

Vietnam's Fire Prevention and Fighting Regulations: A glimpse into the legal framework and common legal issues

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Author:

[Taro Hirose](#)

t.hirosawa@nishimura.com

[Nguyen Thi Ha Thu](#)

n.t.h.thu@nishimura.com

[Nguyen Tuan Anh](#)

n.t.anh@nishimura.com

[Hoang Thi Phuong Anh](#)

h.t.p.anh@nishimura.com

1. INTRODUCTION

In recent years, along with impressive economic development and swift urbanization in Vietnam, the number of fires and explosions has significantly increased, particularly at industrial factories and manufacturing facilities, which has caused many injuries and deaths, as well as substantial property damage. Accordingly, the competent authorities have implemented a wide variety of measures to control and minimize fires. In addition to eliminating the causes of fires (such as electrical device/system malfunctions or errors), ensuring compliance with the current regulations on fire prevention and fighting ("FPF") by enterprises has become more urgent than ever.

In this article, we provide readers with a brief overview of the FPF legal framework, followed by some FPF-related legal issues commonly faced by businesses. Finally, we share our projection on possible actions to be taken by the competent authorities to enhance FPF compliance as well as offer some recommendations for businesses to consider.

2. Legal framework for FPF

Key legal documents on FPF and notable FPF requirements

In Vietnam, FPF issues are mainly governed in accordance with the following key Vietnamese legislation, including, among others, the Law on Fire Prevention and Fighting No. 27/2001/QH10 dated 29 June 2001 (as amended) together with Decree No. 136/2020/ND-CP dated 24 November 2020 ("**Decree 136**"), as recently amended by Decree No. 50/2024/ND-CP date 10 May 2024 ("**Decree 50**"), which offers guidance on the interpretation of such law (collectively, "**Decree 136 (as amended)**"). In addition, the Vietnamese authorities have issued various mandatory FPF technical regulations and standards to ensure fire safety from a technical perspective, such as QCVN 06:2022/BXD (as amended) on National Technical Regulations for fire safety of buildings and construction.

Accordingly, facilities (depending on their types and capabilities) are subject to some of the following key FPF safety requirements:¹

- To obtain an approval on fire prevention and fighting design appraisals (in Vietnamese, "*giấy chứng nhận thẩm duyệt thiết kế về phòng cháy và chữa cháy*") ("**FPF Design Approval**") before engaging in any construction activities for facilities set forth in Annex V, V(a) and V(b) of Decree 136 (as amended), and upon completion of the construction of such fire prevention and fighting works, obtain an acceptance

¹ Articles 5.1 and 5.2 of Decree 136 (as amended).

confirmation of fire prevention and fighting works for the facilities (in Vietnamese, “*văn bản nghiệm thu về phòng cháy và chữa cháy*”) (“**FPF Acceptance**”), both of which are granted by the competent fire prevention and fighting police (collectively, “**FPF Police**”), led by the Vietnam Fire and Rescue Police Department under the Ministry of Public Security (“**C07**”);

- To have a fire fighting plan approved by the FPF Police prior to commencing the operation of constructed facilities;
- To have relevant systems for FPF, including transportation, water supply, communication, database management concerning FPF and transmission of incident notifications, fire alarms, fire and smoke prevention, escape, and life-saving equipment, and other FPF equipment and facilities in the quantity and quality stipulated by law;
- To establish relevant grassroots/specialized fire prevention and fighting forces as provided by law that are ready to be engaged in fire fighting; and
- To have the internal rules, warning signs, diagrams, and other signs related to FPF stipulated by law.

Possible sanctions for FPF non-compliance

Vietnamese law imposes various sanctions and measures on FPF violations, such as monetary penalties of up to VND 100 million;² forcing enterprises to acquire FPF Design Approval and FPF Acceptance in the case of having failed to do so;³ or forcing enterprises to comply with any FPF requirements with which they have not complied.⁴ The specific sanctions must be determined by the FPF Police based on the nature and severity of the violation.

More seriously, in addition to the abovementioned administrative sanctions, the competent authorities may temporarily suspend an enterprise’s operations for a period of up to thirty (30) days in cases where an enterprise, among others:⁵

- fails to remedy a serious violation of FPF regulations after the competent authority has requested in writing that such a remedy be implemented, which includes the illegal manufacture, storage, transport or use of substance posing a fire hazard; failure to ensure solutions on preventing fire spread between fire compartments and rooms of industrial facilities having fire and explosion hazard classes A, B, C; having insufficient quantity of exits as stipulated by laws; or
- commits an extremely serious violation of FPF regulations, i.e., commencing the operation of project/construction work subject to FPF Design Approval without obtaining FPF Design Approval or FPF Acceptance although the competent authority has requested in writing to remedy such violation.

In the case where the temporary suspension term has expired but the violation remains unremedied or is unable to be remedied, an enterprise’s operations might be suspended. Such suspension of operations can be carried

² Article 4.1 of Decree 144/2021/ND-CP (“**Decree 144**”).

³ Article 38.6 of Decree 144.

⁴ Section 3, Chapter II of Decree 144.

⁵ Article 17 of Decree 136 (as amended).

out for the entire facility or parts of the facility, subject to the relevant FPF requirements.⁶

In the worst-case scenario, a violator of FPF regulations may be subject to criminal liability, which carries a penalty of imprisonment for up to twelve (12) years depending on the severity of the violation (e.g., causing the death of three (3) people or more).⁷

3. Common FPF-related issues

Based on our observations, we have briefly highlighted below some common FPF-related issues with which businesses in Vietnam typically struggle.

(i) Failure to re-obtain FPF Design Approval and FPF Acceptance due to lack of clarity regarding renovation or change of functions of buildings that are subject to obligations to re-obtain FPF Design Approval and FPF Acceptance

By law, previously, in the case of renovation or change of functions of a building impacting any FPF requirements that were previously assessed during the application of FPF Design Approval), the owner of the facility for which the FPF Design Approval and FPF Acceptance already was obtained shall be liable for re-obtaining those licenses.⁸ Due to a lack of detailed or official guidance in this regard, especially on how to determine “*renovation or change of functions of building impacting any FPF requirements previously assessed during the application of FPF Design Approval*”, the application of such provision was subject to the views of the local FPF Police, which can vary from province to province. In fact, many businesses renovated or changed the functions of their buildings without re-obtaining FPF Design Approval or FPF Acceptance, as they believed that such renovations or changes were not significant enough to warrant such process. Unfortunately, in some cases, the FPF Police adopted a conservative view, and after inspecting those facilities, found them to be non-compliant. As a result, those businesses were required to cease operation of their facilities until they complied with the requirements.

To address this issue, the Government recently made notable changes to relevant provisions of Decree 136 by issuing Decree 50, which further clarifies cases of renovation or change of functions subject to the obligation on re-obtaining FPF Design Approval and FPF Acceptance. Accordingly, it includes those leading to one of the following specific circumstances: (i) increase of floor number or area of fire compartment (in Vietnamese, “*khoang cháy*”); (ii) change of type and location of exit stairs; (iii) decrease of number of exits on a floor, fire compartments and construction works; (iv) new installment or replacement of fire alarm systems; (v) new installment or replacement of fire extinguishing systems or (vi) change of functions triggering increase of fire safety requirements for floors, fire compartments and construction works.⁹ The issuance of such new regulations is an attempt to resolve the practical difficulties in complying with FPF requirements.

⁶ Article 17.4 of Decree 136 (as amended).

⁷ Article 313 of the Penal Code No. 100/2015/QH13 dated 27 November 2015 (as amended).

⁸ Articles 13.3(b) and 15.1 of Decree 136.

⁹ Articles 13.3(b) and 15.1 of Decree 136 (as amended).

Nonetheless, given that Decree 50 has just been promulgated and taken effect from 15 May 2024, and as some aspects are still unclear (e.g., how to identify cases where a change of functions triggers an “*increase of fire safety requirements for floors, fire compartments and construction works*”), the application and effectiveness of such new regulations remain to be seen.

(ii) Contractual dispute between lessors and lessees due to unclear determination of the responsible party for FPF Design Approval in renovating leased buildings

In the context of renovation of leased buildings, Vietnamese law is silent on which party to a lease is responsible for re-obtaining FPF Design Approval. This ambiguity has been an ongoing issue, which has resulted in some businesses (which were lessees of factories) having disputes with lessors in regard to determining which party was responsible for re-obtaining the FPF Design Approval when the leased factories were renovated. In cases where leases are silent on this FPF requirement, it often results in delays in putting factories into operation, which in turn increases the preparation costs of the lessees.

To address this issue, in its Official Letter No. 2075/C07-P4 dated 9 August 2022 (“**OL 2075**”) to the local FPF Police, C07 issued the following guidance:

- The lessee is responsible for applying for the FPF Design Approval if it subleases a land parcel for construction of a new building.
- The lessee is responsible for applying for the FPF Design Approval if it leases the entirety of a constructed building (for which FPF Design Approval and FPF Acceptance was previously obtained) to renovate or change the functions thereof.
- The lessor is responsible for applying for an amendment to the FPF Design Approval and obtaining FPF Acceptance based on the amended FPF Design Approval before leasing, if during the construction and before obtaining the FPF Acceptance, it wishes to renovate or change the functions of the building.
- The lessor is responsible for applying for the FPF Design Approval if the lessee leases only a part of the building to be renovated or changed and uses common infrastructure, such as traffic roads and parking lots for fire engines, outdoor fire fighting water supply systems, pumping stations, and/or water supply tanks for fire fighting.

Nonetheless, OL 2075 is not a legal document and its compulsory application is uncertain, which has resulted in inconsistent interpretation of its provisions by local FPF Police. Furthermore, there have been several cases where the disputes remained ongoing between the lessor and lessee concerning liabilities in relation to the FPF matters of the leased buildings for which amended FPF Design Approval was obtained before OL 2075 was issued.

(iii) Other FPF non-compliance frequently identified by the FPF Police during inspections

Other than the foregoing, some other examples of non-compliance with FPF measures that are frequently identified during inspections by the competent authorities include:

- Failure to construct facilities in accordance with FPF Design Approval;
- Putting facilities into operation without obtaining FPF Acceptance;

- Failure to create a firefighting action plan (in Vietnamese, “*phương án chữa cháy*”) or to have the action plan approved in accordance with the law;
- Failure to establish a FPF dossier to manage and record data related to FPF activities; and
- Failure to comply with other FPF requirements, such as non-compliance with the requirements on establishing and training FPF forces; submitting periodic FPF reports; placing goods, machines, and equipment of the facilities in a layout ensuring appropriate fire safety distances; checking and maintaining FPF equipment as required by law; and purchasing compulsory fire and explosion insurance.

4. Possible actions by competent authorities to enhance FPF compliance

In order to address FPF issues, in addition to consolidating and enhancing the dissemination of FPF laws and regulations, the FPF Police have strengthened FPF monitoring activities by making periodic and ad-hoc inspections of enterprises to verify their compliance with FPF regulations. In general, the FPF Police conduct inspections once per year regarding the FPF compliance status of facilities.¹⁰

Notably, as instructed by the Prime Minister of Vietnam, the Ministry of Public Security issued Action Plan No. 513/KH-BCA-C07 dated 7 October 2022, which required a comprehensive, nationwide inspection of FPF safety measures in a two-month period (from 15 October to 15 December 2022) to (i) prevent, mitigate, and ultimately eliminate fires resulting in the loss of human life, (ii) assess and evaluate the status of FPF compliance in Vietnam, and (iii) address all FPF non-compliance. Accordingly, all local FPF Police in 63 cities and provinces in Vietnam intensively inspected all facilities that were subject to fire management and control as listed in Appendix I of Decree 136, as well as residential areas. As a result, the FPF Police verified the status of FPF compliance in the areas under their control and management, identified more than 300,000 cases of non-compliance with FPF measures, and imposed monetary penalties in more than 40,000 cases in a total amount exceeding 300 VND billion. Therefore, it appears that the FPF Police are likely to focus on monitoring the performance of remedial actions to address such non-compliance.

The FPF Police will continue conducting regular inspections in accordance with the law to ensure compliance with FPF measures in the regions under their management and control. The annual inspection plan is created by each local FPF Police and is not publicly available. However, if a business is subject to regular FPF safety inspection, the FPF Police inspect all aspects of FPF compliance and officially notify businesses of the inspection details together with relevant inspection contents three (3) business days in advance.¹¹

RECOMMENDATIONS

As FPF issues are technical and complex, and non-compliance with FPF requirements may result in severe damage and consequences, businesses should ensure that they are in compliance with all such requirements. To mitigate potential FPF risks, we recommend taking the following actions:

- Determining your compliance status with the FPF requirements on an annual basis (or more frequently) in order to promptly address any FPF issues that may occur during the usage and operation of buildings, especially for enterprises engaging in business areas that carry an elevated risk of fires or explosions;
- Seeking expert FPF advice in order to comply with the FPF requirements applicable to your buildings; and
- Obtaining the FPF Police’s official opinion on important FPF approvals, including FPF Design Approval and

¹⁰ Article 16.3 (dd) of Decree 136 (as amended).

¹¹ Article 16.5 (a) of Decree 136 (as amended).

FPF Acceptance, especially when renovating or changing functions of existing buildings.

END.

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Public Relations Section, Nishimura & Asahi newsletter@nishimura.com