

If rights are infringed, the owner may take legal action through the Ministry of Trade or the People's Courts.

1.4.2 Specifically Trademarks

Name: Ordinance on Trademarks, and Amendments
Agency: Standing Committee of the National Assembly.
Date: Originally promulgated on December 21, 1982. Amended on March 20, 1990.
Detail:

The Ordinance (and subsequent amendments) is probably the most significant piece of legislation to govern trademarks. It sets out four necessary aspects of trademark protection. First, an administrative structure for issuing trademark patents is established. The Government heads the hierarchy, followed by the State Committee for Science, and the National Office of Inventions.

Second, the Ordinance outlines the rules for obtaining trademark rights. The most important point here is the first-to-file rule, under which the Vietnamese authorities grant the trademark certificate to the first company or individual that registers the trademark, regardless of the trademark's origin.

Third, the Ordinance explains the criteria that trademarks must meet in order to be registered. Finally, the legislation deals with the enforcement of trademarks. Protection can be sought through administrative actions with the Market Management Bureaus of the Ministry of Trade, or through the People's Courts.

Name: Decree No. 84-HDBT (exceptions to the first-to-file rule).
Agency: Government.
Date: March 20, 1990.
Details:

Under the terms in this Decree, foreign owners of trademarks who faced competing claims to registration in Vietnam were exempted from the first-to-file rule from March 20, 1990 to March 20, 1992. In 1992, the Government extended the exemption period to March 20, 1993. It is not clear if the 1993 cut-off date was respected.

1.5 Repatriation of Capital and Profits

Name: Articles 22-23 Law on Foreign Investment in Vietnam (and Amendments).
Agency: National Assembly.
Date: December 29, 1987 (amended 1990 and 1993).
Details:

Article 22 guarantees foreign investors in Vietnam the right to repatriate:

- their share of profits from business operations;
- approved payments due to them for provision of technology or services;
- the principal and interest due on any loan made;
- invested capital; and
- other legally owned sums of money or assets.

Repatriation of profits and other sources of income are subject to the withholding tax on profit remittances (see part 3 of this Section).