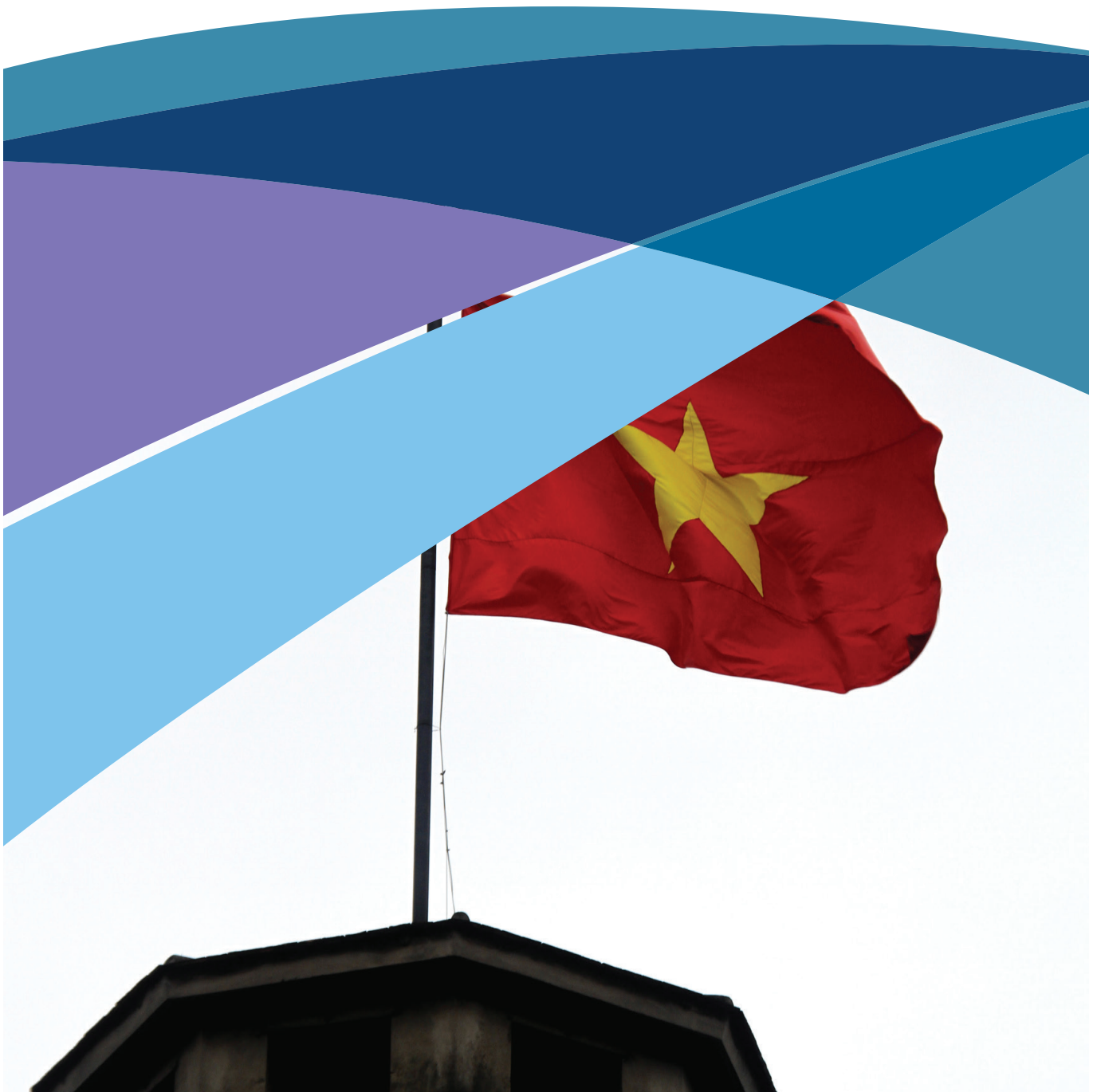




Intellectual
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Intellectual Property Rights in Vietnam





Contents

Intellectual property rights in Vietnam	3
What are intellectual property rights?	3
International considerations	3
Treaties and reciprocal agreements	3
Intellectual property rights - systems in Vietnam	4
Copyright	4
Patents, utility solutions and industrial designs	4
Trade marks	4
Customs	5
Unfair competition	5
Registering and enforcing intellectual property rights in Vietnam	5
Enforcing IP rights in Vietnam	5
Self-help considerations	6
Potential problems faced in Vietnam and how to deal with them	6
Avoiding problems	6
Who should take responsibility for your IP protection?	7
Top tips for IP protection in Vietnam	7
Where to get intellectual property help in Vietnam	8
Related web sites you might find useful	8



Intellectual property rights in Vietnam

Vietnam is a priority market for the UK. Britain is one of the largest European investors in Vietnam.

If you plan to do business in Vietnam, or if you are already trading there, it is essential to know how to use, guard and enforce the rights you have over the intellectual property (IP) that you or your business own.

This guide explains about IP in general, and gives guidance on how to apply these principles in the Vietnamese market. It describes the issues you may face with IP infringement in Vietnam, offers advice on how you can effectively tackle these, and provides links to sources of further help.

What are intellectual property rights?

Intellectual property (IP) is a term referring to a brand, invention, design or other kind of creation, which a person or business has legal rights over. Almost all businesses own some form of IP, which could be a business asset.

Common types of IP include:

- **Copyright** - this protects written or published works such as books, songs, films, web content and artistic works;
- **Patents** - this protects commercial inventions, eg a new business product or process;
- **Designs** - this protects designs, such as drawings or computer models;
- **Trade marks** - this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

IP can be either registered or unregistered.

With **unregistered** IP, you automatically have legal rights over your creation. Unregistered forms of IP include copyright, unregistered design rights, common law trade marks and database rights, confidential information and trade secrets.

With **registered** IP, you will have to apply to an authority, such as the Intellectual Property Office in the UK, to have your rights recognised. If you do not do this, others are free to exploit your creations. Registered forms of IP include patents, registered trade marks and registered design rights.

International considerations

Vietnam has been a World Trade Organisation (WTO) member since 2007. WTO member nations must include some IP protection in their national laws. This means that if you are doing business with Vietnam, you will find some similarity between local IP law and enforcement procedures, and those in force in the UK.

Treaties and reciprocal agreements

Vietnam is also a signatory to the following international IP agreements:

- the Paris Convention - under this, any person from a signatory state can apply for a patent or trade mark in any other signatory state, and will be given the same enforcement rights and status as a national of that country would be;
- the Berne Convention - under this, each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals;

- the Madrid Protocol - this is a central system for obtaining a 'bundle' of national trade mark registrations in different jurisdictions, through a single application;
- the Patent Cooperation Treaty - this works in much the same way as the Madrid Protocol, but for patent applications.

Vietnam is not a signatory to the Hague Agreement, which allows the protection of designs in multiple countries through a single filing.

Intellectual property rights - systems in Vietnam

Vietnam has been a member of the World Trade Organisation (WTO) since 2007. This requires member nations to establish intellectual property (IP) laws whose effect is in line with minimum standards. As a result, there should be few major differences between Vietnam's laws and those of other developed countries.

The Vietnamese IP system is divided into three areas:

- copyright and related rights - administered by the Copyright Office of Vietnam;
- industrial property rights - administered by the National Office of Intellectual Property (NOIP);
- rights to plant varieties - administered by the Plant Variety Protection Office.

NOIP holds the chief coordinator role.

Copyright

Vietnam is a signatory to the Berne Convention on copyright. This sets the minimum protection at 50 years from publication for cinematographic works, photographic works, dramatic works, works of applied art and anonymous works, and at 50 years after the death of the author for other works.

Registration of copyright is advisable and can be made with the National Copyright Office, which is a subsidiary organisation of the Ministry of Culture, Sport and Tourism.

Computer programs are included within copyright legislation in Vietnam where 'computer programs as such' cannot be patented.

Patents, utility solutions and industrial designs

Unlike in the UK, Vietnam distinguishes between patents (sometimes called 'invention patents') and utility solution patents (known elsewhere as 'utility models' or 'minor patents'). Rules for utility solution patents are similar to those for invention patents, but the item is not required to demonstrate an 'inventive step'.

Invention patents give protection for a maximum of 20 years, while utility solution patents are valid for ten years.

Vietnam's patent law operates under the 'first to file' principle - that is, if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent.

The law gives protection for industrial designs for a maximum of five years, renewable for two consecutive periods of five years.

Trade marks

The trade mark system operates in a similar way to European countries, protecting symbols, colours and other visual devices used to identify a business' products or services, now including three-dimensional objects.

Trade names also constitute a form of industrial property in Vietnam, with rights established through their use rather than under a formal registration system.

Domain names are allocated on a first come, first served basis so must be registered to avoid 'cybersquatting' by abusers.

Registration takes up to 15 months (13 months in theory) and a trade mark is valid for ten years, after which it may be renewed indefinitely for further ten-year periods.

Registration of industrial property rights (patents, utility solutions, industrial designs, trade marks, etc) can be made with NOIP, which is a subsidiary organisation of the Ministry of Science and Technology.

Customs

Vietnamese Customs have powers to monitor counterfeit or pirated goods. They may act against both imports and exports.

There is now a formal customs recordal system, allowing IP rights owners to register their marks with Customs.

Unfair competition

Unfair competition relating to IP is governed mainly by Vietnam's Competition Law of 2005, although the IP law does include some general provisions on unfair competition. The procedures for handling unfair competition relating to IP are quite complicated and largely untried.

Registering and enforcing intellectual property rights in Vietnam

To enjoy most types of intellectual property (IP) rights in Vietnam, you should register them.

For patents (including inventions, utility models and industrial designs) individual registrations must be made in Vietnam, but for rights other than industrial designs you can apply under the terms of the Patent Cooperation Treaty, which is usually easier and quicker.

For trade marks, you can either register within Vietnam or use the Madrid Protocol to gain unitary rights under national or Community Trade Mark registration systems.

For copyright, no registration is required but registering copyrights with the copyright authorities is advisable.

'Priority rights' under the Paris Convention can help in the local registration of trade marks, designs and patents by allowing rights previously registered elsewhere to become effective in Vietnam, if filed within a time limit.

Enforcing IP rights in Vietnam

There are three levels at which rights may be enforced in Vietnam:

- **Administrative action** - the majority of IP disputes are settled through this method, which is generally fast and comparatively straightforward. There are various authorities with special responsibilities and functions. Sanctions may include warnings, fines, the seizure or destruction of the counterfeit goods, business licence suspension and re-exportation of infringed imported or transit goods out of Vietnam.
- **Civil court action** - this is rare in Vietnam because of the poor standard of training of the judiciary in IP matters, the lack of specialist IP courts and Vietnamese tradition. Preliminary injunctions and compensation for damages are available through the civil courts.
- **Criminal prosecution** - government authorities, including Customs, can bring prosecutions or rights owners may apply. Penalties can involve fines, imprisonment and even the death penalty in serious, organised or business-related cases.

Self-help considerations

There are various things you can do to make it harder in general for infringers to copy your product. For example, you could:

- Think about the design of your product, and how easy it would be for somebody to reproduce it without seeing your original designs.
- When you hire staff, have effective IP-related clauses in employment contracts. Also, make sure you educate your employees on IP rights and protection.
- Have sound physical protection and destruction methods for documents, drawings, tooling, samples, machinery etc.
- Make sure there are no 'leakages' of packaging that might be used by counterfeiters to pass off fake product.
- Check production over-runs to make sure that genuine product is not being sold under a different name.

Potential problems faced in Vietnam and how to deal with them

Vietnam's intellectual property (IP) legislation is comprehensive, covering every aspect of the protection of IP in accordance with international standards.

However, enforcement agencies have found it difficult to keep up with recent rapid changes to the law, and administrative enforcement is complicated by the large number of bodies involved.

While counterfeiting, particularly of foodstuff and medicines, is widely considered a crime in Vietnam, it is not widely known that other types of IP infringement are a crime - unless they involve a product that could cause injury or damage.

Administrative action is the usual route for dealing with infringements, offering low-cost, quick results. However, this deterrent effect is limited because of the low level of penalties and lack of compensation.

Avoiding problems

The most important way to avoid problems when defending IP rights in Vietnam is to be prepared. To make sure that you can anticipate any potential issues, you should:

- take advice from Vietnamese IP rights experts;
- consult publications and websites on Vietnamese IP rights and protection in general;
- carry out risk assessment and due diligence checks on any organisations and individuals you deal with;
- take professional advice from other experts - eg lawyers, local diplomatic posts, Chambers of Commerce and the British Business Group in Vietnam;
- talk to other businesses already doing similar business in Vietnam;
- consult agents, distributors and suppliers on how best to safeguard your rights;
- check with trade mark or patent attorneys to see whether there have been previous registrations of your own marks, or other IP, in Vietnam;
- stick to familiar business methods - don't be tempted to do things differently because you're trading in a different country.

Who should take responsibility for your IP protection?

You should make sure that everyone in your business takes some responsibility for IP protection. Many businesses depend on the integrity of their IP, and it can often be one of their most valuable assets. So it should be given proper attention by both management and employees, as well as other businesses that you have relationships with.

It may be sensible to nominate a manager to have particular responsibility for understanding and protecting your IP rights. In businesses with legal departments, a legally-trained manager would be a good choice.

Top tips for IP protection in Vietnam

The most important things you can do to protect your IP rights in Vietnam are:

- stick to your normal business instincts;
- do as much as you can to prevent infringements in the first place - prevention is better than the cure;
- assess the risks of the market and make preparations;
- take self-help measures to protect your IP;
- make sure everyone in your business values its IP, including you;
- register your IP rights;
- create good relationships with organisations that can help you;
- consider mediation before defensive action.

Where to get intellectual property help in Vietnam

Whether you're resident in and doing business in Vietnam, or trading internationally with the country, there are a number of professional organisations that can offer you advice and support:

- **UK diplomatic posts** - there is a British Embassy in Hanoi and a Consulate-General in Ho Chi Minh City: <http://ukinvietnam.fco.gov.uk/en>
- **UK Trade & Investment Vietnam** has a range of online information on doing business in Vietnam: <http://www.ukti.gov.uk/export/countries/asiapacific/southeastasia/vietnam/doingbusiness.html>
- The **British Business Group Vietnam** (BBGV) supports British businesses through professional and social networking, exploring and representing members' views and interests and supporting local charities: <http://www.bbgv.org>
- The **European Chamber of Commerce in Vietnam** (EuroCham) - aims to encourage and support businesses trading in or with Vietnam. EuroCham in Vietnam is a non-governmental organisation which works for the interests of its members only: <http://www.eurochamvn.org>
- The **Vietnam National Office of Intellectual Property** (NOIP) is responsible for developing IP strategy in Vietnam, and publishes advice on protecting different forms of IP: <http://www.noipvietnam.com/>
- The **Vietnam Chamber of Commerce and Industry** (VCCI) represents businesses in Vietnam, and promotes trade and investment between Vietnam and other countries: <http://vccinews.com>
- **Vietnam Customs** provides information on import and export procedures, including how you can apply for copyright protection at the border: <http://www.customs.gov.vn/English/Lists/CustomsFormalities/Importer-Other-Details.aspx?ID=105>
- Local **law firms** in Vietnam can offer you legal advice and services specific to your business. The Chambers and Partners website offers a search facility listing Vietnamese local law firms: <http://www.chambersandpartners.com/Asia/Search/Location/230>.

Related web sites you might find useful

Vietnam IP laws and agreements on the WIPO website
<http://www.wipo.int/wipolex/en/profile.jsp?code=VN>



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