Luther in Vietnam

Newsletter, Issue 6/2024

Content

■ EDITORIAL

Dear Reader,

As we approach the half-year mark of 2024, Vietnam continues to show a rapid pace of economic growth and technological advancement. The country is also accelerating its attraction of sustainable investment and has implemented important steps to combat corruption and data privacy violations.

In this month's edition of our Newsletter, the lead article takes a close look at the administrative sanctions that are associated with violations of Vietnam's new personal data protection regime. Businesses must ensure compliance with these new rules to avoid potential penalties.

In the realm of banking and daily transactions, e-money and digital payment methods are gaining more traction in the Vietnamese monetary ecosystem. In this space, digital transactions are quickly becoming the norm for many consumers and businesses. Our team has put together a summary of the newest regulations on this area of technology.

Staying on top of the latest developments, our team also responds to a current popular topic of discussion that clusters around a new decree that bans senior executives from leaving Vietnam under certain circumstances. To add clarity to this topic, we examine the rationale behind this new regulation and point out the implicit risks and how to avoid them.

Lastly, we also cover the latest updates on the evolving foreign investment landscape and analyse the figures of recent investment trends in the Vietnamese market.

As always, we keep our readers informed of the latest developments in the business and legal landscape. We trust that you will find the enclosed insights valuable while navigating the Vietnamese business landscape. We also invite you to engage with our newsfeed on social media and encourage you to approach our experts during recurring events. Your feedback is always welcome and we are happy to address any specific requests you may have with regard to this month's contents.

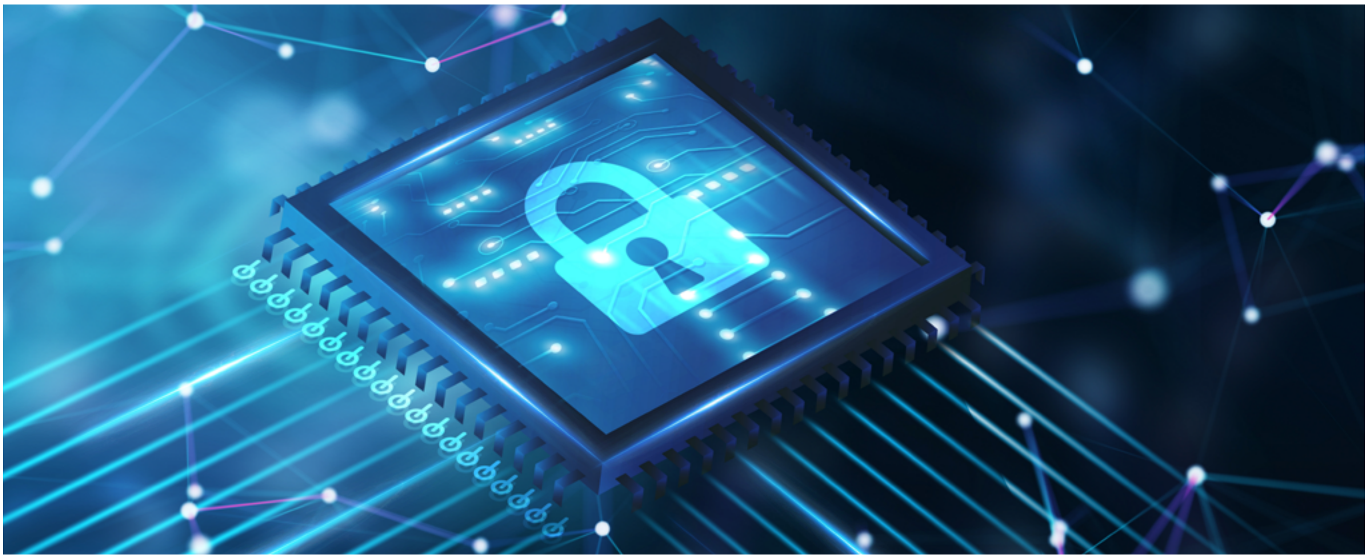
Sincerely,

Leif D. Schneider

Ho Chi Minh City, in June 2024

■ FOCUS

Draft Decree on Cybersecurity Sanctions



In a data-driven world, recognising the rising tide of cyber threats is crucial to stay ahead of the curb. Vietnam is experiencing a meteoric rise in its technological footprint and has embarked on a journey to solidify its legal framework to combat cyber threats. The legal framework currently remains a work in progress. Amongst others, the Draft Cybersecurity Administrative Sanctions Decree ("Draft CASD") is a centrepiece of the new rules for data security and presents another piece of this puzzle.

The Draft CASD has been published in various versions since 2021 for public consultation. It now awaits official enactment, while the existing regulations continue to govern cybersecurity infringements. This article delves into this changing landscape of cybersecurity sanctions in Vietnam, and places a particular focus on their impact on the personal data protection sector.

Existing sanctions regime for personal data protection violations

Decree 15/2020/ND-CP (effective since 15 April 2020), as amended by Decree 14/2022/ND-CP (dated 27 January 2022) (collectively referred to as "**Decree 15**") currently serves as the base regulation. It outlines the Vietnamese system of sanctions for non-compliance with the existing data protection regulations. Decree 15 prescribes a tiered structure of potential penalties, with a maximum monetary fine reaching VND 70 million for organisations and VND 35 million for individuals.

The new Draft CASD

Decree 15 provides a reference point for administrative sanctions associated with dat privacy violations. With the Draft CASD, Vietnam is now poised to significantly strengthen its data security system.

Once Decree 13/2023/ND-CP on Personal Data Protection ("**PDPD**") enters into effect, it will establish a comprehensive framework encompassing principles for data protection, rights of data subjects, and obligations of data controllers and data processors. The synergy between the PDPD and the Draft CASD shall create a more cohesive legal environment for data protection in Vietnam.

The robust sanctions outlined in the Draft CASD have the potential for extraterritorial impacts. This means that both domestic and international organisations operating within Vietnam's digital ecosystem may be subject to sanctions for data security violations. This underscores Vietnam's resolute stance on enforcing its new data security standards and protecting the privacy of its citizens, regardless of the geographical location of the violator.

The table below sets out the penalty range and sanction regime for organisations and individuals who violate Vietnamese data privacy rules:

Violations against	Fine range (VND)
■ Notification on data processing ■ Provision of personal data ■ Editing personal data ■ Processing personal data obtained from audio and video recording activities in public places ■ Breach notification	20 million – 40 million
■ Data subject's consent ■ Withdrawal of consent ■ Personal data protection measures ■ Storing, deleting and destroying personal data	20 million – 100 million
■ Rights of data subjects	20 million – 200 million
■ Personal data protection principles	100 million – 140 million
■ Illegal collection, transfer, buying & selling of personal data ■ Personal data protection in marketing & advertising industry	140 million – 200 million or up to 5% of the revenue of the previous fiscal year in Vietnam for 2nd violation onwards
■ Data Processing Impact Assessment ("**DPIA**") ■ Transfer Impact Assessment ("**TIA**")	140 million – 1 billion or up to 5% of the revenue of the previous fiscal year in Vietnam if at least 5 million Vietnamese citizens are impacted

Further to these fines, the Draft CASD outlines additional potential sanctions, including license revocation, data deletion and public apologies associated with different violations.

Effectiveness of the Draft CASD

The Draft CASD specifies that it is not retroactive. Violations that occur before its effective date (but are discovered or under review thereafter) will be governed by the administrative sanctions regulations in effect at the time of the violation. Furthermore, if the Draft CASD either lacks sanctions or introduces lighter penalties for previous offenses, the milder provisions will take precedence in addressing the violations.

The Draft CASD was expected to take effect on 1 June 2024. However, minor revisions in legislation are still possible, which could potentially delay its official enactment date.

Looking ahead

It is becoming increasingly important to understand the evolving data security regime and the threat of administrative sanctions for incompliance. Businesses should proactively implement cybersecurity measures and ensure their data security in compliance with the legal requirements under the PDPD. Vietnam's cybersecurity sanctions are the '*teeth and claws*' of the systemic changes in this arena. As the nation strengthens its digital shield, understanding the potential '*sting of sanctions*' is essential for navigating the dynamic of the digital marketplace and helps to safeguard a secure cyberspace for all stakeholders.

■ FDI_FYI

Electronic Money and Issues as Regards Non-Cash Payments in Vietnam

The evolution of information technology allows the global economy to come closer together. This also necessitates the effective management of non-cash payments, which are already widespread in Vietnam in mid-2024. In response to this development, the Vietnamese government has now issued Decree No. 52/2024/ND-CP on 15 May 2024 ("Decree 52"). Decree 52 will take effect on 1 July 2024, and replaces previous regulations on non-cash payments. The key changes introduced by this Decree 52 include a clear definition of electronic money, revisions to payment intermediary service regulations and new rules for international payments.

Defining electronic money

Electronic money is globally recognised as a payment method, representing the value of fiat money stored electronically and used for payments. One of the most noteworthy novelties of Decree 52 is the introduction of a clear definition of "electronic money". Vietnamese regulations previously mentioned the term but did not provide a clear-cut definition. This has led to some confusion with other related terms like "virtual money" and "cryptocurrency", which are resolved by the new definition.

Decree 52 now clarifies that "electronic money" refers to the value of Vietnamese Dong stored electronically, provided by banks, foreign bank branches and payment intermediary service providers through e-wallet services. This definition eliminates any opacity related to the term of "electronic money" once and for all. It is important to note that, according to this definition, cryptocurrencies such as Bitcoin and Ethereum are not recognised as electronic money in Vietnam and thus remain unregulated by the State.

Revisions to payment intermediary service regulations

Under Decree 52, the service of supporting electronic money transfers will no longer be licensed as a payment intermediary service (starting 1 July 2024). However, organisations that were licensed to provide this service before this date can continue to do so under existing agreements with customers. Additionally, Decree 52 introduces stricter conditions for providing payment intermediary services, including requirements related to personnel, minimum investment capital, and principles for the State Bank of Vietnam ("**SBV**") to supervise these activities.

In detail:

Regarding professional qualifications, the legal representative of the company, the General Director (or Director) must have:

(i) a university degree or higher in economics, business administration, law, or information technology (the previous regulations did not specify the required field of study); and

(ii) at least five years of experience as a manager or executive in an organisation within the financial or banking sector, and must not be among those prohibited by law from holding such positions when the previous regulations required only three years of experience.

Regarding the minimum investment capital threshold, providers of financial switching services, international financial switching services, and electronic clearing services must have a minimum charter capital of VND 300 billion (up from the previous requirement of VND 50 billion).

With respect to SBV supervision, the Decree 52 also establishes that the SBV will supervise the activities of payment intermediary service providers through remote monitoring, on-site inspections, and other necessary measures. Moreover, these providers must develop and provide online monitoring tools for the SBV to oversee their activities before officially offering services to customers in the market.

These stricter conditions aim to ensure that only financially sound and well-managed organisations can offer these services, protecting consumers and supporting the stability of the financial system.

Regulations on international payments

Decree 52 also clarifies the concept of international payments and systems, as well as the provision of services from abroad to Vietnam and vice versa. According to Decree 52, foreign organisations providing payment services or payment intermediary services to non-residents and foreigners residing in Vietnam must carry out transactions within the country through a commercial bank or a foreign bank branch approved by the SBV. Vietnamese payment intermediary service providers (excluding financial switching service providers) are allowed to offer their services for international transactions. This applies whenever settlements for these transactions are conducted through approved commercial banks or foreign bank branches.

Additionally, financial switching service providers must obtain a license from the SBV to connect with international payment systems for international financial switching services. Those licensed before 1 July 2024 can continue their existing connections, but must meet new business conditions and complete licensing procedures within the following 24 months.

Conclusion

Previously, cross-border payment services in Vietnam, such as partnerships with Alipay, WeChat Pay, PayPal and UnionPay lacked clear legal frameworks. The international payment regulations in Decree 52 are expected to foster cross-border payment service collaborations, supporting the growing needs of e-commerce and technological innovation in Vietnam. Decree 52 marks an important regulatory milestone towards refining the regulatory framework for non-cash payments in Vietnam. It eliminates lingering grey areas and allows service providers and users to redefine business models and obtain appropriate licensing for their activities in Vietnam. By providing clear definitions, stricter guidelines, and a focus on consumer innovation, the Decree aims to enhance the management and integration of electronic money and payment intermediary services. This is likely to foster a more robust and secure payment ecosystem, supporting the continued growth of Vietnam's rapidly expanding digital economy.

Banned from leaving?

Recent media reports pictured a foreign citizen acting as the CEO of a foreign invested enterprise in Ho Chi Minh City who was prevented from leaving Vietnam due to his company's outstanding tax obligation. The amount owed to the tax authorities was a mere VND 997,000 (equivalent to about USD 39). This news report prompted concerns among domestic managers who act as directors and legal representatives of their companies.

Legal basis

Looking at the past, Vietnam had already previously enforced similar 'exit bans' on individuals trying to leave the country. In fact, banning individuals from leaving Vietnam due to failure to fulfil tax obligations is not uncommon over the past years. In accordance with the Law on Tax Administration ("**LTA**"), legal representatives of Vietnamese entities must fulfil their company's tax obligations before leaving the country. This applies to individuals regardless of their citizenship and their reason for trying to exit the country. If failing to settle due tax debts, they may be temporarily suspended from leaving Vietnam by regulations of the law on immigration – resulting in what is commonly referred to as an "exit ban".

Pursuant to the Law on Immigration of Foreigners ("**Immigration Law**") in Vietnam, a foreigner may temporarily be banned from leaving Vietnam if the foreigner falls under one of the following categories:

- The foreigner is currently an accused, defendant, or person with related obligations in a criminal case or a defendant, or person with related obligations in a civil, commercial, labour, administrative, marriage and family case;
- The foreigner is currently obliged to abide by judgments or decisions of courts or decisions of the Competition Handling Council;
- The foreigner fails to fulfil tax payment obligations;
- The foreigner is being obliged to abide by decisions on sanctioning administrative violations; and
- For reasons of national defence and security.

Application

A tax fulfilment obligation that can be subject to exit ban measures often arises as a result of a tax audit or inspection of the Vietnamese tax authorities. After the completion of a tax audit or tax inspection, the Vietnamese tax authorities issue an official decision on administrative tax sanction under which the taxpayers have ten days to settle outstanding tax obligations (including associated interest penalty and fines). Tax payment shortfalls or failures to comply with such sanction decisions typically result in a variety of enforcement measures imposed by the tax authorities. An exit ban is often a part of these measures, which is activated by the Vietnamese Customs and Border forces immediately upon receiving interministerial information from the tax authorities.

In order to ensure timely compliance and effective tax collection, enforcement measures are imposed to prohibit the departure (and prevent the escape) of legal representatives who fail to settle outstanding tax obligations. The period of prohibition from leaving Vietnam may be up to three years, with a possibility of further extensions.

Solution

Because of the severity of its potential implications, the imposition of exit bans under the Immigration Law and the LTA has prompted a significant debate among company managers in Vietnam. Because this risk concerns top level management, especially managers from overseas who currently act as the legal representatives of their companies in Vietnam have voiced fears over being stopped at the border upon exit attempts. Any prohibition of leaving the country is a significant restriction on an individual's personal freedom with a severe impact on businesses and the personal lives of company legal representatives.

To avoid exit bans, company's legal representatives in Vietnam should stay on top of their company's tax debts and monitor the situation accordingly. This can be done by regularly and proactively checking the company's tax payment obligations on the online system of the Vietnamese tax authorities. As an additional source of information, managers can contact the tax debt administration and enforcement division of their local tax office to reconcile any outstanding tax debts. This is especially important after the completion of a tax audit or tax inspection. Any outstanding amounts under enforcement measures that have not been paid must be settled immediately to prevent the imposition of a leaving ban by the relevant authorities.

If an exit ban has been issued in the name of a company legal representative, this can be resolved by taking the following actions:

1. Verify the exact amounts of outstanding tax debts and penalties as well as examine the reasons for such outstanding obligations with the company's accountant.

2. Proactively contact the tax authorities to request detailed information on the outstanding tax obligations, discuss the situation and seek a compromising resolution.

3. Settle the entire outstanding tax obligations immediately (if possible and such amounts are correct), or request the tax authorities to allow instalment payments or negotiate a reasonable payment agreement (if immediate full payment is impossible).

4. After payment and reconciliation of tax debts with the tax authorities, file an official request to the tax and immigration authorities, accompanied by payment evidence or accepted settlement agreement, to lift the travel ban.

5. Ensure that all tax-related documents and procedures are accurately and fully in compliance to avoid similar issues in the future.

Summary

Tax debt and travel bans can significantly impact the business operations and personal reputation of the company legal representatives. Therefore, taxpayers are highly recommended to regularly check their outstanding tax obligations on the online tax portals, comply with the tax authorities' sanction decisions on a timely manner and resolve any disputes in court at a later stage. If company legal representatives encountered difficulties in resolving the outstanding tax debts or travel bans, they should consider seeking advice from a qualified lawyer or tax advisor for professional assistance.

Vietnam's Investment Landscape: Five Months of 2024

Vietnam continues to solidify its position as a highly attractive destination for foreign direct investment ("FDI"). The country's FDI performance in the first five months of 2024 has been particularly positive. The latest data from the Ministry of Planning and Investment ("MPI") paints a picture of a thriving investment landscape across a variety of industries. The data also reveals several key trends that increase FDI inflows into Vietnam's Southeastern provinces and a growing focus on green and sustainable investments.

According to the MPI, the first five months of 2024 recorded a steady increasing inflow of FDI into Vietnam. During this period, over USD 11.07 billion in investment funds have been funnelled into the country. This represents a 2% increase compared to the same period last year. Of the total FDI inflow, USD 7.94 billion was invested in 1,227 new projects, reflecting year-over-year increases of 50.8% and 27.5% respectively.

As of 20 May 2024, Vietnam had a total of 40,285 valid FDI projects with a combined capital of USD 481.33 billion, of which USD 305.43 billion has been disbursed.

1. Sectoral highlights

Foreign investment funds were poured into 17 out of 21 sectors in the nomenclature of Vietnam's national economic classification system. Key highlights in this development are:

- **Processing and Manufacturing** continued leading the way. The industry attracted over USD 7.42 billion, which made up 67.1% of the total FDI. This represents an 11.9% increase from the previous year, underscoring Vietnam's dominance as a regional and global manufacturing hub in the ASEAN community.

- **Real Estate** took the second place, drawing USD 1.98 billion in investments, leaping a staggering 70.8% year-on-year.

- **Wholesale and Retail Sales** secured USD 514.2 million in funds from offshore, which highlights the increasing consumer demand, the wealth of a growing middle class, and the lucrative opportunities in Vietnam's retail landscape.
- **Transport and Warehousing** drew USD 342.2 million in investments, reflecting the growing importance of logistics and infrastructure development in supporting the country's economic expansion.

2. Geographic distribution

Foreign investors spread their engagement across 47 provinces and cities. The below locations stood out:

- **Ba Ria - Vung Tau** took the lead with over USD 1.52 billion in registered capital, accounting for 13.8% of the total and showing a 12-fold increase from the previous year.
- **Hanoi** ranked second with nearly USD 1.14 billion, 10.3% of the total, but a 39% decrease year-on-year.
- **Bac Ninh** came in third with over USD 1.06 billion, representing 9.6% of the total.
- Ho Chi Minh City, Dong Nai, Quang Ninh also remain popular investment destinations, despite their limited capacity to absorb the high demand.

3. Major investors

Vietnam remained a place of interest for many investors from across the globe. To date, foreign investors from 78 countries and territories poured funds into Vietnam in 2024. Their ranking:

- **Singapore** leads the chart with approximately USD 3.25 billion, accounting for 28.2% of total FDI, a 28.2% increase year-on-year.
- **Hong Kong (China)** followed suit with nearly USD 1.45 billion, representing 13.1% of the total and 2.2 times the previous year's amount.
- Regarding the number of projects, **China** topped the list, accounting for 28.3%.

Quality over quantity

While the overall FDI picture in Vietnam remains positive, a closer look at the Southeastern regions reveals an interesting trend. These regions, including Ho Chi Minh City and the nearby provinces of Binh Duong, Dong Nai, and Ba Ria-Vung Tau, have been attracting a growing number of small but high-quality FDI projects. These investments focus on high-tech and sustainability, aligning with the long-term economic growth goals of the region and adds value to the local communities. ESG standards and the avoidance of CO2-emissions are playing an increasing role in the investment game in Vietnam, which is fostered by the country's commitment to reach net-zero carbon emissions by the year 2050.

To underline this development, the newly invested projects are mainly operating in the sectors of biology, electronics, and semiconductors, using advanced and eco-friendly technologies. Some notable examples include the Silicon Carbide Vietnam Co. Ltd. and the Advanced Optics projects of the US-based Coherent Group, with a combined investment of USD 83 million.

The appeal of these southeastern regions can be largely attributed to their robust infrastructure. For instance, Dong Nai is getting a new Long Thanh International Airport, which will greatly improve transportation and logistics in the area. Meanwhile, Ba Ria-Vung Tau has a deep-water port system that can handle large cargo ships going to markets around the world.

Green focus

As more and more foreign investors flock to Vietnam, the Vietnamese government has recognised the need to balance investment growth with sustainable development.

The Vietnamese government has been actively promoting investments projects that are greener and more sustainable. This shift reflects a broader global trend towards greener supply chains and increased demand for sustainable business practices.

A prime example of this green focus is Australis Aquaculture, an American fish farming company. Australis plans to invest an additional USD 1 billion in Vietnam's sustainable development. Their operation in the central Khanh Hoa province aims to significantly help Vietnam to use resources carefully, transitioning to a greener future overall.

To support this green investment focus, the Vietnamese government has implemented several key initiatives. These include streamlining administrative procedures, providing tax incentives for sustainable projects, and actively fostering collaboration between foreign investors and local stakeholders.

Vietnam's FDI performance in the first five months of 2024 reflects the country's continued economic resilience and its ability to adapt to the evolving global investment landscape. With ongoing policy reforms, infrastructure development, and a focus on green investments, Vietnam is well-positioned to attract even more high-quality FDI projects in the second half of the year.

■ GENERAL INFORMATION

Contact us

Luther Law Vietnam LL.C
Suite 25.02 Deutsches Haus
33 Le Duan Boulevard
Ben Nghe Ward, District 1
Ho Chi Minh City, Vietnam
T +84 2873 0010 73
vietnam@luther-lawfirm.com

Visit us online

Website
German: https://www.luther-lawfirm.com/kompetenzen/corporate-services/detail/vietnam
English: https://www.luther-lawfirm.com/en/competences/corporate-services/detail/vietnam

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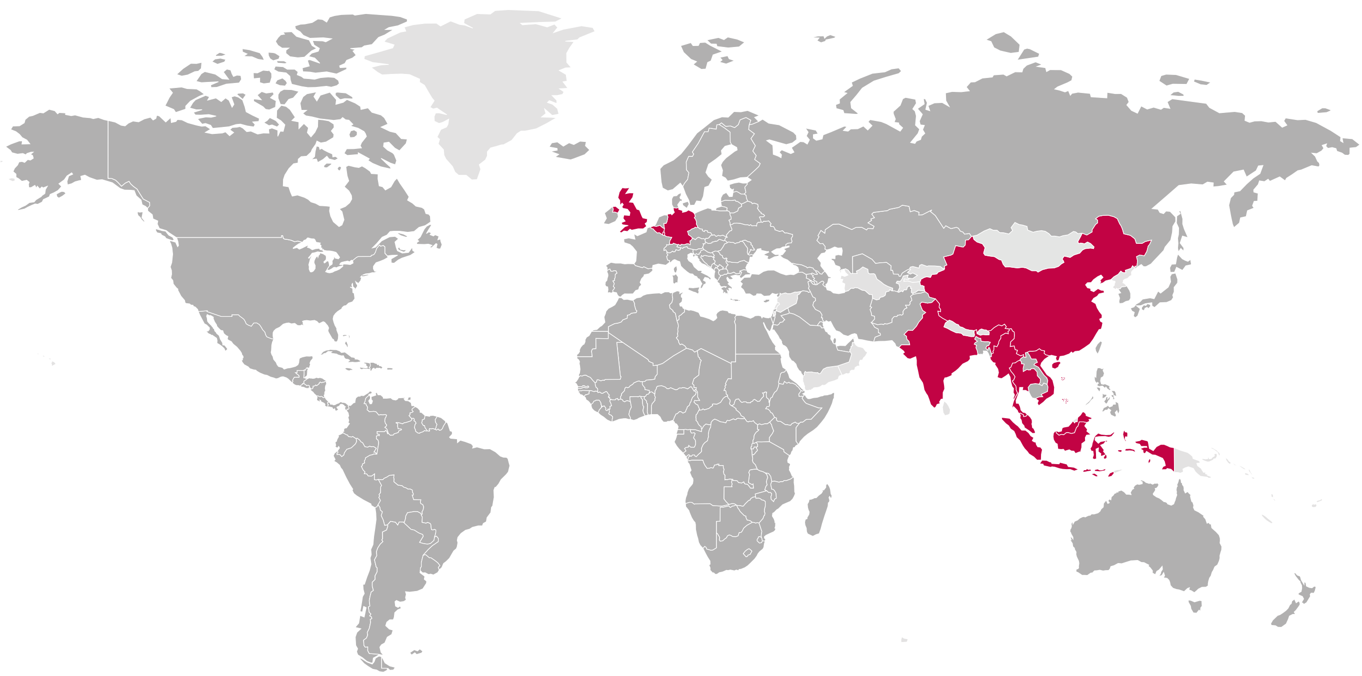

Events, publications and blog

You will find an overview of our events here.

You will find a list of our current publications here.

You will find our blog here.

Legal information

Published by: Luther Law Vietnam LL.C
Suite 25.02 Deutsches Haus, 33 Le Duan Blvd, Ben Nghe Ward, District 1, Ho Chi Minh City, Vietnam
vietnam@luther-lawfirm.com
Responsible for the content: Luther Law Vietnam LL.C.; Suite 25.02 Deutsches Haus, 33 Le Duan Blvd, Ben Nghe Ward, District 1, Ho Chi Minh City, Vietnam
vietnam@luther-lawfirm.com

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