

# World Universities Comparative Law Project

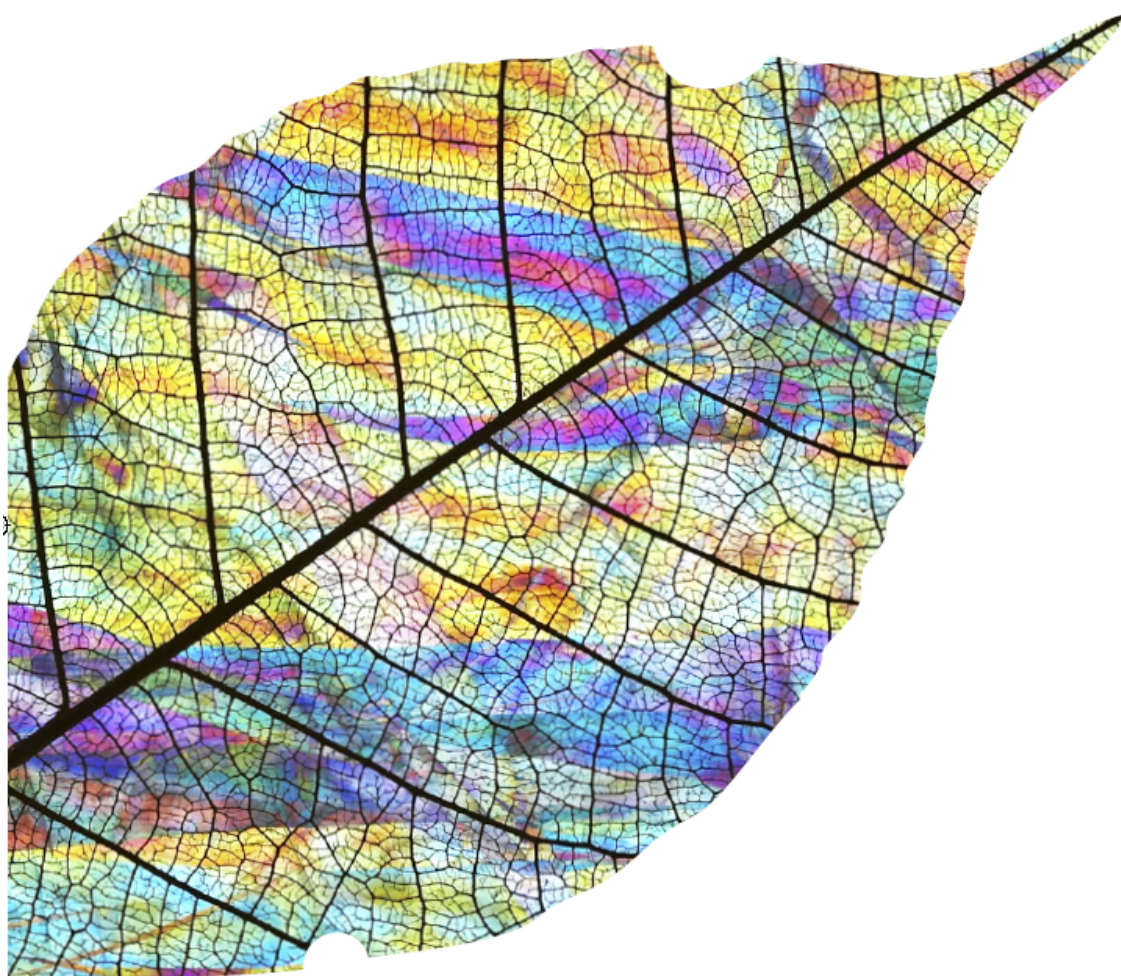
## Legal rating of Vietnam

carried out by Ho Chi Minh University of Law

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A production of the Allen & Overy Global Law Intelligence Unit

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November, 2015

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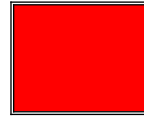
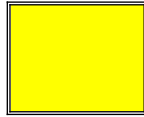
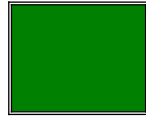
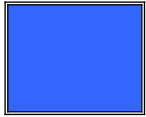
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# **World Universities Comparative Law Project**

## **Legal rating of Vietnam**

**carried out by students at Ho Chi Minh University of Law**

**November, 2015**



Produced by the Allen & Overy Global Law Intelligence Unit



# World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Vietnam was carried out by students at the Ho Chi Minh University of Law.

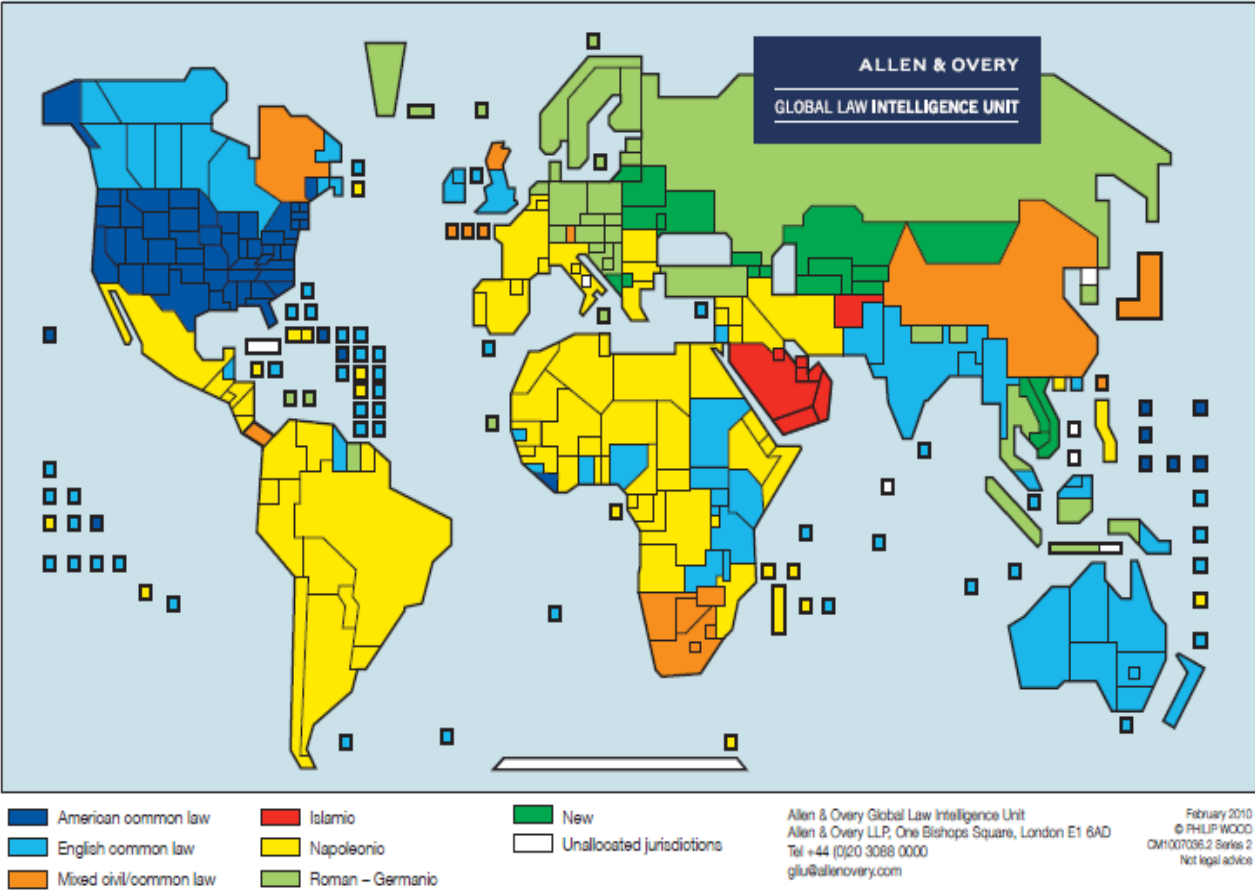
The member of the Faculty of Law at the Ho Chi Minh University of Law who assisted the students was:

Dr. Tran Viet Dung

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

# Families of law



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## Foreword

I am delighted to write a foreword for this legal rating of Vietnam which is one of a series of similar ratings carried out by students around the world as part of the World Universities Comparative Law Project

The aim was to produce a survey of the wholesale financial and corporate law in Vietnam looking at how Vietnam compares with the rest of the world.

I hope that the reader will find the colour-coded methodology and the technique of selecting symbolic and resonant legal indicators to be an expressive and creative way of signalling some of the main contours of wholesale financial, corporate and related law in Vietnam. The result of this project are most fascinating and helpful.

I are most grateful to the students at Ho Chi Minh University of Law for their willingness to participate in this project and I congratulate them on the excellent work they have done. I would also like to pay a special tribute to their intellectual flair and dedication they have shown.

My gratitude also goes to Dr. Tran Viet Dung who managed and guided this project and made a splendid contribution to the successful achievement of the survey.

Some of the aims of the project are to advance international comparative law, to contribute to the ideology of "one world", to promote the understanding of the law as a fundamental foundation of modern society and to achieve these aims through the excellence of the universities, of the students, of the lawyers and of all others involved in the project. These aims have been greatly enhanced by the Vietnamese contribution and I believe that this survey will be of much interest to other universities, students and lawyers around the world.

Philip R Wood CBE, QC (Hon), BA (Cape Town), MA (Oxon), LLD (Lund, Hon)  
Head, Allen & Overy Global Law Intelligence Unit  
Special Global Counsel  
Visiting Professor in International Financial Law, University of Oxford  
Yorke Distinguished Visiting Fellow, University of Cambridge  
Visiting Professor, Queen Mary University, London

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# Description of the legal rating method

## Introduction

This paper assesses aspects of the law in Vietnam with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

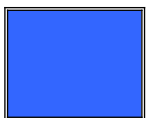
The survey was carried out by students at Ho Chi Minh University of Law. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of Ho Chi Minh University of Law, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

## Methodology

The survey uses colour-coding as follows:

**True**



**False**



**Can't say**



**Blue** generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

**Red** generally means that there is intense legal intervention, usually in the form of a prohibition.

**Green** and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Vietnam. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of



the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

## **Black letter law and how it is applied**

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

## **Key indicators**

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

## **Legal families of the world**

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

## Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

## Banking and finance

### Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

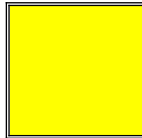
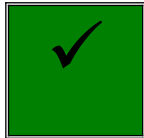
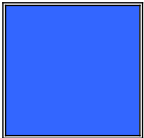
### Insolvency set-off

**Generally** If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange,

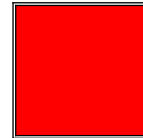
securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

**Q1** In **Vietnam**, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



**Comment:**

In the legal field of Bankruptcy, Viet Nam does not follow the principle of *pari passu*.

According to Article 48, Bankruptcy Law (No. 21/2004/QH11 of June 15, 2004), creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency in the three following situations:

1. Where the two parties have obligations towards each other regarding property of the same kind, they shall not have to fulfill obligations, when due, towards each other and the obligations are considered terminating, except otherwise provided for by law;
2. Where their property values or tasks do not correspond to each other, the parties shall pay the value difference to each other; and
3. Objects which can be valued in money may be cleared against monetary obligations.

Nevertheless, as given in Article 59(2) of Bankruptcy Law, as from the date of receiving the courts' decisions on the application of liquidation procedures to enterprises or cooperatives, the banks where the enterprises or cooperatives subject to the application of liquidation procedures open their accounts are strictly forbidden to set off mutual debts. The law leaves it open for creditors to set off mutual debts on the insolvency of a debtor before receiving any decisions from the court.

Moreover, this prescription on setting off mutual debts is strictly secured by Article 48(1)(e) of Bankruptcy Law saying that transactions are considered invalid if aiming to disperse properties of the enterprises or cooperatives.

To sum up, it is up to creditors do decide the form in which the debts are settled.

## Security interests

**Generally** Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

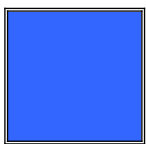
On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

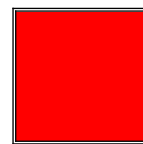
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

**Q2** In **Vietnam**, the law offers a security interest which is highly protective of the secured creditor.

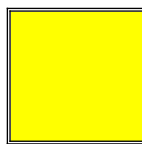
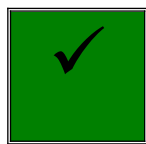
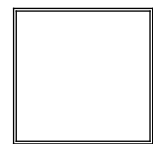
True



False



Can't say



### Comment:

Creditors with financial advantage under security should be protected, because they have taken proper measures to ensure repayment than creditor without security.

In Vietnamese Bankruptcy Law, according to Article 35, where the judges issue decisions to open the liquidation procedures for enterprises or cooperatives, the debts secured with properties mortgaged or pledged before the courts receive the applications for opening of bankruptcy procedures shall be prioritized with repayment by such properties; if the value of the mortgaged or pledged property is not enough for debt repayment, the outstanding debts shall be repaid in the course of liquidating the properties of the enterprises

or cooperatives; if the value of the mortgaged or pledged properties is bigger than the debts, the difference shall be added to the value of the remaining properties of the enterprises or cooperatives.

As stated in Article 37, secured debts are paid before bankruptcy charges; debts of wage, severance allowances, social insurance under law provisions and other interests under the signed collective labor accords and labor contracts and unsecured debts payable to the creditors on the list of creditors on the principle that if the property value is enough for debt repayment, each creditor shall be repaid with his/her/its full debt amount; if the value of the property is not enough for debt repayment, each creditor shall be paid with part of his/her/its debt according to the corresponding ratio. Finally, the cooperative members; the owners of private enterprises; the members of companies, the shareholders of joint-stock companies and the owners of State enterprises receive the remaining amounts where the value of the property of the enterprises or cooperative remains in surplus.

With regard to Article 53 and Article 54 of the Law on Bankruptcy 2014, the law in fact allows secured debts determined before the Court receives the written request for initiation of bankruptcy process to be paid by the collaterals. Nevertheless, in case that the value of the collateral is not sufficient to cover the debt, the remaining value of the debt shall be paid in the liquidation process, in which this amount will be paid after the payment of bankruptcy fees; benefits associated with the labour contracts; financial obligations to the Government; and unsecured debts.

## **Universal trusts**

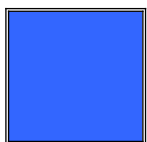
Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

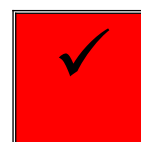
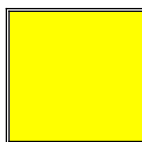
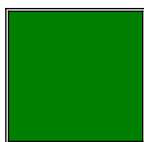
All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

## Q3 Vietnam has a universal trust for all assets.

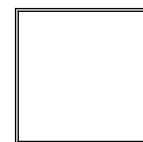
True



False



Can't say



### Comment:

[Laws on universal trust have not been officially adopted in Vietnam.](#)

## Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

## Corporations

### Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

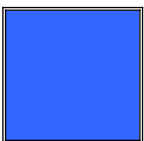
## Director liability for deepening an insolvency

**Generally** If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

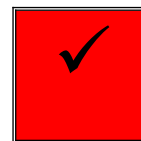
There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

**Q4** In Vietnam the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True



False



Can't say



### Comment:

According to Article 130 of the Law on Bankruptcy 2014, the law indeed imposes liability on directors in relation to a company's insolvency as: (1) any President, General Director, Director, member of the Board of Directors of a wholly state-owned enterprise declared bankrupt shall not hold such post in any other state-owned enterprise after such declaration of bankruptcy; and (2) any President, General Director, Director, member of the Board of Directors of a wholly state-owned enterprise declared bankrupt shall not hold such post in any other state-owned enterprise after such declaration of bankruptcy. However, these prohibitions are invalid in the case of force majeure insolvency.

Moreover, observing Article 5 and 23(5) of the Law on Bankruptcy 2014, obligation to file for insolvency rests upon corporate entities: (1) the legal representative; and (2) owner of any private enterprise, the President of the Board of Directors of any joint-stock company, President of the Member assembly of any multi-member limited liability company, the owner of any single limited liability company or any general partner of any partnership. If said entities fail to do so, they shall be held liable before the Law and for any damages incurred to the insolvent corporate.

## Financial assistance to buy own shares

**Generally** Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

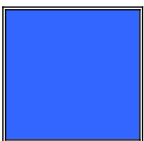
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

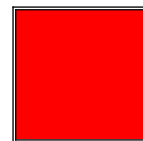
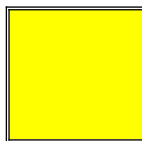
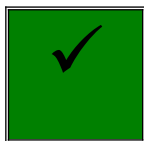
**Q5** Vietnam permits a company to grant financial assistance for the purchase of its own shares

True



False

Can't say



### Comment:

Vietnam permits Limited Liability Company and Joint-Stock Company to grant assistance for the purchase of its own shares. However, the company charter must define in which circumstances company can grant such assistance to buy its own shares, as stated in Article 22 (3) of the Vietnamese Enterprise Law.

## Public takeover regime

**Generally** A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An

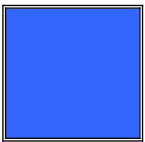


example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

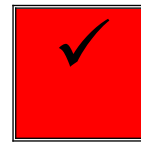
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

**Q6** Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in **Vietnam** is open and has few restrictions.

True



False



Can't say



**Comment:**

Takeovers of public companies in Vietnam prescribe several obstacles. For instance, Decision 55/2009/QD-TTg dated 15 April 2009 of the Prime Minister set the maximum foreign shareholding in a public company in Vietnam to be 49%. The cap may be even more restricted in some sectors, i.e. Decision 787/2004/QD-NHNN dated June 24, 2004 of the State Bank of Vietnam required that all increase or decrease in the shareholding of a shareholder that already holds more than 10% of the charter capital or holds more than 10% of the voting shares in a listed bank in Vietnam shall be submitted to the State Bank of Vietnam for prior approval.

## Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

## Commercial contracts

### Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the

main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

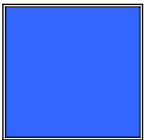
The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

## Exclusion of contract formation

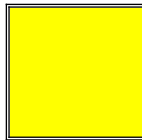
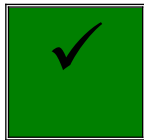
**Generally** Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

**Q7** In **Vietnam**, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

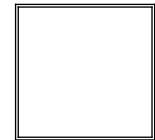
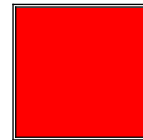
True



False



Can't say



### Comment:

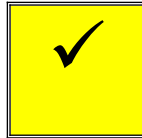
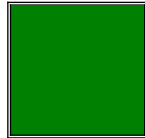
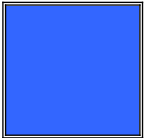
In Vietnam, parties are not bound to heads of terms, except otherwise agreed by both parties. For instances, usually parties sign a memorandum of understanding (MOU) to discuss terms shall be contemplated official contract. Such MOU is not defined in any Vietnamese laws. However, if both parties clearly declared that such MOU shall be treated as a contract and has binding effect, it will force parties to perform their rights and obligations as stipulated in that MOU.

## Termination clauses

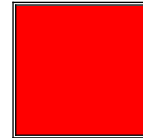
**Generally** Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

**Q8** In **Vietnam**, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

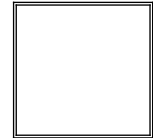
True



False



Can't say

**Comment:**

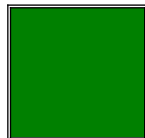
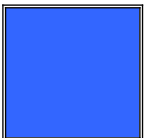
In Vietnam, a termination clause in a loan or sale of goods contract between sophisticated companies providing for the termination of the contract immediately on certain events is not usually upheld. Generally, both parties of the contract want to maintain their economic relationships, and do not contemplate term on immediately termination of contract, unless there are severe violations to the contract.

**Exclusion clauses**

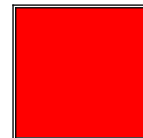
**Generally** Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

**Q9** In **Vietnam**, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True



False



Can't say

**Comment:**

As stated in Article 407(3) of the Civil Code 2005, in cases where a standardized contract (a contract which is used by the offerer as template for many offerees) contains provisions exempting the liability of the offeror of the standardized contract, while increasing the responsibility or abolishing legitimate interests of the offeree, such provisions shall not be valid, unless otherwise agreed upon. In other words, the exclusion of liability clause is not considered as valid if it is deliberately drafted in a standardized contract to benefit the offeror to the disadvantage of the offeree, unless the offeree is aware of this purpose and voluntarily to be bound by such.

## Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

## Litigation

### Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

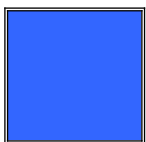
The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

### Governing law clauses

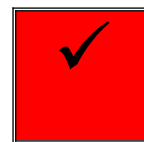
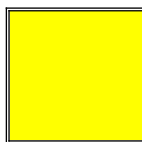
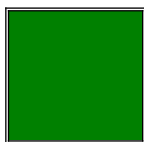
**Generally** Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

**Q10** The **Vietnam** courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Vietnam public policy and mandatory statutes.

True



False



Can't say



#### Comment:

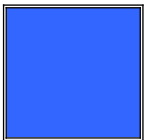
In conformity with Article 758 of the Civil Code 2005, express choice of foreign law is only be made in civil relations involving foreign elements. The choice of law must also satisfy specific conditions under the conflict of laws rule in order to be enforced. Moreover, Article 1(1) of the Commercial Law 2005 further stated that the Vietnam's Commercial Law shall govern commercial activities conducted in the territory of the Socialist Republic of Vietnam.

## Foreign jurisdiction clauses

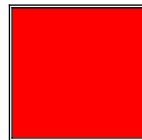
**Generally** Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

**Q11** The **Vietnamese** courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

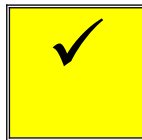
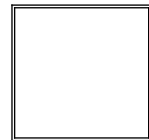
True



False



Can't say



### Comment:

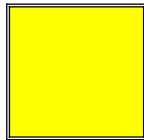
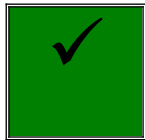
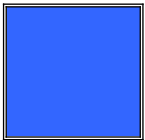
According to Article 370 of the Civil Procedure Code , there are certain cases where the Vietnamese court uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, specifically (a) parties to the arbitral agreement have no capacity to sign such agreement under the law applicable to each party, (b) the arbitral agreement is legally invalid under the law of the country, which has been selected by the parties for application, or the law of the country where the awards were declared if the parties had not chosen law applicable to such agreement, (c) the judgment debtors being individuals, agencies or organizations were not promptly and properly notified of the appointment of arbitrators and of procedures for resolution of disputes at foreign arbitration organization, or could not exercise their procedural rights for plausible reasons, (d) foreign arbitral awards are declared on disputes not requested by the parties for resolution or going beyond the request of the parties to the arbitral agreement, (e) the foreign arbitration personnel or the procedures for dispute resolution by foreign arbitrations do not comply with the arbitral agreement or with the law of the country where the foreign arbitral award is pronounced if the arbitral agreement does not prescribe such matters, (f) the foreign arbitral awards have not yet been legally binding on the parties, and (g) the foreign arbitral awards have been cancelled or suspended from enforcement by competent bodies of the countries where the awards were pronounced or the countries whose laws have been applied. Especially, Foreign arbitral awards shall also not be recognized and permitted for enforcement in Vietnam, if the Vietnamese courts deem that the recognition and enforcement in Vietnam of the foreign arbitral awards run counter to the basic principles of Vietnamese law.

## Arbitration recognition

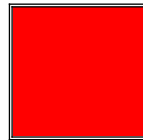
**Generally** Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

**Q12** In **Vietnam**, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Vietnamese courts.

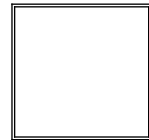
True



False



Can't say



**Comment:**

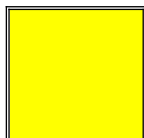
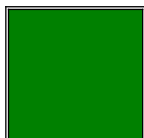
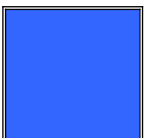
Contract dispute parties may submit dispute to a foreign arbitral tribunal. However, if such dispute belongs to the exclusive jurisdiction of Vietnamese courts, it must be settled by Vietnamese court.

## Class actions

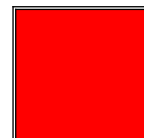
**Generally** In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

**Q13** In, class actions where the class is bound if they do not opt out are generally not allowed.

True



False



Can't say



## Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

## Real property

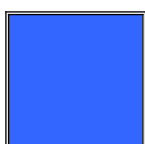
### Ownership of land

#### Generally

In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

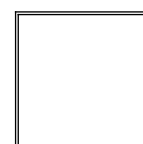
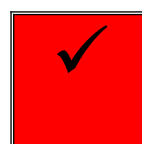
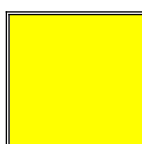
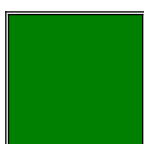
**Q14** In **Vietnam** nationals and local corporations are entitled to own land absolutely.

True



False

Can't say



#### Comment:

In accordance to Article 4 of the Land Law 2013, in Vietnam, land belongs to the entire people with the State acting as the owner's representative and uniformly managing land. The State shall hand over land use rights to land users in accordance with this Law.

### Security of land title and land registers

**Generally** Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

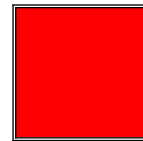
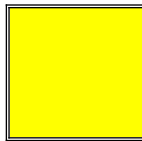
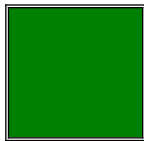
**Q15** Most land in **Vietnam** is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True



False

Can't say



**Comment:**

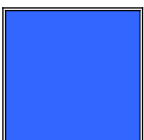
In Vietnam, most land is register in a land register (competent authorities), then a land user is issued a certificate of land use right (the certificate). In most cases, only after having his/her/its land registered then that person/corporation is considered as official user of land. In the event of mortgage or other security of performance of civil obligations measures, changes shall be updated to the certificate.

## Land development restrictions

**Generally** Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

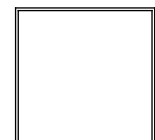
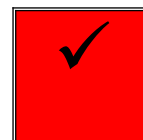
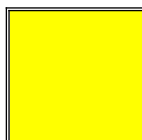
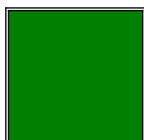
**Q16** In **Vietnam**, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True



False

Can't say



**Comment:**

Vietnam does not restrict development of land, but requires user to register his/her land in case of change of use. User can develop his land as long as that development is still in the scope of use right and does not violate mandatory statutes. As for change of use of land, user must register and complete a complicated procedure as stipulated in the Vietnamese Law of Land.



## Other indicators

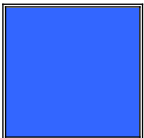
Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

## Employment law

**Generally** The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

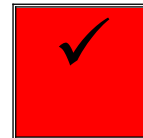
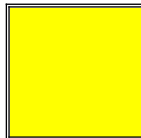
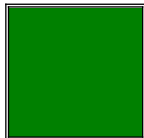
**Q17** In **Vietnam**, there are few controls on hiring and firing employees or on the terms of employment.

True



False

Can't say



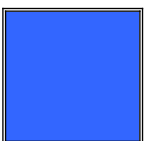
### Comment:

Vietnam controls hiring and firing employees quite strictly. If an enterprise wants to hire or fire an employee, it must comply with several conditions, without which it shall be considered as violating laws and will be responsible for certain measures. On hiring employees, employer must meet the Vietnamese Labor Code requirements on salary, wages, working conditions and so on. On firing, employer also cannot terminate contract whenever it wants. On the other hand, employers must comply with certain requirements on unilateral termination of contract, as well as earning severance allowances

## Environmental restrictions

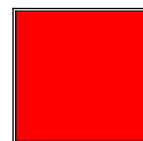
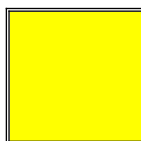
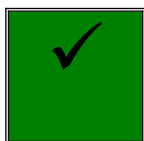
**Q18** In **Vietnam** the rules governing the environment and liability for clean-up are very light and relaxed.

True



False

Can't say



### Comment:

The Law on Environmental Protection 2014 and Law on Environmental Protection Tax 2010 are the main rules governing environmental liability in Vietnam, in which there are established many progressive and

innovative standards as compared to their preceding regulations. Nevertheless, as the Law on Environmental Protection has only become effective in 1 January 2015, it is premature to conclude on the success of its contemporary perspectives.

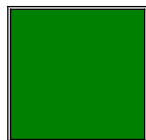
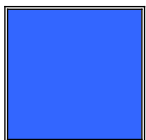
## Openness to foreign business

**Generally** These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

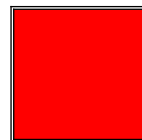
### Foreign direct investment

**Q19** In **Vietnam** foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True



False



Can't say



#### Comment:

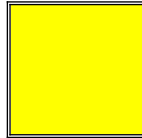
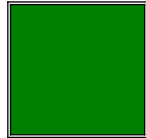
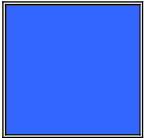
Pursuant to Article 2(1) of Decision 55/2009/QĐ-TTg dated 15 April 2009 by the Prime Minister, foreign investors that purchase and sell securities on the Vietnamese securities market are allowed to hold: (i) up to 49% of total number of stocks of a public joint-stock company; (ii) up to 49% of total number of investment fund certificates of a public securities investment fund; and (iii) up to 49% of charter capital of a public securities investment company.

Foreigners may freely own and control local companies outside protected industries, through the procedures of purchasing shares, merger or purchasing enterprises. However, such local companies shall be treated as foreign-invested companies (Article 6 of Vietnamese Investment Law), and must operate their business under certain requirement defined in the Vietnamese Investment Law.

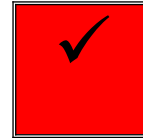
## Exchange controls

**Q20** In **Vietnam**, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

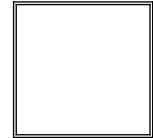
True



False



Can't say



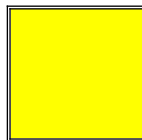
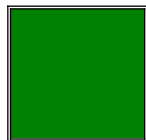
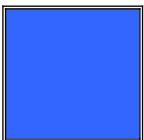
### Comment:

Observing Article 6 to Article 8 of Circular 19/2014/TT-NHNN dated 11 August 2014 by the State Bank of Vietnam, in order to perform the foreign direct investment activities in Vietnam, foreign investment entities (including foreign investor and foreign direct investment enterprise) are entitled to open their foreign currency account and Vietnamese dong account of direct investment at one authorized bank for the purpose of their receipt and expenditure transactions. Depending on the currency, specific transactions must be made through one of the two accounts.

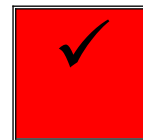
## Alien ownership of land

**Q21** In **Vietnam**, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True



False



Can't say



### Comment:

With respect to Article 55 and 56 of the Land Law 2013, the State may only allocate land and collect land use levy for foreign-controlled companies to implement investment projects for the construction of houses for sale or for a combination of sale and lease. Moreover, under Article 56 of this Law, the State may only lease land to foreign-invested enterprises in cases of: (i) investment projects in agriculture, forestry, aquaculture or salt production, for non-agricultural business and production purpose, for construction of public facilities for commercial purpose, and for implementation of investment projects on houses for lease;

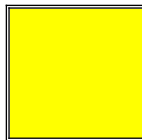
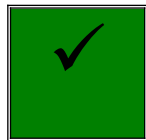
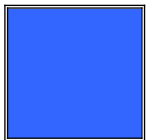
and (ii) construction of non-business facilities. Hence, foreign-controlled companies cannot use land in Vietnam without a permit.

## Application of the law

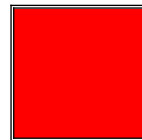
**Generally** These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

**Q22** In **Vietnam**, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

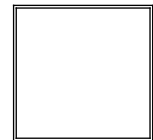
True



False



Can't say



### Comment:

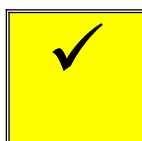
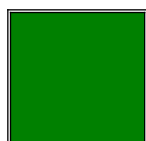
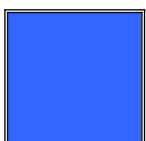
The higher Vietnamese courts are highly expected to apply the law equally to every party regardless of the party's nationality or interests. The judges are expected to base their reasoning on objective factors, unless the law states that certain interests should be favoured such as real estate, etc. However, that is a question of the law itself and not the higher courts' application thereof.

In absence of specific data, there is no reason to assume that the higher Vietnamese courts will treat big businesses less fairly than individuals or that they favour local interests over foreigners when applying the law. Given the scope and complexity of this question, it is difficult to give a more precise answer.

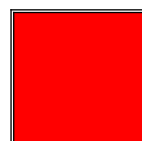
## Costs and delays of commercial litigation

**Q23** The costs and delays of commercial litigation in the higher courts in **Vietnam** are not considered materially greater than in other comparable countries.

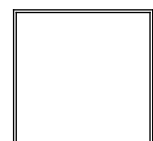
True



False



Can't say



**Comment:**

The Vietnamese court system is to a great extent comparable with those of the other ASEAN countries, based on geographic measures, legal traditions, size and GDP.

The rule in Viet Nam is – like the comparable countries - that the losing party will bear the costs of the case. Like other countries, Viet Nam takes the legal costs from some percentages of the disputed value or a fixed amount plus some percentages of the disputed value after deducting a fixed number according to standard of the wrong.

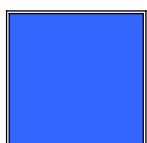
Viet Nam doesn't have good procedural administration. Thus, delays of commercial litigation in Viet Nam carried out in reality take much more time than the law stipulates.

## Overall ranking

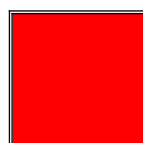
This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

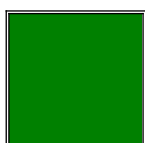
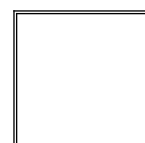
**True**



**False**



**Can't  
say**



## Profiles

The survey was carried out by the following students:

Lê Trần Quỳnh Thy  
+84908587800  
[ltquynhthy.0301@gmail.com](mailto:ltquynhthy.0301@gmail.com)



Đỗ Kim Ngọc  
+84935234662  
[ftlouie1637@yahoo.com](mailto:ftlouie1637@yahoo.com)



Lê Nguyễn Quỳnh Như  
+84908125113  
[lnqnhuu@gmail.com](mailto:lnqnhuu@gmail.com)



Nguyễn Thị Cúc Vi  
+841675123655  
[cucvidhl@gmail.com](mailto:cucvidhl@gmail.com)



Trần Thị Diễm Ngọc  
+84986408005  
[diemngoc.hcmul@gmail.com](mailto:diemngoc.hcmul@gmail.com)



Hoàng Bảo Ngọc  
+84906945999  
[lawngoc@gmail.com](mailto:lawngoc@gmail.com)



Phan Thị Hồng Thắm  
+841678944858  
[hongtham.clcb@gmail.com](mailto:hongtham.clcb@gmail.com)



Nguyễn Đức Nguyên Vy  
+841283651146  
[vyspace93@gmail.com](mailto:vyspace93@gmail.com)





Nguyễn Phước Anh Trâm  
+841683677933  
[tramnpa@gmail.com](mailto:tramnpa@gmail.com)



Trần Bích Ngọc  
+84989805050  
[bichngoclut@gmail.com](mailto:bichngoclut@gmail.com)



Vũ Nguyễn Ngọc Anh  
+84 909 62 7479  
[annvu2704@gmail.com](mailto:annvu2704@gmail.com)



Lê Ngọc Bảo Trang  
+84976 976 291  
[lengocbaotrang110@gmail.com](mailto:lengocbaotrang110@gmail.com)



Vũ Tuấn Linh  
+84 909 62 7479  
[fawkessego1994@gmail.com](mailto:fawkessego1994@gmail.com)



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Philip R Wood CBE, QC (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

Head, Allen & Overy Global Law Intelligence Unit

Special Global Counsel at Allen & Overy LLP

Visiting Professor in International Financial Law, University of Oxford

Yorke Distinguished Visiting Fellow, University of Cambridge

Visiting Professor, Queen Mary University, London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming. Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

Allen & Overy LLP

One Bishops Square

London E1 6AD

T: 00 44 (0)20 3088 0000

D. 00 44 (0)20 3088 2552

M. 00 44 (0)7785 500831

[philip.wood@allenovery.com](mailto:philip.wood@allenovery.com)

[intelligence.unit@allenovery.com](mailto:intelligence.unit@allenovery.com)

D. 00 44 (0)20 3088 2750

[melissa.hunt@allenovery.com](mailto:melissa.hunt@allenovery.com)

Allen & Overy LLP

One Bishops Square, London E1 6AD United Kingdom | Tel +44 (0)20 3088 0000 | Fax +44 (0)20 3088 0088 | [www.allenoverly.com](http://www.allenoverly.com)

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