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1. Introduction

Accessing safe food is a fundamental human right that is pivotal to the survival of future generations, and therefore must be protected in all regards.¹ Furthermore, since daily food consumption is indispensable to all, the food industry is lucrative and plays a significant role in every countries' social and economic development. With that awareness, Vietnamese legislators have promulgated numerous legal instruments governing food safety for the purpose of protecting human health and life from food related harms and shaping the operation of all players in this profitable industry in order to help Vietnam achieve the aforementioned bold goal.

In Vietnam, food safety is governed by various major legislation, including laws on goods and product quality, food safety, and consumer rights protection. In the context of this newsletter, we focus on the most direct laws and regulations on food safety in Vietnam, the Law on Food Safety No. 55/2010/QH12 dated 17 June 2010, as amended in 2018 (the "**Food Safety Law**"), its guiding regulations (e.g., Decree No. 15/2018/ND-CP dated 02 February 2018 guiding certain articles of the Food Safety Law ("**Decree 15**"), and Decree No. 115/2018/ND-CP on food safety administrative sanctions dated 04 September 2018, as amended by Decree No. 124/2021/ND-CP dated 28 December 2021 ("**Decree 115**"). The Food Safety Law mainly describes the rights and obligations of organizations and individuals in respect of food safety; conditions to ensure the safety of food for manufacturing, doing business in food, and importing, exporting food; advertising, labeling food; testing food; analyzing threats to food safety; and protecting, preventing, and overcoming food safety incidents.²

The state management of food safety requires involvement of multiple governmental agencies at both central and local levels in all aspects and during the whole process from farms to tables.³ Vietnam's Ministry of Health ("**MOH**") is the key regulator in charge of food safety management nationwide and the provincial

¹ The ex-Prime Minister, Mr. Nguyen Xuan Phuc, expressed his opinion on a nationwide online conference on food safety held on 11 January 2020.

² Food Safety Law, Article 1

³ Food Safety Law, Chapter X

People’s Committees (as assisted by the Department of Health) is the key one for management of food safety at the provincial level.⁴

2. Food and Food-related Definitions

“Food” means the products that humans eat and drink, in their fresh, raw, processed or preserved forms, excluding cosmetics, tobacco and substances used as pharmaceuticals.⁵ Food is basically understood as any type of goods that is edible and drinkable in whatever form, such as eggs, milks, raw pork meat, fruits, hamburger, spaghetti, etc. However, Vietnam regulators do not treat some edible or consumable products as foods, such as edible cosmetics or drugs.

The law further provides for the definitions of sub-categories of foods, including “*fresh and raw foods*”, “*micro nutrition-fortified foods*”, “*functional foods*”, “*genetically modified foods*”, “*irradiated foods*”, and “*packaged foods*”. In particular:

Fresh and raw foods ⁶	Unprocessed food including meat, eggs, fish, aquatic products, vegetables, fresh fruits and other kinds of unprocessed foods.
Micro nutrition-fortified foods ⁷	Foods supplemented with vitamins, minerals, trace elements with aim to prevent and overcome the deficiency of those substances to the health of the community or a specific target group in the community.
Functional foods ⁸	Foods used to support the functions of the human body, create comfort to the body, increase immunity, and reduce the risk of disease. The functional foods are further divided into sub-groups as follows: (i) <i>Health protective food</i> (health supplement, dietary supplement) means products used to supplement the daily diet, aiming to maintain, enhance, and improve human functions, consisting of each or the combination of (a) vitamins, minerals, amino acids, fatty acids, enzymes, probiotics and other biologically active substances, and (b) substances derived from natural sources, including animals,

⁴ Food Safety Law, Articles 61.2 and 61.4

⁵ Food Safety Law, Article 2.20

⁶ Food Safety Law, Article 2.21

⁷ Food Safety Law, Article 2.22

⁸ Food Safety Law, Article 2.23

	<p>minerals and plants under the form of extracts, isolates, concentrates or metabolites.⁹</p> <p>(ii) <i>Medically nutritious food</i> also known as food for special medical purposes, medical food means food that can be consumed orally or via tube feeding, prescribed to regulate a patient’s diet, the use of which has to be supervised by a medical professional.¹⁰</p> <p>(iii) <i>Food for special dietary uses</i> for dieters, the elderly and other special subjects as defined by the International Committee on Food Standards (CODEX) means foods that are specially processed or mixed to meet the requirements of the specific dietary requirements according to the user’s physical condition or specific medical conditions and disorders.¹¹</p>
Genetically modified foods ¹²	Foods that have one or more genetic ingredients modified by genetic engineering.
Irradiated foods ¹³	Foods that have been irradiated with a radioactive source in order to treat and prevent food degradation.
Packaged foods ¹⁴	Foods that are completely packaged and labelled, ready for direct sale for further processing or for direct consumption.

Since food is consumed by humans, “food safety” refers to all actions assuring the humans eating or drinking the food remain unharmed by food consumption.¹⁵ One of the actions for food safety is setting up conditions for assurance of food safety that are technical regulations and other regulations regarding foods, food

⁹ Decree 15, Article 3.1
¹⁰ Decree 15, Article 3.2
¹¹ Decree 15, Article 3.3
¹² Food Safety Law, Article 2.24
¹³ Food Safety Law, Article 2.25
¹⁴ Food Safety Law, Article 2.27
¹⁵ Food Safety Law, Article 2.1

manufacturing and trading establishments, and food manufacturing and trading issued by competent authorities for the purpose of ensuring food safety with respect to human health and life.¹⁶

To date, there have yet to be any regulations on “novel foods” under Vietnamese laws. As a general principal, novel foods, if brought into consumption or processing, would be subject to the control and application of the existing legal regulations on foods in general as herein under described.

3. Basic Principles for Food Safety Management

Vietnam’s Food Safety Law sets forth certain management principles, including, among other things, that (i) all organizations and individuals that produce or trade foods are responsible for food safety; (ii) food production and trading are conditional businesses and food producers and traders must be responsible for the foods they produce or trade; (iii) food safety management must be based on respective technical regulations and rules issued by the government authorities and standards that food producers and traders declare to apply; (iv) food safety management must be implemented throughout the production and trading processes based upon analysis of threats to food safety.¹⁷ As a result, all laws and regulations on food safety in Vietnam must be built and enforced in line with the abovementioned principles.

4. Key Rights and Obligations of Food Industry Stakeholders

(1) Food Producers¹⁸

As one of the key stakeholders of the food industry and with the decisive role in ensuring food quality and safety at an early stage, food producers have extensive rights to (i) decide and declare the product standards they produce and apply for internal control measures to ensure food safety; (ii) request food traders to cooperate in the process of recall and disposal of unsafe food; (iii) select appropriate conformity assessment organizations and testing establishments designated to certify regulation conformity; and (iv) use standard conformity stamps, regulation conformity stamps and other marks for their products.

Apart from the above rights, to guarantee its role in processing and production of foods, food producers have the following key obligations:

- responsibility to comply with food safety conditions and requirement, including, but not limited to, (i) promptly suspend food production, notify concerned parties of and take remedies upon detecting unsafe food or food uncomformable with announced standards or relevant technical regulations; (ii) recall and handle of expired and unsafe foods; (iii) archive dossiers, food samples and necessary information for food origin tracing and trace the origin of unsafe food; (iv) establish self-inspection processes in the course of food production; (v) make payment for sample testing and examining expenses upon request

¹⁶ Food Safety Law, Article 2.6

¹⁷ Food Safety Law, Article 3

¹⁸ Food Safety Law, Article 7

by the competent authority during inspection procedure; and (vi) compensate for the damages caused by the unsafe foods they produce;

- obligations to comply with the Government regulation on supplementation of specific micro nutrients (e.g., iodine, iron, zinc and vitamin A) to particular foods (including salt, wheat flour and vegetable oils), where the deficiency of which would affect community's health; and
- obligations on provision of sufficient and accurate and truthful information on foods and food safety, regarding (i) the label, package and documents accompanying the food; and (ii) warning on the risk of food to become unsafe and provide preventive methods for food traders and consumers and requirements on the transportation, storage, preservation and use of food.

(2) Food Traders¹⁹

Assuming the role to bring the foods closer to consumers, food traders have the right to request food producers and importers to (i) cooperate in recalling and disposing of unsafe food; and (ii) make decisions on internal control measures to maintain food hygiene and safety and select eligible establishments to inspect food safety/ certify regulation conformity for imported food.

Similarity to food producers, food traders are required to adhere to the following key obligations:

- compliance of food safety conditions and requirements during its trading business and the trading foods, including the obligations to (i) inspect food origins and labels and documents related to food safety; keep dossiers on food; comply with requirements on tracing of origins of unsafe foods; (ii) suspend the trading operation and inform food producers or importers and consumers upon detection of unsafe food; (iii) report to competent agency on food poisoning or a disease caused by foods they trade and promptly provide remedial actions upon the detection incident; (iv) cooperate with food producers and importers and competent state agencies in investigating food poisoning cases for remedial measures, recall or dispose of unsafe food; (iv) make payment for sample testing and examining expenses upon request by the competent authority during inspection procedure; and (v) compensate for the damages caused by the unsafe foods they trade.
- prompt provision of truthful information on food safety, including (i) notification to consumers of safety assurance conditions in the course of food transportation, storage, preservation and use; and (ii) risks causing unsafe foods and methods of risk prevention to consumers upon receiving warnings of food producers or importers.

(3) Food Consumers²⁰

As the end-users in the process, the consumers are provided with comprehensive rights and obligations upon their purchase and consumptions of food. Accordingly, food consumers have the right to request food producers, traders and consumer protection organizations to protect their rights and interests under the laws on consumer protection rights. In addition, food consumers are also required to provide prompt information

¹⁹ Food Safety Law, Article 8

²⁰ Food Safety Law, Article 9

on food safety risks, and report food poisonings and foodborne diseases to the competent authorities, medical examination and treatment establishments and food producers and traders.

5. Food Safety Conditions

(1) General food safety conditions

The Food Safety Law generally requires that food must satisfy the respective technical regulations; comply with the regulations on limits of pathogenic microorganisms, residues of pesticides or veterinary medicines, heavy metals, contaminants and other substances in food that may cause harm to human health and life.²¹ Further, depending on each type of food, in addition to the above requirements, food must comply with one or several regulations on use of food additives, supporting substances during food processing and manufacture; food packaging and labelling; and food preservation.²²

Other than the conditions above, each type of food as classified above must meet particular conditions and requirements by law, such as ensuring the ability to track food sources in case of fresh and raw foods²³ or ingredients must not interact with each other to create a harmful substance in the case of processed foods.²⁴

(2) General safety conditions in food production and trading

Conditions applicable to food producers and traders

Food producers and traders must ensure that their production and trading establishments:²⁵

- have suitable venues with appropriate areas and safe distance from toxic and contaminating sources and other harmful factors;
- have sufficient technically qualified water for food production and trading;
- have adequate appropriate equipment and materials to process, package, preserve and transport different types of food, as well as suitable equipment to prevent and control insects and harmful animals;
- have a qualified waste treatment system; and
- maintain food safety assurance conditions and obligations applicable to food traders and persons directly engaged in food production and trading.

²¹ Food Safety Law, Article 10.1

²² Food Safety Law, Article 10.2

²³ Food Safety Law, Article 11.2

²⁴ Food Safety Law, Article 12.2

²⁵ Food Safety Law, Article 19.1

Conditions applicable to food preservation

Food producers and traders need to ensure that their preservation venues and vehicles have sufficient space to separately preserve different kinds of food and precisely load and unload goods while maintaining hygiene during preservation process.

In the course of preservation, food traders and producers are required to apply necessary measures to keep foods unaffected from external factors such as temperature, humidity, insects, animals, dust, strange smells and negative environmental effects.²⁶

Conditions applicable to food transportation

To warrant food quality, transport vehicles used in food transportation must be made from qualified material and the transported foods will be in good preservation conditions throughout transportation process.²⁷

(3) General regulations on food additives and pesticides for food safety

Food Additives

By law, “food additives” means substance, with or without nutritional value, which are intentionally added to food in the process of production in order to retain or improve particular characteristics of the food.²⁸

Use of food additives in food production and trading must conform to the following key requirements and principles:²⁹

- Before being circulated in the market, in general, food additive producers and traders must conduct self-announcement on food safety conformity and for some food additives, they must register the conformity announcements with competent authorities;
- Food additives may be used in food production only if they are listed in a list of additives permitted for use in food prescribed by the MOH. In case the food additive is unlisted, food additive producers and traders must carry out procedures of product registration declaration in accordance with the law;

²⁶ Food Safety Law, Article 20.1

²⁷ Food Safety Law, Article 21.1

²⁸ Food Safety Law, Article 2.13

²⁹ Food Safety Law, Article 17; Decree 15, Articles 5, 6, and 33; Circular No. 24/2019/TT-BYT, Article 7

- Use of food additives must not exceed the maximum allowable use;
- Food additives must be used for the right food object and with minimum volume to achieve the desired technical effects without harming human health or deceiving consumers;
- Food additives must have clear origin and source and be within the use period;
- Food additives must fully meet the management requirements and technical requirements for food additives, which include:
 - ✓ National technical regulations or provisions in legal documents promulgated by competent authorities if applicable national technical regulation is not available;
 - ✓ National standards if the above is not available;
 - ✓ CAC and JECFA standards and regional and foreign standards in case the above are not available;
 - ✓ Manufacturer standards in case the above are not available.

Any violation in use of food additives must be dealt with in accordance with the law as generally discussed in Item 7.2 below.

Pesticides

By law, “pesticide” means any substance or mixture of substances or microbiological agents meant for preventing, inhibiting, repelling, seducing, destroying or mitigating the harmful impact of plant pests, pathogens and diseases; regulating or controlling the growth of plants or insects; serving the purpose of plant storage; or increasing the safety and efficacy of various plant protection products.³⁰

Pesticides are subject to strict management and control with multiple principles, including, among other things, ensuring food safety and human health.³¹ As a general condition for food safety, food manufacturers and sellers must ensure that, among other things, the subject food must contain permissible pesticide residue levels.³² Regarding this matter, the MOH has issued guidance on the permitted pesticides, maximum limits of pesticide residue in certain types of foods or Maximum Residue Level (MRL), Extraneous Maximum Residue Limit (EMRL), Acceptable Daily Intake (ADI) for

³⁰ Law on Plant Protection and Quarantine No. 41/2013/QH13 (“**Law on Plant Protection and Quarantine**”), Article 3.16

³¹ Law on Plant Protection and Quarantine, Article 4.3

³² Food Safety Law, Article 10.1. According to Article 2.2 of Circular No. 50/2016/TT-BYT (“**Circular 50**”), “Pesticide Residue” refers to any specified substance in food resulting from the use of a pesticide.

the compliance of entities and individuals operating in food manufacture and sale. The guidance includes a detailed list specifying Maximum Residue Levels of Pesticide in Food that the food producers and traders must be fully aware of during their operation.³³

Any violation in food safety regarding pesticide residue must be dealt with in accordance with the law as generally discussed in Item 7.2 below.

6. Certification for satisfaction of food safety conditions in production and trading

By law, all food producers and traders must obtain a certificate for food safety eligibility in food production and trading, save for some exemption cases (e.g., micro business establishments, packaged food sellers, sellers and manufacturers of food containers and packages, restaurants within hotels, collective kitchens not registered as food businesses, street food vendors, those having one of the following certificates, including GMP, HACCP, ISO 22000, IFS, BRC and FSSC 22000 or the like, etc.)³⁴

Applicants will obtain the certificate upon satisfying all the following conditions, including satisfaction of all food safety conditions applicable to specific foods, including the general conditions as stated above, and having registered the food trading business line in its enterprise registration certificate.³⁵ The licensing authority shall conduct on-site inspection at the applicants within fifteen days from the receipt of full and valid dossiers from the applicants. If the applicants satisfy the relevant conditions, the licensing authority shall issue the certificate. The certificate is valid for three years from the issuance date. In case of renewal, an application dossier for renewal must be submitted no later than six months prior to the expiry of the current certificate.³⁶ Upon obtaining the certificate, the applicants must ensure the satisfaction of those conditions during the effectiveness of the certificate. Failure to satisfy any of the above condition leads to the revocation of the certificate.³⁷

Depending on the business size of the establishments and the types of food being produced or distributed, the licensing authority issuing the certificate might be the MOH, Vietnam's Ministry of Industry and Trade, Vietnam's Ministry of Agriculture and Rural Development or their lawful delegates as decided by the relevant ministries.³⁸

³³ Circular 50, Annex

³⁴ Decree 15, Article 11.1 and 12.1

³⁵ Food Safety Law, Article 34.1; Decree 15, Article 11.2

³⁶ Food Safety Law, Article 37

³⁷ Food Safety Law, Article 34.2

³⁸ Food Safety Law, Article 35; Circular No. 43/2018/TT-BCT, Article 6; Circular No. 38/2018/TT-BNNPTNT, Article 5 and Article 17.1; Decree No. 155/2018/ND-CP amending Decree No. 67/2016/ND-CP, Article 2.3

7. Prohibited acts and sanctions

(1) Prohibited acts relating to food safety

By law, the following acts, *among other things*, are prohibited for ensuring food safety:³⁹

- Using materials that are not appropriate for food processing to process foods;
- Using unqualified or overdosed food additives and food processing aids; using chemicals with unclear origin or prohibited chemicals in food production or trading;
- Using animals that died from diseases, epidemics or unknown causes for food manufacture and trading;
- Manufacture and trading of unqualified and/or violated foods;
- Using vehicles that cause contaminating to food, vehicles used for transporting toxic substances that have not been cleaned to transport food materials and food;
- Providing false or counterfeit food test results;
- Concealing, falsifying, erasing evidence of food safety incidents or other intentional acts that hinder the detection and remedy of food safety incidents;
- Persons suffering from infectious diseases engaged in food manufacture and trading;
- Manufacture and trading food at establishments that do not have certificates of food safety qualification as prescribed by law; and
- Posting or disclosing false information on food safety, causing irritation to society or damage to manufacture and business activities.

³⁹ Food Safety Law, Article 5

(2) Sanctions and compulsory remedial measures

In addition to the prohibited acts as stated above, any violations of the food safety regulations must be handled in accordance with law. Depending on the nature of and severity of non-compliance, violators might be subject to administrative or criminal liabilities.⁴⁰

Administrative liabilities

The types of violations are quite extensive. They basically include (i) violations against conditions for assurance of safety of food products; (ii) violations against food safety conditions in production, trading and supply of foods; (iii), violations against food safety requirements applied to imported and exported foods and other violations against food safety conditions in production, trading and supply of foods, and (iv) violations against regulations on advertisement and education of food safety; food testing; risk analysis, prevention and handling of food safety incidents; tracing food origins, recall and disposal of disqualified food.⁴¹

For the violations above, the maximum administrative penalty amount applicable to organization is up to VND 200,000,000, or depending on certain violations, could be up to seven times the value of the foods involved in the violation.⁴² Depending on the nature and severity of the violation, additional penalties including temporary revocation of the food related certificates for a certain period might be imposed (e.g., in case of certificate of food safety eligibility in food production and trading, the revocation period is between 01 and 06 months); or suspension of operation for 01 to 12 months and confiscation of the means causing the violated acts.⁴³

Apart from the monetary fines and additional penalties above, the violators may also be subject to one or several remedial measures depending on the nature and type of the violated act.⁴⁴ For instance, the violators might be forced to re-export, destroy, recall, or modify the usage purpose of unqualified or foods identified in relation to a violation, food containers, chemicals, other food-related items, issued materials, or publications; bear all costs for the handling of food poisoning and examination and treatment of poisoned persons; or return an amount equal to the value of the violated material evidence in case they are no longer available.

⁴⁰ Food Safety Law, Article 6.1

⁴¹ Decree 115, Article 1.2

⁴² Decree 115, Article 3.1

⁴³ Decree 115, Article 2.2

⁴⁴ Decree 115, Article 2.3

Criminal liabilities


Violation acts regarding food safety that lead to severe consequences may be subject to criminal liability. Accordingly, depending on the value of the violation related products and seriousness of the committed act, the penalty shall consist of monetary fine of up to VND 500,000,000 or imprisonment from 01 year to 20 years, and related individuals may be banned from holding certain positions, practicing certain professions or doing certain jobs from 01 to 05 years.⁴⁵

In addition to the administrative and criminal liabilities above, in case of causing damage to other persons, the violators might be liable for damage compensation in accordance with the law.⁴⁶

In sum, food safety regulations in Vietnam remain relatively general and vague, thus understanding such regulations might be a challenge due to the deficiency of detailed and clear guidance. Above are our general notes for your understanding of Vietnam's basic issues of food safety regulations only. Should you need further detailed guidance on food safety regulations in Vietnam, please contact us.

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⁴⁵ Penal Code 2015, as amended by the Amended Penal Code 2017, Article 317

⁴⁶ Food Safety Law, Article 6.1