

DOCUMENT PRESERVATION IN VIETNAM

**(Corporate and Accounting; Customs; Anti-Money Laundering; Cybersecurity;
Transfer Pricing, Legal and Medical Records)**

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DOCUMENT PRESERVATION IN VIETNAM*

(including a discussion of documents that have an impact on corporate and accounting, customs, anti-money laundering, cybersecurity, transfer pricing, legal and medical records)

To what extent does the law impose an obligation to retain documents beyond their current usefulness? Vietnamese law has fairly specific rules identifying documents that must be preserved and the periods for which they must be preserved. Regulations on preservation of electronic documents, however, are not sufficient. This piece discusses the requirements to preserve accounting and business documents. Additionally, separate sections address the preservation of anti-money laundering documents, documents that relate to transfer pricing, law client and medical patient files, and documents that relate to cybersecurity.

In general, electronic documents and the need to preserve electronic documents are getting more attention both from corporations and from the Vietnamese Government. This is evidenced by the issuance of a draft circular on management of electronic documents and dossiers. This draft circular is proposed to apply only to State agencies, but the authorities encourage other organizations to apply them. In addition to the draft, there are noteworthy regulations on the preservation of electronic documents in many different fields such as accounting, customs, etc. We have tried to capture them in this book and discuss electronic information where possible.

I. ACCOUNTING DOCUMENTS

On December 29, 2000, the Minister of Finance issued Decision 218/2000/QD-BTC (“Decision 218”) on the preservation of accounting documents, accompanied by detailed regulations on the implementation of the 1988 Ordinance on Accounting and Statistics.

Under Decision 218, businesses in all economic sectors¹, family businesses, administrative agencies, the armed forces, political organizations, socio-political organizations, social organizations, and socio-professional organizations, whether financed by the State or by other groups, are subject to regulations regarding the preservation of accounting documents.

On November 20, 2015, the Law on Accounting No. 88/2015/QH13 (“Law on Accounting 2015”) was passed. It took effect on January 1, 2017, replacing the Law on Accounting No.03/2003/QH11 dated June 17, 2003. The Government then issued Decree 174/2016/ND-CP (December 30, 2016) (“Decree 174”) to guide implementation of the Law on Accounting. While there are some new rules on the preservation of accounting documents, generally the framework remains unchanged. Decision 218, however, has not been cancelled, and that poses problems. That is, some provisions of Decision 218 are

* This book has been prepared by lawyers in the Hanoi and Ho Chi Minh City offices of Russin & Vecchi. It is current through March 2019. An earlier version was published in Vietnam Law and Legal Forum.

¹ All economic sectors include foreign invested enterprises, State-owned enterprises, and private Vietnamese-owned enterprises.

now in conflict with the later Law on Accounting and the Decree 174. Neither the Law on Accounting nor Decree 174 states that all provisions contrary to them are superseded. In principle, the Law on Accounting and Decree 174 do prevail over any conflicting provisions of the older Decision 218. However, failure specifically to cancel Decision 218 creates a lack of clarity.

1. Which accounting documents are subject to preservation?

Decree 174 provides that original accounting documents are subject to preservation. If any accounting document is temporarily seized, confiscated, lost or destroyed, a copy of such document and a record of the seizure, confiscation, loss or destruction must be preserved. Original accounting documents that must be preserved include:

- a) Accounting vouchers: original vouchers and book-entry vouchers;
- b) Accounting books:² detailed accounting books and general accounting books;
- c) Financial reports: monthly, quarterly and annual financial reports; administrative accounting reports; and
- d) Other related documents:
 - all contracts, such as loan documents, joint-venture agreements;
 - documents that relate to capital, reserves and profit, including approval to convert profit to capital, and approval to distribute dividends or to allocate profit to company reserves;
 - budget documents in respect of revenues and expenditures, use of capital and reserves, or use of funds from the State budget;
 - documents that deal with tax issues, such as decisions on tax exemption, reduction, reimbursement, collection of overdue accounts, or annual tax settlements;
 - documents that relate to asset inventory or valuation;
 - documents that relate to examination, audit and inspection conducted by tax authorities and auditing companies, such as reports on inspection and examination, or audit reports;
 - documents that relate to dissolution, bankruptcy, division, separation, merger, termination of operations, or ownership transformation;
 - documents that relate to the destruction of accounting documents; and

² Accounting books include accounting forms that contain accounting information, such as bank account balances, details of expenditures, etc. In brief, accounting books are records that serve the purpose of monitoring an enterprise's financial history throughout its operation.

- other documents that relate to accounting, such as documents in support of vouchers, or documents on computerized accounting programs.

Magnetic tapes, magnetic discs, and payment cards that contain electronic documents subject to preservation must be arranged chronologically and protected from deterioration and illegal access. To a certain extent they are treated as documents.

Under the Law on Accounting and Decree 174, accounting documents must be (i) printed in hard copy in a legal format and affixed with the corporate seal and an authorized signature before they can be preserved or, (ii) preserved in electronic devices provided that the safety and security and accessibility during the preservation period³ of the information is ensured. Under the Law on Accounting 2015, electronic devices mean devices which operate based on electric, electronic, digital, magnetic technologies, wireless transmission, optical technologies, electromagnetic technology, or similar technologies. That is, electronic documents can be stored not only in computers but also in the cloud, in movable drivers and may even be stored in servers outside of Vietnam. The legal representative of the Vietnamese enterprise can decide to preserve accounting documents in either hard copy or in an electronic format.

Enterprises are obligated to print out electronic accounting documents and the legal representative or chief accountant must certify such documents whenever the authorities need them for inspection or for audit purposes. According to Decree 174, the validity of the hard copy prevails over electronic documents.

2. When should accounting documents be preserved?

The Law on Accounting 2015 and the Decree 174 require that accounting documents be preserved within 12 months from completion of an accounting year, or upon completion of accounting work, such as completion of an investment project, restructuring, merger, etc.

3. What are the preservation periods?

Depending on the type of documents involved, accounting documents must be preserved for 5 years, 10 years, or for an indefinite period.⁴ Observing required preservation periods is essential. For example, the Tax Department has authority to investigate whether a business has calculated taxes correctly. The Law on Corporate Tax allows the tax authorities to recalculate corporate tax for five years prior to the date on which a miscalculation of corporate tax is suspected, even if there has been a final tax settlement for the year in question. If the required accounting documents are not available, the Tax Department has the authority to impose a corporate tax based on the amount of profit it believes was earned.

³ A reference to Article 10 of Decree 174

⁴ An “indefinite period” is more than 10 years, and is considered to run until the accounting documents naturally deteriorate. Natural deterioration does not really apply to electronic documents. This is another example in which careful thought has not been given to electronic documents. The most reasonable but still imperfect application is that electronic accounting documents should be preserved for at least the same period as hard copy documents.

Preservation periods by document type:

- a) Accounting documents that relate to management and administration and that do not directly support book-entries nor elaborate upon financial reports must be preserved for at least five years from completion of the relevant accounting year.⁵ In addition, the law requires that accounting vouchers that are not in direct support of book-entries and do not elaborate upon financial reports must be preserved for at least five years. The accounting documents referred to in this section might include warehousing and ex-warehousing bills and receipts, and revenue and expenditure notes not included in the file of accounting vouchers.
- b) Accounting documents that must be preserved for 10 years include:
 - accounting documents that directly support book-entries and elaborate financial reports, detailed comprehensive sheets, detailed accounting books, monthly, quarterly and annual financial statements, audit reports and accounting examination reports;
 - accounting documents that relate to investment projects;
 - accounting documents that relate to liquidation, assignment of fixed assets, reports on stocktaking and asset valuation;
 - accounting documents that relate to dissolution, bankruptcy, division, separation, merger, termination of operations, or restructuring;
 - documents and dossiers on the audit of financial statements by independent auditing organizations; and
 - records on the destruction of archived accounting and related documents.
 - other documents that do not fall into clauses 3 (a) and (c)
- c) Accounting documents that have historical or social significance to a business, an industry or an area must be preserved indefinitely. Unfortunately, there is no definition of what documents are included. They can be general accounting books, annual financial reports or accounting documents that deal with investment projects, or they can be other unspecified documents. The enterprise, based on historical characteristics and long-term significance of particular accounting documents, can itself decide which accounting documents must be preserved indefinitely.

4. Where should accounting documents be preserved?

In general, the Decree require businesses to preserve their accounting documents on their own premises. The storage room should be in good condition. Temperature, humidity, and other such factors must be suitable for preservation of documents.

The Decrees also permit a business to hire a storage service provider. In these circumstances, there must be a signed contract between the business and the storage service provider which defines the responsibilities of the two parties and provides for service fees, terms of payment, and other such details.

⁵ The Decrees do not discuss this requirement in more detail. An enterprise may decide whether to apply longer preservation periods.

5. Recovery and treatment of accounting documents lost or destroyed for objective reasons

This matter is governed by Circular 96/2010/TT-BTC (July 5, 2010), guiding the recovery and treatment of accounting documents lost or destroyed for objective reasons (“Circular 96”). Objective reasons for loss or destruction of accounting documents include: natural disasters, fire, decay, termites and theft.

Accounting documents that must be repaired, recreated, or restored include: accounting vouchers, accounting books, financial statements, tools for keeping figures, and other materials or documents in relation to accounting tasks that are currently taking place in the accounting department or in accounting units of branches.

Within 15 days after recognizing that accounting documents have been lost or destroyed, accounting departments must report that loss or destruction to the relevant Government agencies, such as: financial agencies, taxation agencies, the state treasury, and direct senior management agencies. Also, accounting departments must establish a committee to organize the recovery of accounting documents, and use their best efforts to: collect, repair, recreate from other materials, restore, and recover destroyed accounting documents; or collect and copy lost accounting documents.

If destroyed or lost documents cannot be recreated or restored from other materials, the committee is required to prepare a declaration form stating that the documents have been irrevocably destroyed or lost. The declaration form must be confirmed in writing by at least two members of the committee, along with one representative of the relevant management agencies.

6. What penalties are imposed for violation of preservation regulations?

The Vietnamese Government has issued Decree 41/2018/ND-CP (March 12, 2018) which imposes administrative sanctions on accounting violations (“Decree 41”) with effective from May 1, 2018.

Under Decree 41, a party is subject to a penalty of up to ten million Vietnamese dong if it does not observe preservation regulations. Such a penalty applies if a party fails:

- to preserve accounting documents within 12 months from completion of the accounting year or upon completion of accounting work; or
- to preserve accounting documents fully or safely; or
- to arrange archived accounting documents by fiscal year in chronological order; or
- to take steps to recover lost or destroyed accounting documents.

In the most serious cases, such as if the violator deliberately destroys accounting documents before the preservation period ends, the monetary penalty may rise to 20 million Vietnamese dong.

These amounts on their own may not seem adequate to motivate a business to observe the requirements of the Law on Accounting 2015 and Decree 174. The real consequences, however, may exceed the administrative sanctions imposed by Decree 41. That is, as mentioned at section I.3, failure to produce documents subject to preservation may have

negative tax consequences if the Tax Department calculates taxes based on its own estimates.

II. FINANCIAL DOCUMENTS

On December 24, 2018, Decree 165/2018/ND-CP (“Decree 165”) was promulgated and took effect on February 10, 2019. It generally regulates e-transactions which involve finance.

In fact, Decree 165 does not provide for the preservation of electronic documents. Electronic documents may be preserved under specialized laws. However, Decree 165 is important because it creates a path for electronic documents to be considered to be originals.

Electronic documents are defined as documents which create, send, receive and store data in an electronic format. These documents are used to carry out electronic financial transactions, including reports, contracts, agreements, transaction and other information.

An electronic document is considered to be an original when it satisfies any one of the following conditions:

- a) it is digitally signed by the creator and parties to the transaction.
- b) the information system which is used to carry out electronic financial transactions, ensures the integrity of the electronic document during the transmission, receipt and storage process, and it has been authenticated by a digital signature or a biometric or by the authentication code of the creator or parties to the transaction.
- c) other methods agreed by the parties to the transaction, all done in a way that ensures the integrity of the data, its authenticity, and which is consistent with the Law on E-transactions.

III. BANKING DOCUMENTS

The State Bank of Vietnam (“SBVN”) has issued four legal regulations on the preservation of banking documents. The most comprehensive regulation is Circular 43/2011/TT-NHNN (December 20, 2011), on periods for preserving files and documents in the banking industry (“Circular 43”). It applies to entities that fall within the organizational structure of the SBVN, along with credit institutions and other organizations that conduct banking operations (“Banking Entities”). The other three documents are: Decision 376/2003/QD-NHNN (April 22, 2003), on the preservation and storage of the electronic documents that “payment service providers”⁶ use in paying and monitoring their own capital (“Decision 376”); Decision 1789/2005/QD-NHNN (December 12, 2005) as amended by Circular 38/2013/TT-NHNN (December 31, 2013), promulgating the regime on the use of accounting vouchers of banks (“Decision 1789”); and Decision 1913/2005/ QD-NHNN (December 30, 2005), which establishes the framework to preserve accounting documents used in banking (“Decision 1913”).

⁶ Under Circular 46/2016/TT-NHNN dated December 31, 2014, payment service providers include the State Bank, commercial banks, policy banks, cooperative banks, branches of foreign banks, People’s credit funds, and micro-finance institutions.

1. Which banking documents are subject to preservation?

Circular 43 is broadly written. It requires Banking Entities to preserve administrative files and data, specialized files and data, scientific and technical files and data, and files and data on activities of the Communist Party, trade unions, and youth unions.

If such files and data have been recorded on media such as magnetic tapes, magnetic discs, payment cards, or electronic vouchers, and if they are subsequently printed, the files and data must be preserved in accordance with Circular 43 and related regulations. If they have not been printed, and exist only in electronic form, Decision 376 applies.

Circular 43 divides banking documents into two classes:

- Class 1 documents include files and data that are important, reflect clearly the function and duties of bodies and entities, serve as reference material for research and operations of the entities involved, and have political and historical value.
- Class 2 documents include all files and data that are not class 1 documents.

A table listing types of documents and their classification is provided in the Annex to Circular 43. The table includes preservation periods for files and data for Banking Entities.

The category of electronic documents that must be preserved according to Decision 1789 is broader than that described in Decision 376. Decision 376 only includes electronic records that payment service providers (banks and credit institutions) use when they pay in and monitor their own capital. In contrast, under Decision 1789, banking accounting vouchers comprise both paper documents and data contained in electronic media, such as discs, tapes, various types of credit cards, etc, which show that a financial transaction has been initiated and completed.

2. When should banking documents be preserved?

Circular 43 defines the basic requirements on the preservation of banking documents. The period for preserving files and data is determined by assessing the practical and historical value of documents to the Banking Entities and the sector, as well as the nature of documents. Decision 376 specifies procedures, periods, places and methods to preserve electronic banking documents.

Circular 43 requires that banking archives include all documents which relate to a Banking Entity's management and its banking and monetary business operations as well as those that have an economic, political, historical, scientific or technical value.

A separate policy applies to electronic documents used by payment service providers for accounting and settlement purposes. Decision 376 allows payment service providers to decide whether they will preserve electronic documents in hard copy or in electronic media. If preserved in hard copy only, the electronic documents must be printed with an authorized signature and the corporate seal affixed. If in electronic media, electronic documents must be maintained in their original electronic form.

3. What are the preservation periods?

The preservation period of a document is the period beginning from the time when the document is finalized until the time when preservation is no longer required by law, as provided in the Annex to Circular 43.

According to Circular 43, the preservation period depends on the document's class:

- Class 1 documents must be preserved for an indefinite period. Files and data in this class must be preserved and must be filed with the Historical Archives in accordance with State regulations (Ordinance on Historical Archives, 2011).
- Class 2 documents must be preserved for a period of between 3 and 70 years in accordance with the Annex to Circular 43. The files and data may be destroyed upon expiration of the stipulated preservation period.

Electronic Documents

Decision 376 divides electronic documents into three categories, with three different preservation periods:

- Electronic documents that relate directly to accounting books must be kept for 20 years;
- Electronic documents that relate to management, operations, inspections and cross-checking of capital payment activities by payment service providers (banks and credit institutions), but that do not directly affect data in accounting books, must be kept for at least 5 years; and
- Electronic documents that relate to disputes, criminal activities, or court cases must be preserved in accordance with the requirements of the courts or related laws, even if the preservation periods required by Decision 218 have expired.

Banking Accounting Documents

Under Decision 1913, an accounting document must be preserved for 5 years, 10 years, or indefinitely, depending on the content and nature of the document. However, if an accounting document relates to a lawsuit, dispute, or case that has been or will be heard, the term of preservation is normally provided by other legal documents or determined by the particular authority involved.

4. Where should banking documents be preserved?

Circular 43 and Decision 376 both require that banking documents be kept in a qualified storage space at the Banking Entity. Circular 43 is silent on whether banks or credit organizations can rent storage space in order to keep banking documents. Decision 376 allows a payment service provider, if it does not have storage space, to hire storage space from another payment service provider. As Decision 376 applies to all banks and credit

institutions, they can hire storage space from each other. We have discussed the matter with an official of the SBVN and understand that a bank or a credit institution can rent a storage service provider as long as the confidentiality and safety of the documents are assured. Of course, as in the case of the preservation of other types of documents, there should be a written contract between the bank and the storage service provider, detailing the terms agreed upon and the responsibilities of each party.

Under Decision 1913, accounting documents of foreign invested banks, branches of foreign banks, and representative offices of foreign banks must be preserved. When foreign banks terminate their operations in Vietnam, their accounting documents must be preserved in a place determined by a decision of the SBVN.

5. What penalties are imposed for violation of preservation regulations?

Depending on the specific violation, a fine from 10 million Vietnamese dong to 80 million Vietnamese dong may be imposed.

Under Decree 96/2014/ND-CP dated October 17, 2014 providing penalties for administrative violations involving regulations on currency and banking, an organization is subject to a penalty of up to 30 million Vietnamese dong if it fails to preserve credit dossiers as prescribed by regulations; a penalty of up to 40 million Vietnamese dong if it fails to comply with the rules involving preservation of information on lending, borrowing, purchasing valuable papers related to inter-bank activities. A penalty of up to 80 million Vietnamese dong if it fails to preserve credit customers' information for at least five years from receipt of such information.

IV. CORPORATE DOCUMENTS

According to the Law on Enterprises which came into effect on July 1, 2015, and depending on the form of enterprise generally, a company is required to preserve the following documents:

- Company charter and its amendments or supplements, internal management rules, members' or shareholders' registration book;
- Business registration certificate, title documents protecting industrial property rights, product quality registration certificates, licenses, permits and other certificates;
- Documents and papers certifying ownership of the company's assets;
- Minutes of meetings of the members' council, shareholders' meetings and board of directors' meetings, records of the company's decisions;
- Prospectus for issuance of securities;
- Reports of the control board, conclusions of inspection bodies and independent auditors;
- Accounting books, accounting vouchers, annual reports; and

- Other documents as provided for by law.

A company is required to preserve documents at its head office or, say, a location prescribed in the company's charter. Oddly, the law is silent on the term for which documents must be preserved and simply refers to relevant law.

When an enterprise engages in transactions involving electronic documents and information, it can preserve the documents/information in the form of data messages if the following conditions are satisfied:

- The information in the data message is accessible and usable for reference;
- The contents of such data message records are stored in the same format in which the contents originated, were sent or received, or are in a format that represents its contents accurately;
- Such data message records are stored in a manner that enables the identification of their origin, destination, and the date and time when a message was sent or received.

The Law on E-transactions and Decree 26/2007/ND-CP (February 15, 2007) as amended by Decree 106/2011/ND-CP (November 23, 2011) and Decree 170/2013/ND-CP (November 13, 2013), providing details on implementation of the Law on E-transactions, are silent on the length of time which documents must be preserved.

V. DOCUMENTS INVOLVED IN THE CUSTOMS CLEARANCE PROCESS

A new Law on Customs, dated June 23, 2014 ("Law on Customs"), became effective on January 1, 2015. Under the Law on Customs, owners of goods subject to declaration in the customs process are obligated to preserve the following documents:

- Customs documents regarding/records of cleared goods for at least five years from the date of registration of the goods; and
- Accounting books, documentary evidence, and other documents related to the clearance of imported and exported goods in accordance with the law.

In addition, other related dossiers, documents, and information must be made available for submission at the request of customs authorities for verification as part of a post-customs clearance inspection. These inspections can occur within five years from the date the declaration is registered. Thus, any related documentation/information must be preserved for this five-year period.

Moreover, under Circular 38/2015/TT-BTC (March 25, 2015) as amended by Circular 39/2018/TT-BTC providing customs procedures (April 20, 2018), in case original documents have been submitted to customs, photocopies must be preserved. However, if goods of owners have submitted electronic documents to customs, the owners are required to preserve them in an electronic form.

VI. DOCUMENTS SUBJECT TO THE RULES ON ANTI-MONEY LAUNDERING

1. Who is responsible to preserve documents?

The National Assembly passed the Law on Anti-Money Laundering, dated 18 June, 2012 (“Law on Anti-Money Laundering”). Decree 116/2013/ND-CP (October 4, 2013) provides guidance to the Law on Anti-Money Laundering (“Decree 116”).

The Law on Anti-Money Laundering applies to:

- Financial entities;
- Organizations and individuals conducting non-financial business;
- Vietnamese organizations and individuals, foreigners living in Vietnam or foreign organizations, international organizations and non-governmental organizations which operate in Vietnam and carry out financial transactions and asset transactions with financial entities or organizations and individuals which conduct non-financial related business; and
- Other organizations and individuals involved in the prevention and combating of money laundering, including foreign organizations and individuals with neither operations nor a residence/presence in Vietnam, but engaged in transactions with organizations and individuals listed immediately above.

The Law on Anti-Money Laundering requires the storage of customers’ identification and transaction records. The reporting entity is responsible to store a customer’s transaction files for a period of at least five years from the date a transaction occurred. It must store customer identification files, along with accounting source documents and reports on high value transactions, suspicious transactions, and transactions involving electronic transfer of money for at least five years from the date the transaction is completed, the date the account is closed, or the reporting date.

Such parties must gather and preserve information regarding the identities of their customers and transactions stipulated in Articles 21, 22, and 23 of the Law on Anti-Money Laundering. They must follow reporting forms that are provided in Article 25.

In addition to the private entities or individuals named above who are responsible for preserving documents, state agencies have a parallel responsibility to preserve documents related to transactions subject to anti-money laundering regulations. Specialized inspectors must preserve and file information that relates to suspicious transactions or to transactions with a large value [section IV.2(b) and 2(c)] for at least five years from the effective date of the transaction.

2. Circumstances and transactions requiring individuals or organizations to preserve customer identification

The Law on Anti-Money Laundering imposes a requirement to report, provide, and store information in the following circumstances:

(a) Report on high value transactions

A reporting entity (including financial entities, and/or organizations and individuals conducting non-financial business⁷) is responsible to report to the SBVN when it conducts a high value transaction. As requested by the SBVN, the Prime Minister will stipulate value levels of transactions that must be reported.

The reporting entity is responsible to report to the SBVN when there is a reasonable basis to suspect that the assets in a transaction originate from a crime or relate to money laundering. Such a report is made on a standard SBVN form.

(b) Basic suspicious signs:

- A customer provides inaccurate, incomplete, and/or inconsistent customer identification information;
- A customer tries to persuade the reporting entity not to report a transaction to a competent State body;
- The customer is unidentifiable on the basis of information provided by the customer or the transaction involves an unidentifiable party;
- After an account has been opened or a transaction has been conducted, the personal or office telephone number provided by a customer is not contactable or does not exist;
- A transaction is conducted pursuant to an order or delegation of authority from an individual or organization named on the warning list;
- Customer identification information or the economic and legal bases of the transaction suggest that there may be a link between the parties involved in the transaction and criminal activity, or that a relationship exists between such parties and an organization or individual named on the warning list;
- An organization or individual participates in a transaction with a large amount of money that does not correspond to the income of nor relate to the business activities of such organization or individual;
- A transaction of a customer is conducted through the reporting entity without complying with the sequence and procedures stipulated by law.

⁷ These reporting entities are listed in Decision 20/2013/QD-TTG of the Prime Minister on clarification of high value transactions dated April 18, 2013.

(c) **Suspicious signs in the banking sector:**

- There is a sudden increase in the number of transactions in an account, a rapid inflow or withdrawal of cash from an account, or a large number of transactions within any one day while the account balance remains very small or nil;
- There are several small value remittances from various accounts to one account in a short period of time or vice versa; or money is transferred by way of numerous accounts; or the parties involved do not appear to be concerned about transaction fees; or multiple transactions are conducted and the value of each transaction is close to the value level at which the transaction must be reported;
- Letters of credit (or L/Cs) and other commercial financing methods with a high value or high discount rate in comparison with a normal commercial discount rate;
- A customer opens multiple accounts at a credit institution or a foreign bank branch in a geographical area different from the place in which the customer resides, works or conducts business activities;
- A customer does not undertake any transaction in his account for a period of more than one year and then re-commences transactions without a rational reason; an account in which the customer has not conducted transactions suddenly receives a deposit or a remittance of high value.
- There is a remittance overseas of a large sum from an account of an enterprise following receipt of numerous small deposits by electronic transfers, cheques or bills of exchange;
- An enterprise with foreign owned capital makes a remittance overseas immediately after receipt of invested capital or makes a remittance overseas that is inconsistent with its business activities; a foreign enterprise makes a remittance overseas immediately after receipt of money from overseas, transferred to its account at a credit institution or foreign bank branch operating in Vietnam.
- A customer regularly exchanges money of small denominations into money of large denominations;
- A deposit, withdrawal or transfer is conducted by an organization or individual involved in a crime, creating illegal assets as reported in the mass media;
- A customer requests a loan in the permitted maximum amount on the basis of security by an insurance contract with lump-sum premium payment immediately after such premium has been paid, unless such arrangement is requested by a credit institution;
- Information about the origin of assets used by a customer for funding, investment, lending, financial leasing, or investment is not clear or transparent;

- Information about the origin of secured assets used by a customer to obtain a loan is not clear or transparent.

(d) **Suspicious signs in the insurance business sector:**

- A customer requests purchase of a high value insurance contract or requests a lump-sum payment of insurance premiums with respect to insurance products for which a lump-sum payment method is inapplicable while the current insurance contracts of such customer are of small value and subject to periodic payment.
- A customer requests execution of an insurance contract with periodic premium payment in an amount that does not correspond to such customer's current income or requests an insurance contract relating to business beyond the customer's normal business activities.
- A person purchases an insurance contract and makes payment from an account that is not his/her account or by bearer negotiable instrument;
- A customer requests change of nominated beneficiary, especially change to a person with whom the customer does not have a transparent relationship;
- A customer accepts unfavorable conditions unrelated to his/her age or health; a customer requests purchase of insurance with an unclear purpose and is reluctant to provide reasons for the insurance or the conditions and the value of an insurance contract conflict with the apparent needs of the customer;
- A customer cancels an insurance contract immediately upon purchase and requests remittance to a third party; a customer regularly participating in insurance transfers the insurance contract to a third party;
- An insurance company has an unusual increase in the number of insurance contracts for its employees;
- An insurance enterprise regularly pays insurance proceeds in a large sum of money to the same customer.

(e) **Suspicious signs in the securities sector:**

- A large number of securities transactions that are considered suspicious transactions are conducted by an organization or individual within one day or over a number of days;
- A customer transfers securities outside the system without a rational reason;
- A securities company makes a remittance inconsistent with its securities business;
- A non-resident remits a large sum of money overseas from a securities trading account;

- A regular customer sells an investment portfolio and requests that the securities company pay in cash or by cheque;
- A customer conducts an unusual investment in multiple types of securities in cash or by cheque during a short period or is willing to invest in unfavorable lists of securities;
- A customer's securities account is inactive for a long time but suddenly there is a big investment inconsistent with the financial capability of the customer;
- A purchase or sale of securities is sourced from investment funds opened in territories ranked by international organizations as being high-risk for money laundering.

(f) **Reports on transactions of electronic transfers of money**

When the reporting entity provides electronic transfer services, it is required to report to the SBVN regarding any electronic transfer transaction exceeding the value stipulated by the SBVN.

3. What penalties are imposed for violation of these provisions?

An organization that commits a breach of the Law on Anti-Money Laundering is subject to administrative penalties. An individual who commits a breach of the Law on Anti-Money Laundering may be disciplined, subject to an administrative penalty, or subject to criminal prosecution.

If any organization or individual commits a breach of the Law on Anti-Money Laundering and causes loss or damage, payment of compensation is required.

Under the Criminal Code of Vietnam No.100/2015/QH13 (November 27, 2015) as amended by Criminal Law of Vietnam No. 12/2017/QH14 (June 20, 2017), money laundering is a crime. Violators are subject to prosecution under Article 324. The Criminal Code is unclear whether failure to preserve related documents is money laundering.

VII. INFORMATION SUBJECT TO THE CYBERSECURITY LAW

On June 12, 2018 the National Assembly passed the Cybersecurity Law No.24/2018/QH14 with effect in 2019. Of course, preservation of information/documents is a part of the Law. Recently, a draft decree dated October 31, 2018 guiding the Cybersecurity Law ("Draft Decree") was issued with the same effective date as the Cybersecurity Law.

1. Who is responsible to preserve information?

Onshore or offshore enterprises that provide telecommunications services, internet services and value-added services in Vietnam's cyberspace and that collect, exploit, analyze or process personal information or data related to the relationship of users or data created by users in Vietnam must retain such information or data within Vietnam for a specific period. The Draft Decree provides that such onshore or offshore enterprises must preserve documents if through its service, enterprise enable users to conduct prohibited

acts as specified in the Cybersecurity Law and enterprises violate provisions in the Cybersecurity Law by itself. The actual material which needs to be preserved is not clear.

2. Which information is subject to preservation?

The Law is fairly general. But under the Draft Decree, the data required to be stored in Vietnam includes:

- Data related to the personal information of users: full name, date of birth, birthplace, nationality, occupation, position, residence address, contact address, email, telephone, identity card number, citizen identification number, passport number, social insurance number, credit card number, health status, medical records, biometric records.
- Data created by users in Vietnam: uploaded information, synchronized information or information imported from devices.
- Data related to the relationship of users in Vietnam: friends, groups whose users connect or interact.

3. What are the preservation periods?

- System records for investigating and handling an offense under the Cybersecurity Law must be kept for 12 months;
- Data related to personal information of users must be preserved for the operational duration of the enterprise;
- Data created by users in Vietnam and data which relates to the relationship of users in Vietnam must be kept for 36 months.

Oddly, the Draft Decree does not specify when time periods for preservation of each type of information begin. One can speculate that it is from the creation of the information, but without clear time periods, there is a risk if documents are destroyed.

VIII. TRANSFER PRICING AND PRESERVATION OF DOCUMENTS

Transfer pricing rules affect the price at which goods and services are sold between associated parties⁸. The law defines various types of transactions among associated parties (“associated transactions”). Certain associated transactions, by definition, are considered as suspicious transactions that are highly likely to violate the rules on transfer pricing. If a party is involved in an associated transaction, it must preserve any documents involved in the transaction. When settling its corporate income tax (“CIT”), a taxpayer is responsible to declare associated transactions and provide supporting documents upon request.

⁸ “associated parties” are defined as: (i) parties directly or indirectly involved in another party’s management or supervision or a party that contributes capital to or invests in another party; and (ii) parties that are directly or indirectly subject to the management, supervision, or capital contribution or any form of investment of another party.

Rules on preservation of documents from associated transactions is treated in Decree 20/2017/ND-CP (February 24, 2017) (“Decree 20”) and Circular 41/2017/TT-BTC (April 28, 2017) (“Circular 41”), which Circular has replaced Circular 66/2010/TT-BTC, on the determination of market prices in business transactions among associated parties.

1. Obligation to store information, documents and evidence.

Associated parties have the obligation to store information, documents, and evidence they used as the basis to apply transfer pricing rules. They must produce these documents during examinations or inspections.

Business enterprises must preserve information, documents, and evidence that relate to production and business activities, and to methods used to determine market prices on which associated transactions are based. These documents must be well-documented throughout the time that the associated parties are engaged in the transaction. The parties must maintain this evidence in accordance with rules on accounting and statistics, and in accordance with tax laws.

2. Under Decree 20 and Circular 41, associated parties are obligated to preserve:

- National files including information specified in Annex 2 of Decree 20 such as information on associated transactions and on the policy and methods used to determine the market prices on which associated transactions are based;
- Information on the multinational group including information specified in Annex 3 to Decree 20 such as the business operations of the group; policy and methods used to determine market prices on which associated transactions are based; and the policy of allocating revenue, activities and functions within the group's value chain; and
- Report on inter-country profit of the parent company as provided in Annex 4.

3. The **preservation period for associated transactions.**

Similar to Circular 66, both Decree 20 and Circular 41 do not provide a separate term for preservation of documents used in associated transactions. As these documents also relate to accounting, we believe that the preservation period should be at least 10 years.

IX. CLIENTS’ AND PATIENTS’ FILES

This section addresses clients of law firms and notary offices and patients of clinics, hospitals, and private doctors.

1. How should clients’ files be preserved by lawyers and law firms?

The Law on Lawyers came into effect on January 1, 2007, and was amended by the National Assembly on November 20, 2012 (“Amended Law on Lawyers”). The Amended Law on Lawyers took effect on July 1, 2013. It mandates that lawyers keep confidential all information given to them by clients unless otherwise agreed in writing by their

clients. A lawyer must also keep client files in a confidential manner and must assure that his or her staff observe the rules of confidentiality.

However, no specific guidance on the preservation of client files is provided by the Law on Lawyers, the Amended Law on Lawyers, or Decree 123/2013/ND-CP (October 14, 2013) implementing the Law on Lawyers.

With respect to preservation periods, under, say, UK law, the period seems to vary depending on the type of matter. The most common advice recommends a minimum period of, say, between 7 and 15 years, with a few exceptions in relation to certain files and important original documents. In this context, it is ideal for a lawyer to agree with his or her client on when files can be destroyed after a case is closed. Based on interviews with several members of the Vietnamese bar, the practice appears to be that each lawyer personally decides how long to keep a client's file. Original documents should always be returned to the client where possible, with a record of return (such as a receipt from the client) retained by the law firm.

2. Preservation of notarial files.

The Law on Notarization ("LON"), issued by the National Assembly, became effective on January 1, 2015. It provides that a notarial organization has an obligation to preserve its files.

a) Requirements regarding notarial files:

The notarization file should contain the application for notarization of the contract or transaction, the original notarized document, copies of the supporting papers presented by the applicant, documents regarding verification or assessment, and other relevant documents. Each notarization file must be numbered to correspond with the date and time that the notarization was registered in the notarization book.

b) Preservation periods for notarial files:

Notarial organizations must take appropriate security measures to secure their notarial files. An original notarized document and other documents in a notarization file must be kept for at least 20 years in the head office of the notarial organization or in another place consented to in writing by the local Department of Justice.

c) Status of notarization files when a notarial organization dissolves or terminates its operation:

When a Notary Office ("NO") is dissolved, its notarization files must be handed over to another NO designated by the Department of Justice.

When an NO terminates its operation, it must enter into an agreement with another NO to transfer its notarization files to that NO. If an agreement is not reached, the Department of Justice will designate an NO to take the files.

3. Preservation of patients' files by clinics, hospitals, and private doctors.

The Law on Medical Examination and Treatment (“LOMET”), which was passed on November 23, 2009, took effect on January 1, 2011. LOMET provides that within 24 hours of a patient's departure, the patient's case history dossiers must be completed in a form that can be preserved.

Pursuant to LOMET, the patient's case history dossier consists of a medical, health and legal record. Each patient has one case history dossier for each time the patient has a medical examination or receives treatment at a medical examination and treatment facility, such as a clinic, hospital, or private doctor's office.

LOMET provides that a patient's case history dossier will be preserved according to the levels of confidentiality set out in the law on protection of state secrets. There are three different preservation periods that clinics, hospitals, and private doctors must observe:

- At least 10 years for case history dossiers of in-patients and out-patients;
- At least 15 years for case history dossiers of victims of labor and daily-life accidents; and
- At least 20 years for case history dossiers of mental patients and patients who die at the medical examination or treatment facility.

Medical examination and treatment facilities that preserve dossiers electronically must have backup copies and must comply with preservation periods.

Similar to a law firm's client files, patient case history dossiers, once they are preserved by clinics, hospitals, and private doctors, must also be kept confidential unless an authorized entity allows the rules of confidentiality to be broken. A patient's case history dossiers can be disclosed to persons other than medical service providers only if it is permitted by the hospital authorities. The patient's rights with respect to the files are not clear. It seems that a patient's files do not belong to the patient, and so patients cannot withdraw the files whenever they want.

LOMET requires clinics, hospitals, and private doctors to maintain patient files in good condition. The regulations are silent on whether patients' files can be stored outside of the hospitals or clinics where the patients have been treated. Based on interviews with several officials of the Ministry of Health, it seems that the policy for hospital case history dossiers is quite strict: they must be kept on site. The policy seems less strict for clinics and private doctors. It appears that patients' case history dossiers created in clinics and within the practices of private doctors can be kept offsite provided that all protections mandated for offsite storage are observed.

X. CONCLUSION

Vietnamese law covers the preservation of accounting, banking, corporate and commercial documents, and documents that relate to cybersecurity and anti-money laundering. There are also rules on documents that relate to associated transactions. Generally, the categories of documents subject to preservation are specified. Also, the

preservation periods--although sometimes long--are generally clear, except for corporate documents that relate to associated transactions. Vietnam has made some attempts to address preservation of electronic data but governing law remains focused on hardcopies and has not really embraced electronic records. The rules on patients' files are not sufficiently comprehensive, especially if the documents were not created by a hospital.

In practice, Vietnamese enterprises normally preserve documents on site. Document deterioration is a significant issue. Preservation is often done through traditional preservation methods without the critical help of computers, systemized databases, or archiving and data retrieval methods. However, this is certainly changing. Absent are specific rules about preserving documents electronically. Even so, it would seem that one can easily remain within both the letter and spirit of the law by utilizing modern methods of document preservation and management.