

## 8 Typical Contract Drafting Mistakes in Vietnam:

Drawing up a will in Vietnam is particularly useful if you live and/or work in Vietnam long-term and also have significant assets or property in Vietnam. If you are also married to a Vietnamese spouse, a will in Vietnam is particularly important to protect your family outside of Vietnam, especially children from a previous marriage or partnership. Here is an overview about inheritance law in Vietnam and specifically last wills / testaments in Vietnam:

### 1. **Make bilingual contract versions:**

While it is in principle possible to have the English-language contract version prevail over the Vietnamese version, there are certain limitations if Vietnamese laws provide for the exclusive validity of the Vietnamese-language version (for example in certain family and real estate matters). Contracts in Vietnam should therefore generally be made in bilingual English-Vietnamese versions even where the English version could prevail and be basis for arbitration proceedings. If - however - no arbitration was agreed on and Vietnamese courts are therefore competent, the Vietnamese version will generally be prevailing. In such case, it is important that an accurate Vietnamese translation is available. This is often underestimated, as even certified Vietnamese translation companies are often unable to translate legal terms precisely. For example, Vietnamese translations of English terms often confuse and/or do not clearly distinguish between legal and commercial meaning of certain terms, even with common terms such as e.g., “capital”, “investment”, “revenues” and “profits”.

### 2. **Be careful with using headquarters' contract templates:**

Use of international (headquarters) contract templates: Headquarters of multinational companies often prefer to use their own contract templates for matters of internal (group) consistency in all jurisdictions they are active in. While this is understandable from a group point of view, at least local compliance with Vietnamese laws should be carefully checked. In addition, suitability of the template for the specific case should be reviewed, as no template can fully anticipate all details and specifics of the case at hand. An additional problem with international templates is that these are often very comprehensive and therefore too detailed for the Vietnamese side that generally works with simpler and shorter contract versions.

### 3. **Don't use outdated or invalid contract templates:**

Sometimes, investors use contract templates that may work in other jurisdictions, however for Vietnam they would be regarded as a circumvention of Vietnamese laws and are therefore invalid. This is for example true for trustee or nominee agreements with Vietnamese nationals as far as they intend to circumvent i) certain licensing requirements (e.g., investment licensing procedures under the Investment Law or ii) applicable maximum foreign ownership restrictions regarding shareholdings or holding of capital contributions in companies in specific business areas. In addition, for some areas of the law, certain Vietnamese templates exist. While not strictly legally binding, these should at least be considered both in form and content.

### 4. **Define contract terms clearly and avoid inconsistency of contract terms:**

Specifically in cases where the Vietnamese party provides the first contract draft, there are often no clear definitions of terms which may result in misunderstanding about their meaning.

It is therefore important to introduce terms either in a separate paragraph, or where the term is first mentioned, a contract definition which in the following will only be used in capitalized form. Where annexes / appendixes are made, they must explicitly be made “integral part” of the contract and their use of defined terms must be consistent.

**5. Comply with specific Vietnamese legal terminology:**

Vietnamese laws often have legal terms that deviate from internationally common terms. This is particularly true in the area of commercial and corporate law. For example, shareholders in a limited liability company are called “members” in Vietnam. And these “members” do not hold shares but “capital contributions” in the limited company. The meeting of shareholders in a limited company in Vietnam is called “Members’ Council” meeting instead of shareholder meeting. Articles of association or bylaws are referred to in Vietnam as the “Company Charter” and there is a dogmatic difference between the investment and the charter capital in Vietnam. Therefore, English templates should be reviewed with regard to deviating terminology in Vietnam.

**6. Look at missing or incomplete contract provisions:**

Where the Vietnamese side provides contract drafts, there will often be a focus on certain (rather commercial) provisions such as payment and delivery terms, while other terms are either missing or incomplete. This is often true for e.g., liability-, confidentiality and data protection clauses, termination clauses, compliance clauses and entire agreement-, severability- and written-form clauses. In addition, some legal terms, concepts and clauses are still not very well known in Vietnam, which may cause additional confusion on the Vietnamese side. This is for example the case with hold-harmless and indemnification clauses and tag-along/drag-along clauses in share purchase agreements.

**7. Avoid insufficient dispute resolution clauses and refer disputes to the VIAC:**

A good dispute resolution clause should generally include a two-step approach with the first step being negotiation or mediation, however with a clear procedure including at least notification requirements and timelines for amicable resolution (e.g., 30 days). Only if negotiation fails, the dispute should be referred to in a second step to arbitration centers or Vietnamese courts. A referral to the Vietnam International Arbitration Center (VIAC) often makes sense, because arbitration at the VIAC has the advantage that VIAC’s arbitral awards are directly enforceable in Vietnam. In addition, English can be agreed as the language to be used in arbitration proceedings at the VIAC, the parties can choose their arbitrators freely at the VIAC and the cost of VIAC proceedings are significantly lower than at the SIAC or other foreign arbitration centers. Conversely, agreeing with your Vietnamese business on arbitration abroad is generally recommended only in exceptional and complex cases such as for example in multinational and- / or multijurisdictional disputes.

**8. Comply with form requirements:**

Contracts can generally be concluded without legal form requirements in Vietnam, except for certain areas of the law, such as for example in family and real estate law, where official notarization is required for contracts to be valid. For reasons of evidence and documentation, however, written form is urgently recommended even where no form requirements exist. Therefore, commercial contracts will usually be made in writing. Furthermore, a written form clause is recommended in each contract in order to avoid objections of the other party that certain side agreements exist.

**About the Author:**

*Dr. Matthias Dühn, LL.M. (Georgetown) was admitted as a lawyer to the German Bar Association in 2001 and has been registered as a "Foreign Registered Lawyer" in Vietnam since 2007. He has been focusing his law firm Viet Diligence Legal law firm, founded in 2014, on market entry of foreign investors and entrepreneurs in Vietnam, and is therefore familiar with all legal questions relating to Vietnamese investment-, corporate-, commercial- and tax laws. He also advises on all matters questions relating to international contract drafting and complex contract negotiations, particularly in the area of commercial contracts, mergers and acquisitions (M&A) and joint ventures. Dr. Dühn is also experienced in all Vietnamese labor law issues, such as drafting employment contracts, termination of employees and complex settlement negotiations.*

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