese overseas actors/actresses in Vietnam; and
- (E) Agreement or power of attorney from the NPO to the Qualified Entity.³²

- *With respect to foreign actors/actresses currently living in Vietnam*

The Qualified Entity shall submit (directly or by post) one set of the following documents to the provincial PC (through the DOCST):³³

- (A) Application (in a prescribed form in Annex 7 (in Vietnamese only)),³⁴
- (B) Agreement between the Qualified Entity and the relevant foreign actors/actresses; and
- (C) Agreement or power of attorney from the NPO to the Qualified Entity.³⁵

Timing

Within five (5) working days from the date of receipt of a complete and valid dossier, the MOCST, or the provincial PC, will issue its approval to the Qualified Entity. As the licensing authority has its own discretion to determine if an application dossier is complete, in practice, it often takes longer for a licence to be issued.

Fees

Nothing at law requires that the applicant pay a fee for the issuance of the above permit.

Step 2: Obtaining Performance Licence

²⁷ *Tiết mục* in Vietnamese.

²⁸ *Vở diễn* in Vietnamese.

²⁹ Although this is not required by the law, in practice, if the NPO has no function to organise art performance, this document will be required by the DOCST.

³⁰ Articles 16.2, 19 of Decision 47 and Article 2.II.1.3 of Circular 07.

³¹ Prescribed form of the application is issued by Circular 07 (Form 3).

³² Although this is not required by the law, in practice, if the NPO has no function to organise art performance, this document will be required by the DOCST.

³³ Articles 16.3, 20.5 of Decision 47 and Article 2.II.1.3 of Circular 07.

³⁴ Prescribed form of the application is issued by Circular 07 (Form 4).

³⁵ Although this is not required by the law, in practice, if the NPO has no function to organise art performance, this document will be required by the DOCST.

Application Documents

In order to obtain a Performance Licence, the Qualified Entity shall submit (directly or by post) one set of the following documents to the relevant authority:³⁶

- (A) Application for Performance Licence (in a prescribed form),³⁷ indicating clearly: name of program or performance, items,³⁸ performances,³⁹ time and location for performance;⁴⁰
- (B) Summary contents⁴¹ of program, items, or performances, list of authors, director, choreographer, musician, artist, actors/actresses;
- (C) Scenario and music sheet with respect to the performance that will be performed, for the first time in Vietnam, and photos or design specimen of the clothes to be shown (if a fashion show is included)⁴²
- (D) If applicable, the permit issued by the MOCST or the provincial PC allowing foreign/Vietnamese overseas actors/actresses to perform in Vietnam (see Step 1 - section II.2 above); and
- (E) Certified copy of the Qualified Entity's business registration certificate or establishment decision.

We understand that in practice, the Ho Chi Minh City DOCST would require the following additional documents.⁴³

- (A) Decision of the MOCST allowing the performance of the songs, if the songs (i) were composed prior to 1975 in the Southern provinces which have not been permitted by the MOCST to be published; or (ii) are composed by Vietnamese overseas;⁴⁴
- (B) Permit of author(s), or organisation representing the author(s)⁴⁵, allowing the use of their work(s);
- (C) Copy of visa of foreign models (if any);
- (D) Agreement or power of attorney from the NPO to the Qualified Entity;⁴⁶ and
- (E) Agreement to lease location to organise the performances (if such location is not a specialised location (e.g. theatre, etc.)).⁴⁷

Timing

³⁶ Article 22 of Decision 47 and Article 2.II.1.4 of Circular 07.

³⁷ Prescribed form of the application for Performance Licence is issued by Circular 07 (Form 5).

³⁸ *Tiết mục* in Vietnamese.

³⁹ *Vở diễn* in Vietnamese.

⁴⁰ The Ho Chi Minh City DOCST also requests the Qualified Entity to register time and location for examination of the performance.

⁴¹ *Nội dung* in Vietnamese.

⁴² Article 7.2 of Decree 103.

⁴³ http://csdl.thutuchanhchinh.vn/ho_so_tthc/tp_ho_chi_minh/t_hcm_031168_tt and http://csdl.thutuchanhchinh.vn/ho_so_tthc/tp_ho_chi_minh/t_hcm_031229_tt.

⁴⁴ Pursuant to Notice No. 05 of the Ministry of Culture and Information dated 28 February 1995 (as amended by Circular 07), songs which were composed prior to 1975 in the Southern provinces and have not been permitted to be performed in Vietnam by the MOCST must be approved by the Ministry of Culture and Information (now the MOCST) prior to performance. For the purpose of this Note, I will not discuss in details procedures for obtaining such approval.

⁴⁵ i.e. the Copyright Department under the MOCST.

⁴⁶ Although this is not required by the law, in practice, if the NPO has no function to organise art performance, this document will be required by the DOCST.

⁴⁷ This was advised by Ms Tuyet.

Within five (5) working days from the date of receipt of a complete and valid dossier, the Art Performance or the provincial DOCST will issue a Performance Licence to the Qualified Entity. As the licensing authority has its own discretion to determine if an application dossier is complete, in practice, it often takes longer for a licence to be issued.

Fees

Under Circular 08,⁴⁸ upon applying for a Performance Licence, the Qualified Entity will need to pay a fee, to cover the administrative costs associated with the evaluation of an art performance program, to the relevant licensing authority (i.e. the Art Performance Department or the local DOCST) at the following tariff:

No.	Length of performance program	Fee (VND/performance)
1.	Up to 50 minutes	300,000
2.	51-100 minutes	600,000
3.	101-150 minutes	900,000
4.	> 150 minutes	900,000 + additional fee

Of which:

- Additional fee: from 151 minutes upward, the applicant needs to pay an additional fee of VND25,000/25 minutes (rounded up).
- Instrumental music, dance or **charitable performance** program would be entitled to a discount of 50% off of the evaluation fees detailed above.
- Performances which must be adjusted and re-evaluated must pay an additional evaluation fee which is equal to 50% of the fee as detailed above.

Step 3: Obtaining a written acknowledgement for performance issued by the DOCST where the performance is performed

If the performance is organised in a province different from the province where the Qualified Entity is located, after being issued a Performance Licence, the Qualified Entity also needs to obtain a written acknowledgement for performance from the local DOCST(s) where the performance is performed.⁴⁹

Application Documents

While the law does not specify how the procedures should be, in practice, the HCMC DOCST would require the Qualified Entity to submit the following documents:⁵⁰

- (A) Written request for performance in Ho Chi Minh City;⁵¹
- (B) Performance Licence issued by competent authority;
- (C) List of actors/actresses; and
- (D) Business registration certificate or establishment decision of the Qualified Entity.

Timing

⁴⁸ Circular 08/2004/TT-BTC of the Ministry of Finance dated 9 February 2004 guiding the collection, payment and use of fee for evaluation of art performance program (*Circular 08*).

⁴⁹ Articles 10.2 and 2.3 of Decision 47.

⁵⁰ http://csdl.thutuchanhchinh.vn/ho_so_tthc/tp_ho_chi_minh/t_hcm_031787_tt.

⁵¹ The Ho Chi Minh City DOCST also requests the applicant to register time and location for examination of the performance.

Within seven (7) working days from the date of receipt of a complete and valid dossier, the HCMC DOCST will issue a written acknowledgement to the Qualified Entity. As the licensing authority has its own discretion to determine if an application dossier is complete, in practice, it often takes longer for a written acknowledgement to be issued.

Fees

Nothing at law requires that the *Qualified Entity* is required to pay a fee for the issuance of the above receipt.

3. *Fashion Shows*

If a fashion show is organised separately (without any other professional art performance as discussed in section II.2 above), the *Qualified Entity* also needs to obtain a separate Performance Licence from the Art Performance Department or the local DOCST.⁵²

Application Documents

The *Qualified Entity* needs to submit (directly or by post) one set of the following documents to the relevant authority:⁵³

- (A) Application for fashion show (in a prescribed form in Annex 8 (in Vietnamese only)),⁵⁴ indicating the name of the program, items,⁵⁵ authors, directors and performers;
- (B) Photos or design specimen of clothes to be shown;
- (C) Visa of foreign models (if any);⁵⁶
- (D) Agreement to lease location to organise the performances (if such location is not a specialised location);⁵⁷ and
- (E) Agreement or power of attorney from the NPO to the Qualified Entity.⁵⁸

Timing

Within five (5) working days from the date of receipt of a complete and valid dossier, the relevant authority will issue a Performance Licence to the Qualified Entity. As the licensing authority has its own discretion to determine if an application dossier is complete, in practice, it often takes longer for a licence to be issued.

If the licensing authority requests that an examination of the shows must be conducted, then the Qualified Entity needs to facilitate the licensing authority to do so.

Fees

⁵² Article 7.1 of Decree 103. Although it is not entirely clear, it appears from Article 7.1 of Decree 103 that the MOCST shall issue an approval to organisations at central level. The provincial PC will issue an approval to the remaining organisations.

⁵³ Article 7.2 of Decree 103 and Article 2.VI.1 of Circular 07.

⁵⁴ Prescribed form of the application for Performance Licence is issued by Circular 07 (Form 21).

⁵⁵ *Tiết mục* in Vietnamese.

⁵⁶ While this is not required by the law, in practice, the HCMC DOCST would require such document (http://csdl.thutuchanhchinh.vn/ho_so_thc/tp_ho_chi_minh/t_hcm_031229_tt).

⁵⁷ This is advised by Ms Tuyet.

⁵⁸ Although this is not required by the law, in practice, if the NPO has no function to organise art performance, this document will be required by the DOCST.

A similar fee structure, as set out in Step 2 of section II.2, applies for review of fashion shows.

4. *Festivals*

Decree 103 and Circular 04 provide for various types of festivals, including: (i) traditional festivals, (ii) historical and revolutionary festivals, (iii) cultural, sport, and/or tourist festivals, and (iv) festivals of a foreign origin, which are organized in Vietnam. As the Decree does not provide for any restrictions on types of organisations to be permitted to organise festivals, one can argue that any entity, which should include NPOs, are permitted to organise a festival.

A. Festivals subject to a licence

The organisation of the following festivals would be subject to a licence issued by the provincial PC (*Festival Licence*):⁵⁹

- Festivities organized for the first time;
- Festivities restored after many years' interruption;
- Periodically organized festivities but with changes in their traditional contents and/or time; and
- Festivities of foreign origin organized by foreign or Vietnamese organizations.

B. Festivals not subject to licence

Upon organising the following festivals, the organiser is not required to obtain a Festival Licence but will need to report to the Culture and Information Office at the commune level (with respect to festivals organised by organisations at commune level) or to the local DOCST (with respect to festivals organised by organisations at the district level) at least thirty (30) days prior to the opening date:⁶⁰

- Traditional festivities which have been organized regularly, continuously or periodically; cultural and tourist festivities.⁶¹
- Other festivities which are organized for the second time or more (except for festivities of a foreign origin organized by foreign or Vietnamese organizations).

The report must specify: time, location, contents,⁶² program,⁶³ script of festival; together with the establishment decision and a list of members of the organizing committee for the festival.

Application Documents

In order to obtain a licence, at least 30 working days prior to the opening date, the applicant needs to submit to the provincial PC an application for a Festival Licence (in a prescribed form in Annex 9 (in Vietnamese only)),⁶⁴ indicating clearly:

- contents of festival or changes in contents;
- time and location;

⁵⁹ Article 18.1 of Decree 103.

⁶⁰ Article 19 of Decree 103 and Article 7 of Circular 04.

⁶¹ e.g. pagoda related festivals organised every years (Perfume Pagoda Festivals, Lim Festival, Hung King Anniversary, etc.)

⁶² *Nội dung* in Vietnamese.

⁶³ *Chương trình* in Vietnamese.

⁶⁴ Prescribed form of the application for Performance Licence is issued by Circular 07 (Form 22).

- proposed establishment of festival organisation committee;
- commitment to ensure quality⁶⁵ and to bear responsibilities before the law if committing a breach;⁶⁶ and
- commitment to ensure safety and order during the festival.

Timing

Within twenty (20) working days from the date of receipt of a complete and valid dossier, the provincial PC will issue a Festival Licence to the applicant. If the local DOCST has been authorised by the provincial PC to issue such Licence, it will issue a Festival Licence within 10 working days from the date of receipt of a complete and valid dossier. As the licensing authority has its own discretion to determine if an application dossier is complete, in practice, it often takes longer for a licence to be issued.

Fee

Nothing at law requires that an applicant pay a fee for the issuance of a Festival Licence.

III. Restrictions on Organizing Cultural Activities / Professional Art Performances

Decree 103 and Decision 47 provide for a wide range of prohibited activities during the organisation of cultural activities or professional art performances as follows:⁶⁷

- (a) Cultural activities and commercial provision of cultural services with the following contents:
 - Inciting the people to oppose the State of the Socialist Republic of Vietnam; undermining the unity block of the entire people;
 - Inciting violence, propagandizing wars of aggression, sowing hatred between nations and peoples; disseminating reactionary ideas and cultures, depraved lifestyles, criminal acts, social evils, superstitions, acts against fine customs and habits, harming the health and deteriorating the eco-environment.
 - Disclosing Party and State secrets, military, security, economic and foreign relation secrets, personal privacy and other secrets under law;
 - Distorting history, negating revolutionary achievements, offending personalities, offending the nation, slandering and hurting the honour and reputation of organizations, and honour and dignity of individuals.
- (b) Circulating, disseminating and trading in illegally produced or imported cultural products, cultural products subject to circulation suspension, circulation ban, withdrawal,

⁶⁵ It is not clear from the law what “commitment to ensure quality” means (i.e. whether the festivals must be organised by professional festival organisers or festivals which have meaningful activities should satisfy the condition of quality). Since Article 20.4 requires festival organisers to ensure that folk games, cultural performances and sports organized in the festival area must be of useful and healthy contents appropriate to the scope, nature and characteristics of the festival, the later interpretation sounds more sensible.

⁶⁶ Under Decree 103, various activities are prohibited during the organisation of cultural activities (see section III). Decree 103 also imposes certain specific responsibilities on a festival organiser (e.g. (i) to set up an organizing committee, (ii) festive rituals must be solemnly practiced in a traditional manner under the guidance of competent state agencies in charge of culture, sports and tourism, (iii) within the festivity area, the national flag must be hoisted in a solemn place above festive flags, (iv) folk games, cultural performances and sports organized in the festival area must be of useful and healthy contents appropriate to the scope, nature and characteristics of the festival, and (iv) donations, charities, financial supports and other revenues from the organization of festivities must be managed and used in accordance with law. It is therefore reasonable to assume that committing such prohibitions should constitute a breach of law.

⁶⁷ Article 3 of Decree 103 and Article 3 of Decision 47.

- confiscation or destruction decisions; commercially providing cultural services without business registration certificates or business permits required by law.
- (c) Organizing cultural activities and commercially providing cultural services in violation of regulations on civilized lifestyles, security, order and fire and explosion prevention and fighting.

ANNEX 5
APPLICATION FOR ISSUANCE OF LICENCE TO FOREIGN INDIVIDUALS
AND/OR ART GROUPS TO PERFORM IN VIETNAM

(Form 2 – Circular 07/2011/TT-BVHTTDL of the MOCST dated 7 June 2011)

TÊN CƠ QUAN, TỔ CHỨC
ĐỀ NGHỊ CẤP PHÉP

CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

....., ngày..... tháng..... năm

ĐƠN ĐỀ NGHỊ CẤP GIẤY PHÉP
CHO CÁ NHÂN, ĐOÀN NGHỆ THUẬT NƯỚC NGOÀI
VÀO VIỆT NAM BIỂU DIỄN NGHỆ THUẬT

Kính gửi: - Bộ Văn hóa, Thể thao và Du lịch
(*đối với các đơn vị thuộc Trung ương*)
- Ủy ban nhân dân tỉnh, thành phố
(*đối với các đơn vị thuộc địa phương*)

(Đơn vị)..... đề nghị Bộ Văn hóa, Thể thao và Du lịch (hoặc Ủy ban nhân dân tỉnh, thành phố...) cấp giấy phép cho cá nhân (hoặc đoàn nghệ thuật) do đơn vị chúng tôi mời vào Việt Nam biểu diễn nghệ thuật:

1. Tên đoàn nghệ thuật (hoặc cá nhân):.....
2. Nội dung chương trình:.....
3. Thời lượng chương trình (số phút):.....
4. Người chịu trách nhiệm chương trình:.....
5. Thời gian: Từ ngày... tháng... năm..... đến ngày... tháng... năm.....
6. Địa điểm:.....
7. Cam kết:

- Thực hiện đúng các quy định về biểu diễn nghệ thuật và các quy định của pháp luật về quyền tác giả và quyền liên quan.
- Chịu trách nhiệm về tính chính xác, trung thực của nội dung hồ sơ đề nghị cấp giấy phép./.

ĐẠI DIỆN THEO PHÁP LUẬT CỦA
CƠ QUAN, TỔ CHỨC ĐỀ NGHỊ CẤP GIẤY PHÉP
(*Ký, đóng dấu, ghi rõ họ tên*)

ANNEX 6
APPLICATION FOR ISSUANCE OF LICENCE TO VIETNAMESE OVERSEA
INDIVIDUALS TO PERFORM IN VIETNAM

(Form 3 – Circular 07/2011/TT-BVHTTDL of the MOCST dated 7 June 2011)

TÊN CƠ QUAN, TỔ
CHỨC
ĐỀ NGHỊ CẤP PHÉP

CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

....., ngày..... tháng..... năm

ĐƠN ĐỀ NGHỊ CẤP GIẤY PHÉP
CHO CÁ NHÂN LÀ NGƯỜI VIỆT NAM ĐỊNH CƯ Ở NƯỚC NGOÀI
VÀO VIỆT NAM BIỂU DIỄN NGHỆ THUẬT

Kính gửi: Cục Nghệ thuật biểu diễn, Bộ Văn hoá, Thể thao và Du lịch

(Đơn vị)..... được thành lập ngày...theo giấy phép số... của Bộ Kế hoạch và Đầu tư (Sở Kế hoạch và Đầu tư tỉnh, thành phố...). Thực hiện kế hoạch, đơn vị đề nghị Cục Nghệ thuật biểu diễn xem xét, cấp giấy phép cho cá nhân là người Việt Nam định cư ở nước ngoài được vào Việt Nam hợp tác với đơn vị chúng tôi trong một số chương trình sản xuất, phát hành bản ghi âm, ghi hình ca múa nhạc, sân khấu và biểu diễn nghệ thuật:

1. Tên cá nhân:.....(nghệ danh.....)
2. Ngày tháng năm sinh:.....
3. Số hộ chiếu:.....
4. Địa chỉ liên hệ: (tại Việt Nam hoặc ở nước ngoài).....
5. Thời gian: Từ ngày... tháng... năm.... đến ngày..... tháng..... năm.....
6. Địa điểm:.....
7. Cam kết:

- Thực hiện đúng các quy định về biểu diễn nghệ thuật và các quy định của pháp luật về quyền tác giả và quyền liên quan.
- Chịu trách nhiệm về tính chính xác, trung thực của nội dung hồ sơ đề nghị cấp giấy phép./.

ĐẠI DIỆN THEO PHÁP LUẬT CỦA
CƠ QUAN, TỔ CHỨC ĐỀ NGHỊ CẤP GIẤY PHÉP
(Ký, đóng dấu, ghi rõ họ tên)

ANNEX 7
APPLICATION FOR ISSUANCE OF LICENCE TO FOREIGN
ACTORS/ACTRESSES CURRENTLY LIVING IN VIETNAM TO PERFORM IN
VIETNAM

(Form 4 – Circular 07/2011/TT-BVHTTDL of the MOCST dated 7 June 2011)

TÊN CƠ QUAN, TỔ
CHỨC
ĐỀ NGHỊ CẤP PHÉP

CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

....., ngày..... tháng..... năm

ĐƠN ĐỀ NGHỊ CẤP GIẤY PHÉP
CHO CÁ NHÂN LÀ NGƯỜI NƯỚC NGOÀI
ĐANG SINH SỐNG TẠI VIỆT NAM BIỂU DIỄN NGHỆ THUẬT

Kính gửi: - Cục Nghệ thuật biểu diễn, Bộ Văn hóa, Thể thao và Du lịch (*đối với các đơn vị thuộc Trung ương*)
- Ủy ban nhân dân tỉnh, thành phố
(*đối với các đơn vị thuộc địa phương*)

(Đơn vị)..... đề nghị Bộ Văn hóa, Thể thao và Du lịch (hoặc Ủy ban nhân dân tỉnh, thành phố...) cấp giấy phép cho cá nhân người nước ngoài đang sinh sống tại Việt Nam biểu diễn nghệ thuật:

1. Tên cá nhân:.....(nghệ danh.....)
2. Địa chỉ nơi cư trú:.....
3. Nội dung biểu diễn.....
4. Thời lượng chương trình (số phút):.....
5. Thời gian: Từ ngày... tháng... năm..... đến ngày... tháng... năm.....
6. Địa điểm:.....
7. Cam kết:

- Thực hiện đúng các quy định về biểu diễn nghệ thuật và các quy định của pháp luật về quyền tác giả và quyền liên quan.
- Chịu trách nhiệm về tính chính xác, trung thực của nội dung hồ sơ đề nghị cấp giấy phép./.

ĐẠI DIỆN THEO PHÁP LUẬT CỦA
CƠ QUAN, TỔ CHỨC ĐỀ NGHỊ CẤP GIẤY PHÉP
(Ký, đóng dấu, ghi rõ họ tên)

ANNEX 8
APPLICATION FOR ISSUANCE OF FASHION SHOW LICENCE
(Form 21 – Circular 07/2011/TT-BVHTTDL of the MOCST dated 7 June 2011)

TÊN CƠ QUAN, TỔ
CHỨC
ĐỀ NGHỊ CẤP PHÉP

CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

....., ngày..... tháng..... năm

ĐƠN ĐỀ NGHỊ
CẤP GIẤY PHÉP TRÌNH DIỄN THỜI TRANG

Kính gửi: - Cục Nghệ thuật biểu diễn, Bộ Văn hóa, Thể thao và Du lịch
(*đối với các đơn vị thuộc Trung ương*)
- Sở Văn hóa, Thể thao và Du lịch tỉnh/thành phố....
(*đối với các đơn vị thuộc địa phương*)

Nhà hát (Đơn vị)..... đề nghị Cục Nghệ thuật biểu diễn (hoặc Sở Văn hóa, Thể thao và Du lịch...) cấp giấy phép trình diễn thời trang:

1. Tên chương trình:.....
2. Nội dung chương trình:.....
3. Thời lượng chương trình (số phút):.....
4. Người chịu trách nhiệm chương trình:.....
5. Thời gian: Từ ngày... tháng... năm... đến ngày... tháng... năm.....
6. Địa điểm:.....
7. Cam kết:

- Thực hiện đúng các quy định về biểu diễn nghệ thuật, trình diễn thời trang; thi người đẹp, người mẫu; phát hành, lưu hành, kinh doanh bản ghi âm, ghi hình ca múa nhạc, sân khấu và các quy định của pháp luật về quyền tác giả và quyền liên quan.

- Chịu trách nhiệm về tính chính xác, trung thực của nội dung hồ sơ đề nghị cấp giấy phép./.

NGƯỜI ĐẠI DIỆN THEO PHÁP LUẬT CỦA
CƠ QUAN, TỔ CHỨC ĐỀ NGHỊ CẤP GIẤY PHÉP
(*Ký, đóng dấu, ghi rõ họ tên*)

ANNEX 9
APPLICATION FOR ISSUANCE OF LICENCE FOR
ORGANISATION OF FESTIVAL

(Form 22 – Circular 07/2011/TT-BVHTTDL of the MOCST dated 7 June 2011)

**TÊN CƠ QUAN, TỔ
CHỨC
ĐỀ NGHỊ CẤP PHÉP**

CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

....., ngày..... tháng..... năm

ĐƠN ĐỀ NGHỊ
CẤP GIẤY PHÉP TỔ CHỨC LỄ HỘI

Kính gửi: (*Tên cơ quan cấp giấy phép*)

Tên cơ quan, tổ chức (*đề nghị cấp phép*):

Địa chỉ:.....

Điện thoại:.....

Đề nghị (*Tên cơ quan cấp giấy phép*)..... cấp giấy phép tổ chức lễ hội.....

Nội dung lễ hội (*ghi rõ nội dung lễ hội hoặc nội dung thay đổi so với truyền thống*).....

Thời gian tổ chức:

Địa điểm tổ chức:

Thành phần Ban Tổ chức lễ hội:

Cam kết:

Thực hiện đúng nội dung ghi trong giấy phép, không vi phạm các quy định cấm tại Điều 3 Quy chế hoạt động văn hóa và kinh doanh dịch vụ văn hóa công cộng ban hành kèm theo Nghị định số 103/2009/NĐ-CP ngày 06 tháng 11 năm 2009 của Chính phủ./.

ĐẠI DIỆN THEO PHÁP LUẬT CỦA
CƠ QUAN, TỔ CHỨC ĐỀ NGHỊ CẤP GIẤY
PHÉP

(Ký, đóng dấu, ghi rõ họ tên)

ANNEX 10
SAMPLE EVENT LICENSE APPLICATION COVER LETTER

LIN Center for Community Development
Re: Organization of “[NAME OF EVENT]”

THE SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom – Happiness
Date: DD Month YYYY

To: HCM City Department of Culture, Sport and Tourism
HCM City Department of External Affairs

Dear Sirs and Madams,

LIN Center for Community Development hereby extends our best regards to your department. We are writing to seek your approval of our proposed organization of the [EVENT NAME] on [DATE] at [VENUE]. We would like to present on the purpose and the organization of this event, as follows:

- LIN Center for Community Development was registered for operations in accordance with the Certificate of Operation Registration No. A-840 dated 29 June 2009 issued by the Ministry of Science and Technology. The main responsibility of the center is to conduct programs that help to develop the community. We are pleased to enclose the Certificate of Operation Registration for your reference.
- LIN Center for Community Development, together with [LIST EVENT PARTNERS, IF ANY], is organizing this event. The liaison person who is responsible for the event is [INSERT NAME & TITLE]. [IF APPLICABLE] We are pleased to enclose a list of individuals contributing to the event team in Appendix 1.
- The [EVENT NAME] is supported by [EMBASSY/CONSULATE NAME, IF APPLICABLE], which sent a Diplomatic Note No. [INSERT NUMBER] dated [INSERT DATE] kindly requesting your departments to facilitate us in the licensing process to carry out the [EVENT NAME].
- The [EVENT NAME] will be starting at XX:00 to XX:00 at [VENUE] on [DATE]. We are pleased to enclose the agenda and timetable of this event in Appendix 2.
- The [EVENT NAME] will be participated by the representative of LIN Center for Community Development, members of the Committee, other [NUMBER] foreigners (Please see Appendix 1) who are working and living in Vietnam, together with about [NUMBER] guests.
- We are also pleased to enclose herewith the script of the event and the lyrics of the songs which will be played in the event, for your reference (Appendix 3).

We undertake that the [EVENT NAME] will be carried out in compliance with the content mentioned herein and with the laws of Vietnam.

We kindly request your department to consider and approve the organization of the [EVENT NAME] in compliance with the content registered in this letter.

Thank you and best regards,

Declared by

[SIGNED AND STAMPED]

On behalf of LIN