



# Criminal Proceedings Foreigners' Rights and Obligations

Speaker:

**Mr. STEPHEN LE HOANG CHUONG**

Senior Litigator

Managing Partner of Le & Tran

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19-23 Lam Son Square, Dist.1, HCMC

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# I. Scope of Vietnam Criminal Proceedings Code applicable to Foreigners



Regulations of Vietnam Criminal Proceedings Code (CPC) are generally applicable to all activities related to the criminal proceedings conducted within the territory of Vietnam.



International treaties are applicable if Vietnam is a signatory, or on the principle of reciprocity.



International treaties only provide judicial guidance to the proceedings authorities at the national level.

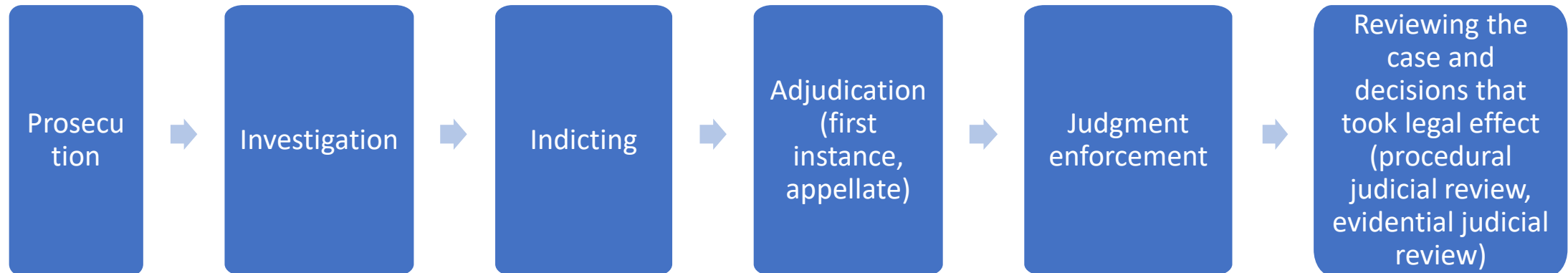


**There is no discrimination between the rights & obligations of Foreigners and Vietnamese in the criminal proceedings.**

## II. The roles under which Foreigners may involve in the criminal proceedings



- In theory, the criminal proceedings include the following 6 stages:



- The role of a participant shall be decided by the proceedings authorities and is likely to change throughout each stage.

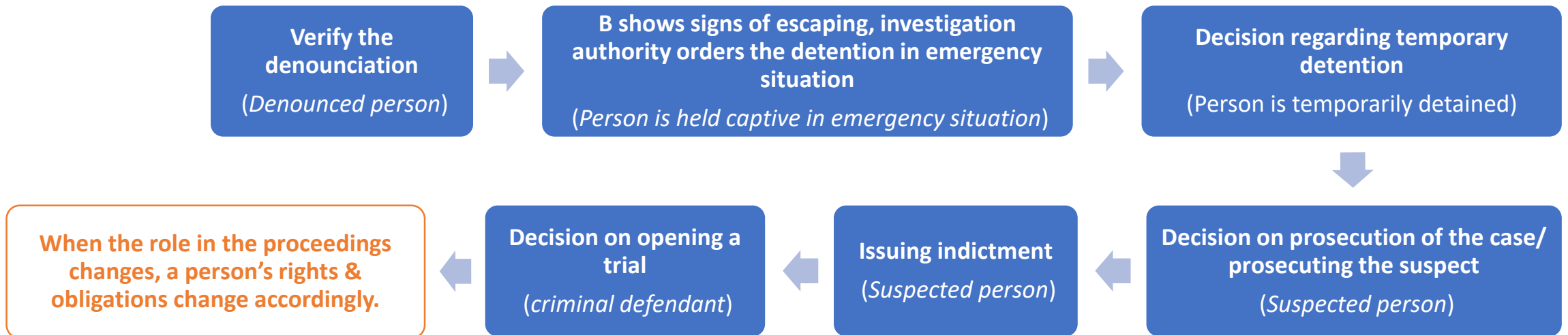
## II. The roles under which Foreigners may involve in the criminal proceedings



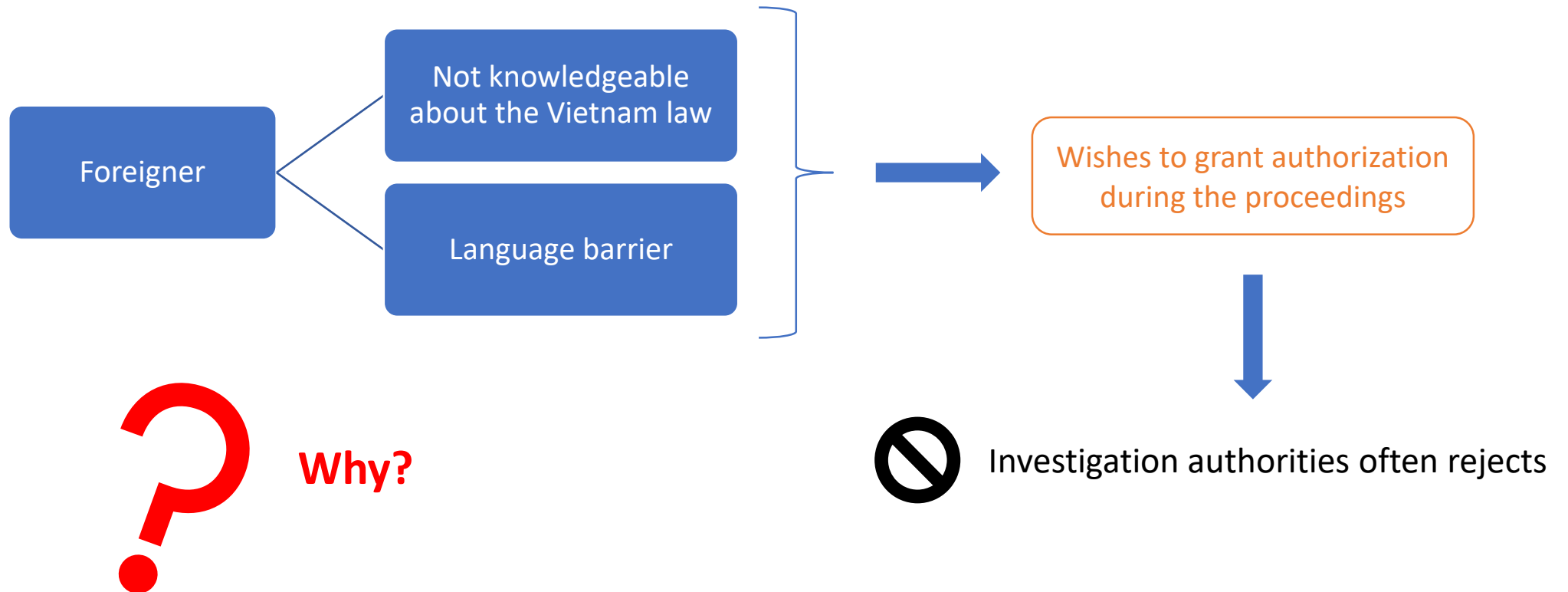
- There are 14 roles under which Foreigners may involve in the criminal proceedings:
  1. Denouncer, informant, prosecution petitioner
  2. Denounced person, person being suggested to a prosecution
  3. Person is held captive in emergency case
  4. Arrested person
  5. Person is temporarily detained
  6. Suspected person
  7. Criminal defendant
  8. Victim
  9. Civil plaintiff
  10. Civil defendant
  11. Person with rights or obligations related to the case.
  12. Witness of crime
  13. Witness of criminal proceedings
  14. Legal representative of an organization committing crime; other representatives

## II. The roles under which Foreigners may involve in the criminal proceedings

- The role of a person engaging in the criminal proceedings may be changed stage by stage:  
E.g: A files against B for “asset robbery”. The role of B in the criminal proceedings is as follows:



### III. Authorization in the criminal proceedings



### III. Authorization in the criminal proceedings



#### 1. Legal grounds:

- The CPC doesn't provide the term “authorization”, it only provides the term “representative”.
- The representative participates in the proceedings only in the 4 following situations:



Suspected person, criminal defendant, victim, civil plaintiff, civil defendant, person having rights & obligations related to the case who is an organization: representative is the legal representative of the organization.



Suspected person, criminal defendant, civil plaintiff, civil defendant, person having rights & obligations related to the case who is an individual under the age of 18, has lost or limited civil capacity.





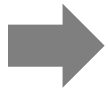
#### 1. Legal grounds:



The victim is an individual under 18 years of age, has die, has been lost or limited civil capacity.



Person is held captive in emergency, arrested person, person is temporarily detained, witness of crime under 18 years of age.



Individuals with the full ability to take criminal responsibility and having civil capacity shall not be entitled to appoint a representative but can only request lawyers.



## 2. In practice:

Proceedings authorities can accept a Power of Attorney (PoA) submitted by the victim; person having rights & obligations related to the case; civil plaintiff; civil defendant; agency/organization who informs about the crime.



However, acceptance of the POA is very limited, and is often followed by some specific conditions such as:

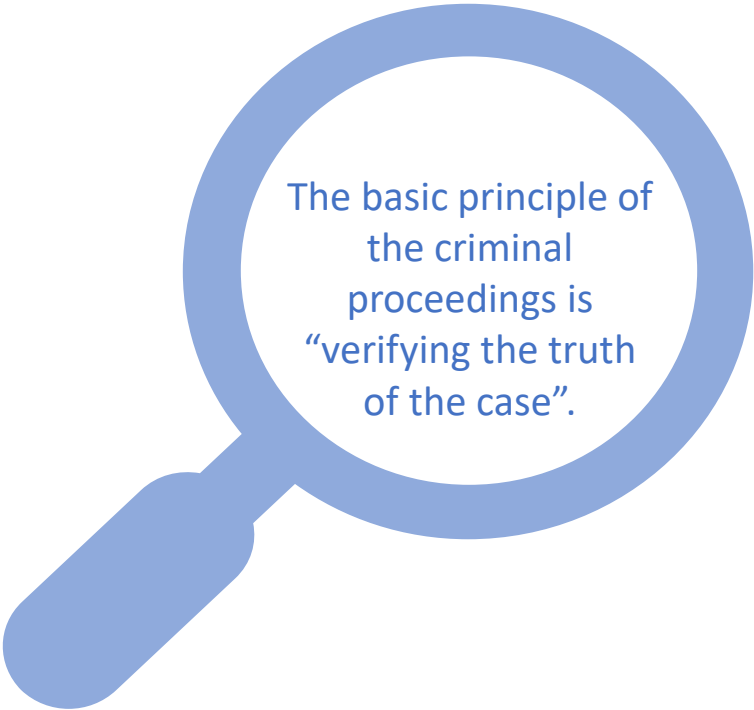
- The participant resides and works abroad; or
- Suffering from health matters.



PoA is not allowed in the important steps such as cross-examination, identification, and statement recording which must all be performed directly by the participant.

For denounced person, person is temporarily detained, arrested person, suspected person, criminal defendant and witness of crime: authorization cannot be made because their rights over personal identity cannot be transferred.

### 3. Causes:



The basic principle of the criminal proceedings is “verifying the truth of the case”.

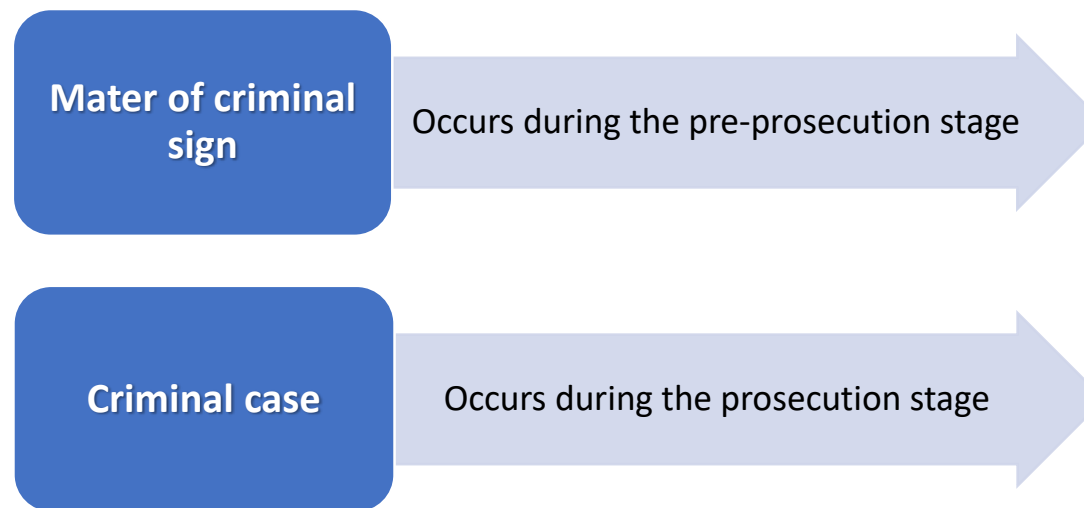
- The authorized person could give inaccurate & inadequate statements, which creates the difficulties to the investigation process such as procedural/evidential mistake and omission of criminal sign.
- The legal consequence that the accused person shall be subject is serious, potentially leading to long term imprisonment, a life sentence or the death penalty.

**Hence, authorization is not applicable in the criminal proceedings.**

## IV. Rights & obligations of Foreigners during pre-prosecution stage (matter of criminal sign)



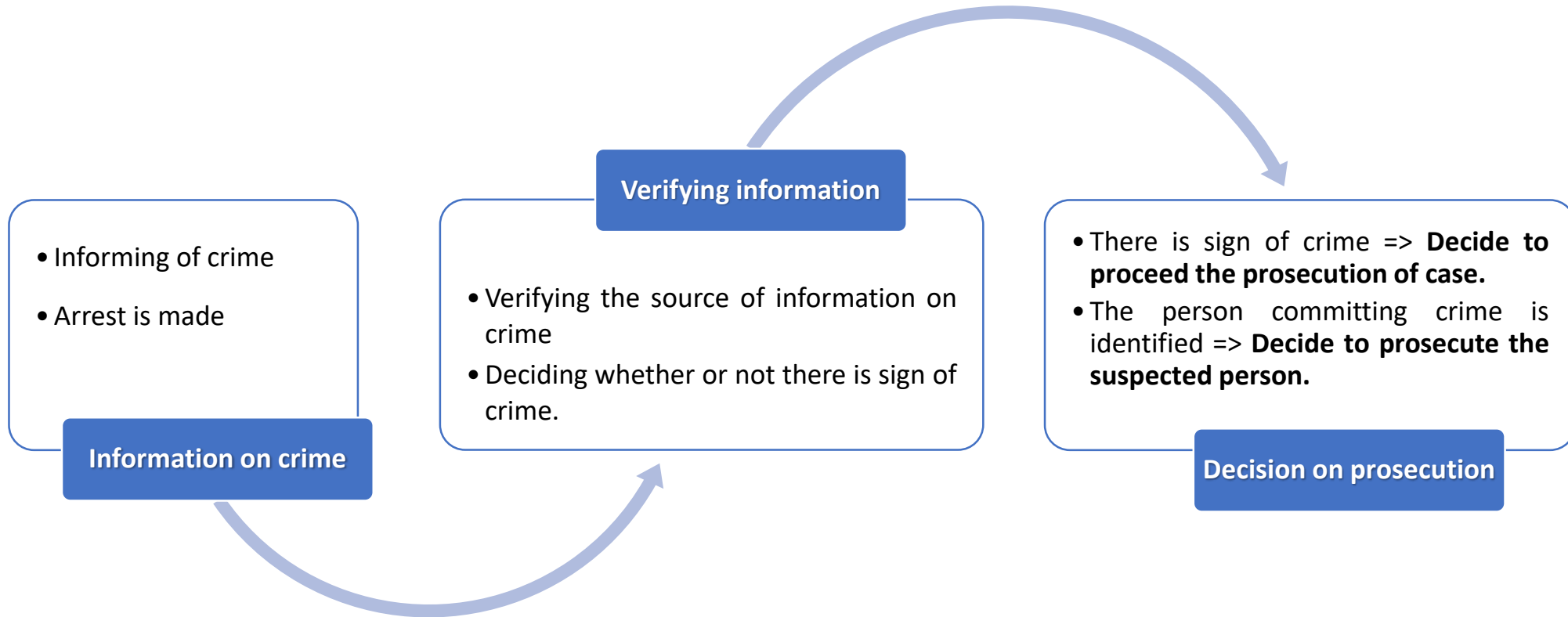
In theory, there are 6 stages in the criminal proceedings. However, in practice, the officers conducting the proceedings often use 2 terms:



## IV. Rights & obligations of Foreigners during pre-prosecution stage (matter of criminal sign)



### 1. Pre-prosecution stage:

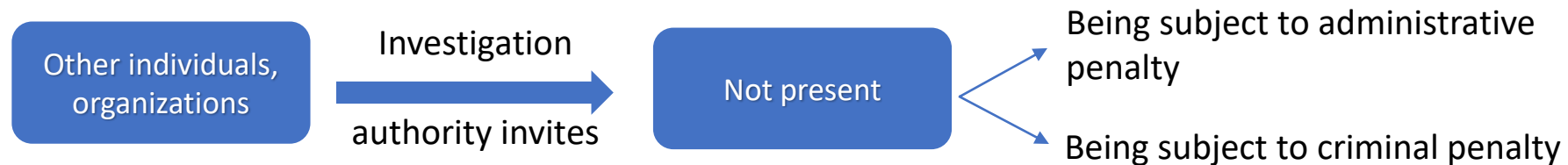


## IV. Rights & obligations of Foreigners during pre-prosecution stage (matter of criminal sign)



### 2. Foreigners may involve in the proceedings during this stage with the following roles:

- Denouncer, informant, prosecution petitioner
- Denounced person, person being suggested to a prosecution
- Person is held captive in emergency
- Arrested person
- Person is temporarily detained
- Other individuals and organizations: having no role in the proceedings and not specifically provided with rights & obligations in the CPC.



## IV. Rights & obligations of Foreigners during pre-prosecution stage (matter of criminal sign)



Rights & obligations are specifically provided for in Article 56 to Article 59 of the CPC. Some featured rights are:

### Denouncer

- Can request to keep their denouncing action confidential.
- Can request for protection of assets, health, etc., for themselves and their relatives, who are potentially threatened.

### Denounced person, person being suggested for a prosecution

- Shall be notified of their denounced conduct, of suggested prosecution and of any settlement result.
- Shall provide evidence or documents as required.
- Can request lawyers to protect their rights and interests.

### Person is held captive in emergency, arrested, or temporarily detained

- Have the right to remain silent: to not give statements against themselves.
- Can request lawyers to defend themselves.

## IV. Rights & obligations of Foreigners during pre-prosecution stage (matter of criminal sign)



Some featured obligations:

**Denouncer, denounced person, person being suggested for a prosecution**

- Must be present as requested (in written summons) by the investigation authority.

**Person is held captive in emergency, arrested, or temporarily detained**

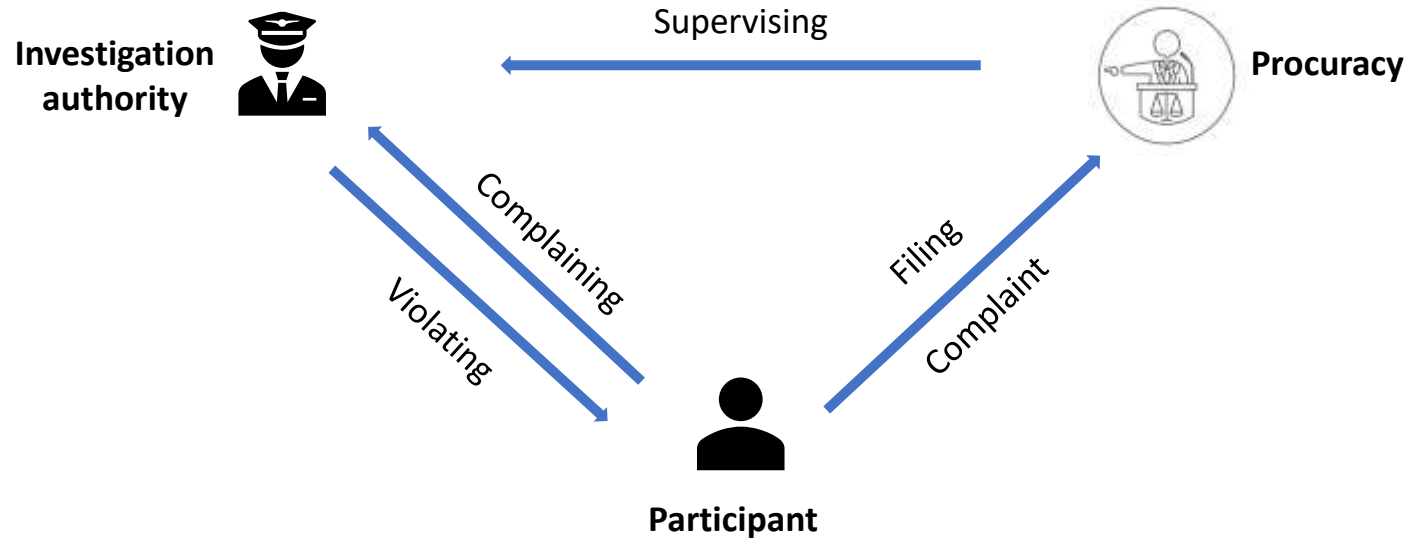
- Must abide the order of detention, arrest and request of the investigation authority as regulated by the CPC and the Law on temporary detention, imprisonment.



## IV. Rights & obligations of Foreigners during pre-prosecution stage (matter of criminal sign)



Person engaging in proceedings has the right to file complaint against the investigation authority to the People's Procuracy if there is violation to the CPC and/or wrongdoing which impacts his/her legitimate rights and interests.

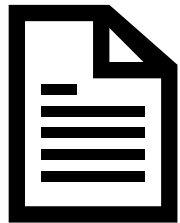


## V. Rights & obligations of Foreigners during prosecution stage (criminal case)



- The prosecution proceedings begins with

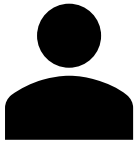
### Prosecution decision of criminal case



**Prosecution decision  
of criminal case**

- The roles involve in this stage include:
  - Suspected person
  - Criminal defendant
  - Victim
  - Civil plaintiff
  - Civil defendant
  - Person having rights and obligations related to the case
  - Witness of crime
  - Witness of criminal proceedings
  - Legal representative of organization committing crime; other representatives

## V. Rights & obligations of Foreigners during prosecution stage (Criminal case)



Rights and obligations of each role are provided for in Article 60 to Article 67 of the CPC. Rights and obligations of legal representative of an organization committing crimes are separately provided for in Article 435 of the CPC.

**SUMMONS!**

After issuing Prosecution decision of criminal case, persons involving in the proceedings are requested to work with the investigation authority by a formally written “Summons”.

## V. Rights & obligations of Foreigners during prosecution stage (criminal case)



Some featured rights:

**1. Right to remain silent.**

**2. Right to read, transcribe written documents or digital documents.**

**3. Right to request the competent authorities to protect life, health, honor, dignity, prestige, property, legitimate rights and benefits and relatives from threats.**

## V. Rights & obligations of Foreigners during prosecution stage (criminal case)



### 1. Right to remain silent

- The suspected person or criminal defendant has the right to “*give statements and opinions and have no obligation to testify against themselves or admit to guilt*”.

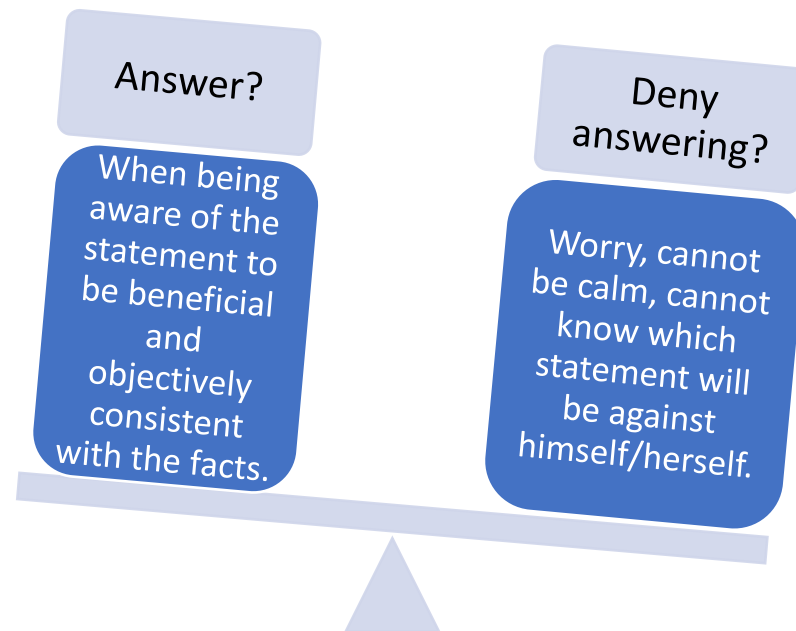


## V. Rights & obligations of Foreigners during prosecution stage (criminal case)



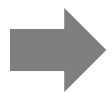
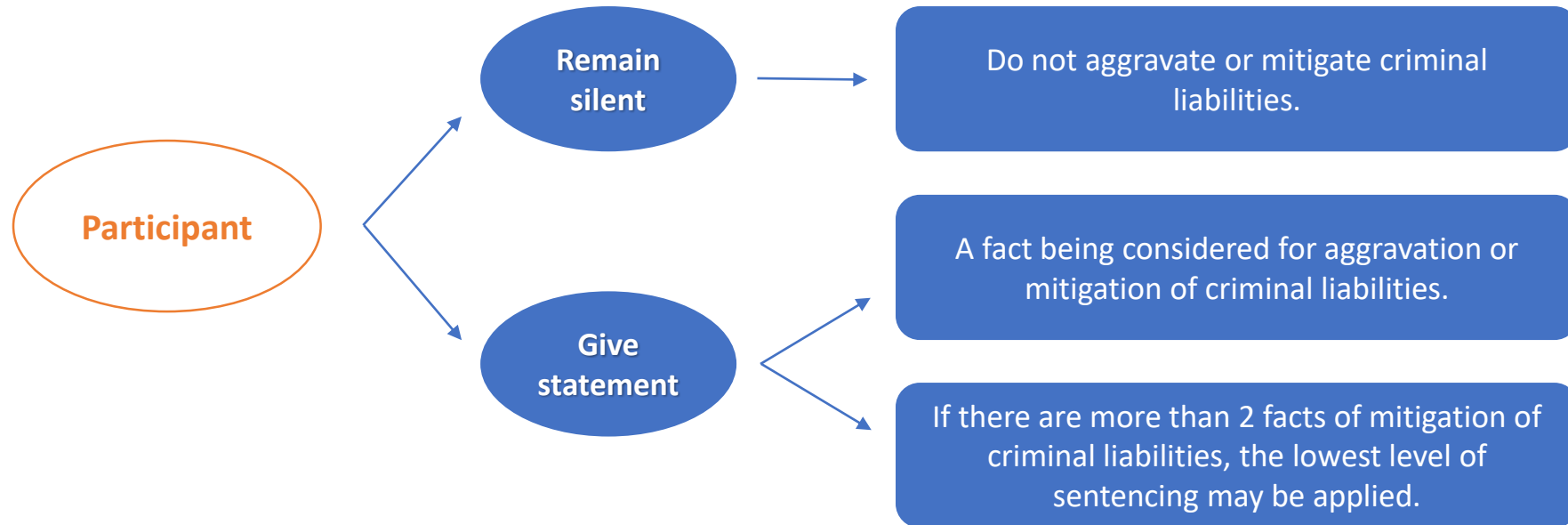
### 1. Right to remain silent

- If the statement appears with the facts and other evidence in the case file, the statement would be evidence for establishing guilt against or innocence to the suspected person or criminal defendant.



## V. Rights & obligations of Foreigners during prosecution stage (criminal case)

### 1. Right to remain silent



**Request lawyers to defend and give legal assessment.**

## V. Rights & obligations of Foreigners during prosecution stage (criminal case)



### 2. Right to read, transcribe written documents or digital documents

- Applicable subjects: suspected person, legal representative of organization committing crime.
- Applicable scope: read and transcribe only. No photocopy. Therefore, it is hard to fully transcribe the contents.
- Types of documents are permitted to read or transcribe: only documents related to establishing crime or innocence, or other documents related to defense.
- Time to conduct right: from the end of investigation.
- Proceedings: provided in Circular No. 02/2018/TTLT-BCA-VKSNDTC-TANDTC-BQP dated February 1, 2018.

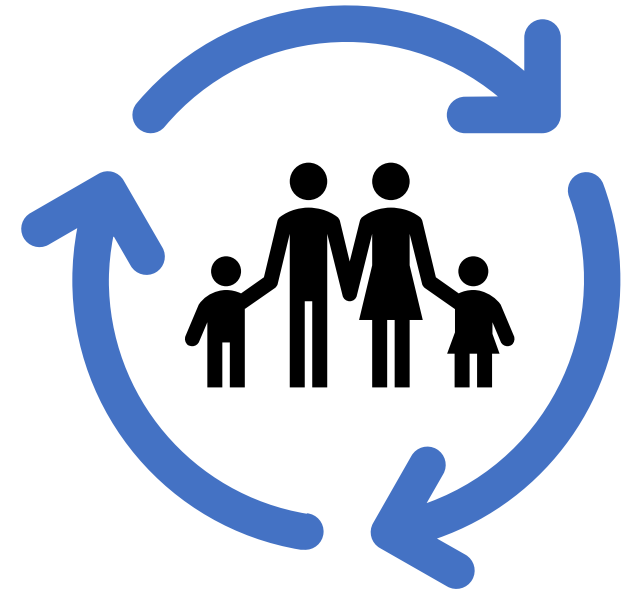


## V. Rights & obligations of Foreigners during prosecution stage (criminal case)



### 3. Right to request the competent authorities to protect life, health, honor, dignity, prestige, property, legitimate rights and benefits and relatives from threats

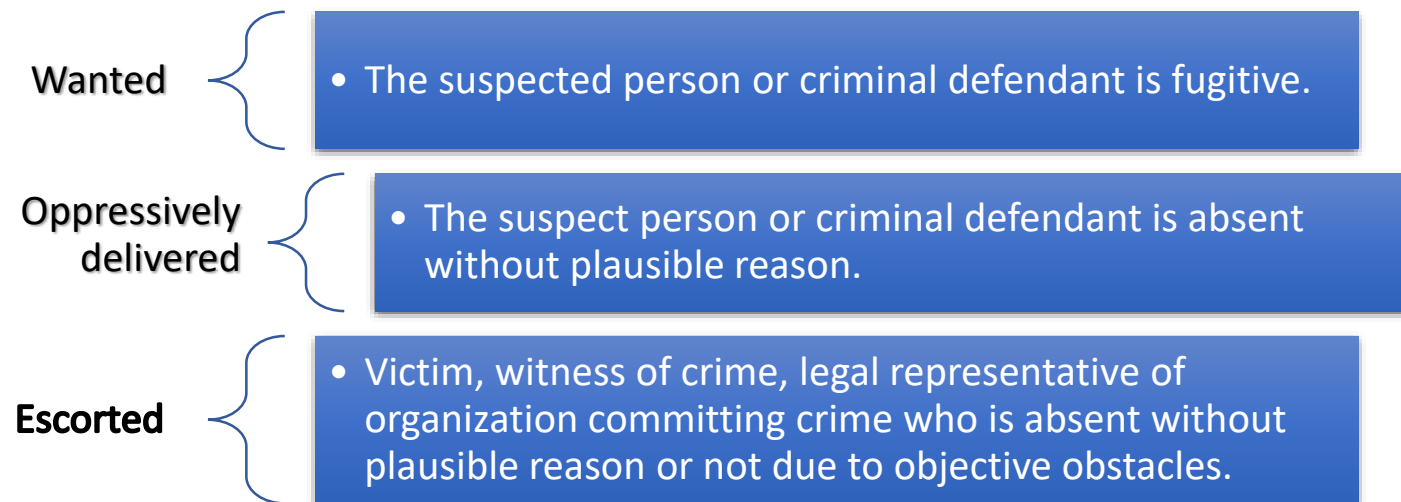
- Applicable subjects: victim, witness of crime, witness of criminal proceedings.
- Purpose: to reduce stressful tensions and to encourage individuals to cooperate with competent authorities to fight against crimes.



## V. Rights & obligations of Foreigners during prosecution stage (criminal case)



- The most typical obligation during this stage: Being present requested by Summons of the investigation authorities
- Should there be any absence, the authorities may apply the following measures:



## V. Rights & obligations of Foreigners during prosecution stage (criminal case)



### To conclude:

Interrogation and taking statements may strongly intimidate participants, especially those suspected.

During the stage of investigation, the investigation authority interrogates and takes statements several times and keep repeating the same questions.

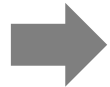


This is a right and also a professional practice of the investigation authority.

## V. Rights & obligations of Foreigners during prosecution stage (criminal case)



Since a participant cannot remember exactly the contents of statements they have made, he/she might be confused and afraid of the legal consequences when the investigation authority interrogates (if they make an inconsistent statement).



**Should be fully aware of your rights and obligations and request a lawyer to defend.**

## VI. Measures of prevention & coercion



Are important measures to ensure security and safety and to prevent and fight against crimes in support of the investigation process and enforcement of judgment.

### 1. Prevention measures:

There are 08 measures:

- Emergency custody
- Arresting
- Temporary detainment
- Temporary detention
- Bail
- Surety
- Residential confinement
- Exit ban

## VI. Measures of prevention & coercion



### 1. Prevention measures:

- Applicable grounds:
  - Having grounds that show that a person is going to commit a horrific or extremely severe felony or is committing a crime.
  - Having grounds that show that the suspect would make difficulties for the investigation, prosecution and hearing process.
  - Having grounds that show that the suspect continues to commit crimes.
  - To ensure judgement enforcement.

## VI. Measures of prevention & coercion



- Legal grounds: from Article 110 to Article 125, the CPC.
- The application of prevention measures is highly flexible, depending on the assessment of the proceedings officers.
- In practice, each accused person is often applied with a prevention measure depending on the severity level of the criminal act.
- Prevention measures that are often applied are “arresting, temporary detainment, or detention”. If eligible, other measures such as “residential confinement”, “bail” or “surety” could be applied.



Proceedings participants have the right to request a change to prevention measure or complain if the proceedings authority violates the procedures of applying prevention measure.



## 2. Coercive measures:

There are 04 coercive measures:

### Coercive delivery

- Applied to a person who is arrested in emergency situation, the suspected person.

### Forced escort

- Applied to witness of crime, victim, denounced person, person being suggested for a prosecution.

### Detainment of property

- Applied to suspected person and criminal defendant whose offences are punishable by fines or confiscation of property as per the Criminal Code or applied to guarantee the compensation for the damage.

### Freezing of accounts

- Applied to suspected person and criminal defendant whose offences are punishable by fines or confiscation of property as per the Criminal Code or applied to guarantee the compensation for the damage upon the detection of such person's accounts in a credit institution or State Treasury.





## 2. Coercive measures:

- Legal grounds: from Article 126 to Article 130, the CPC.
- The application of coercive measures is highly flexible, depending on the assessment of the proceedings officers.
- Property detainment and freezing of accounts could be cancelled by the investigation authority, procuracy and the court when unnecessary.



Proceedings participants should understand the conditions and applicable procedures to utilize their rights appropriately.

## 1. Authorization:

Situation: In some situations the investigation authority accepts the PoA. However, how to make a lawful PoA?

- In fact, most of notary publics deny notarizing the authorization in criminal cases.



- Reason: rights over personal identity cannot be transferred.

## 1. Authorization:

### Solution:



How to make POA acceptable?

Drafting a PoA in a general way.

Scope of PoA: working with proceedings authorities (do not clearly state the names of the authorities) to collect and submit documents and related evidence to resolve the case. Avoiding stating the criminal terms such as: denouncing, investigation authority, criminal case, etc.



## 2. Recording statement, interrogating:

- Situation 1: What should you do when receiving a “Summons” to work with an investigation authority regarding “seizure of assets”
- Solution:

Firstly:

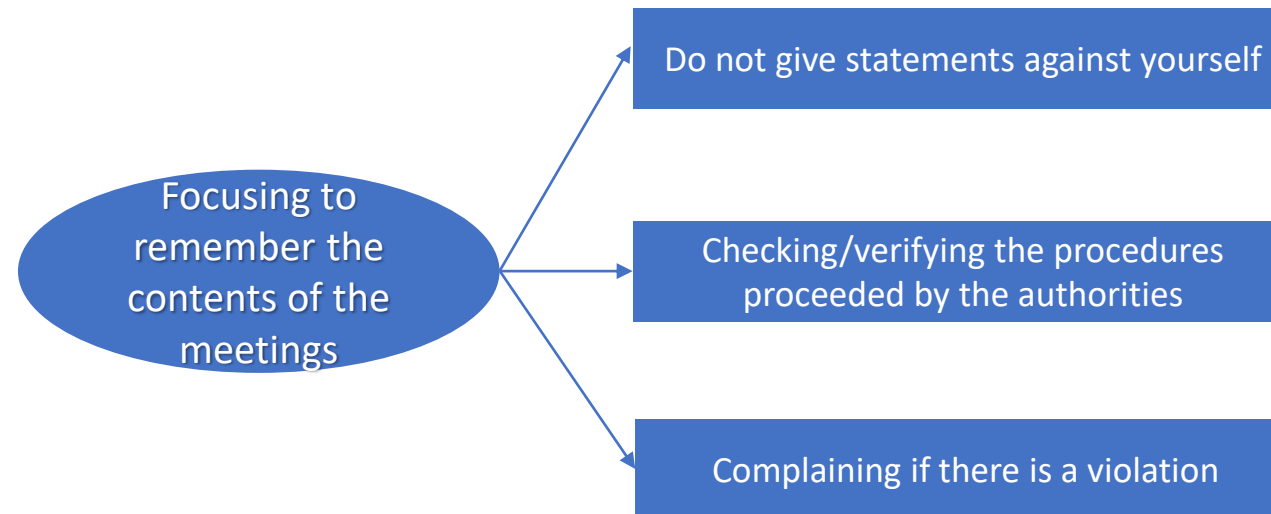




## 2. Recording statement, interrogating:

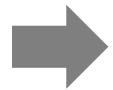
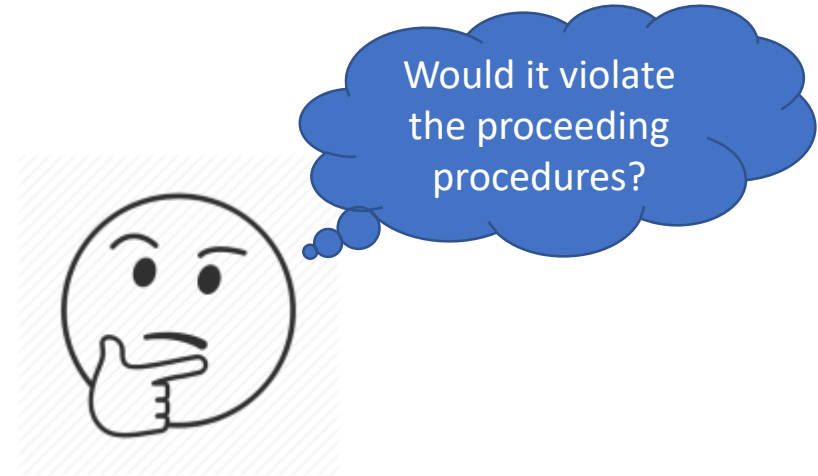
- Solution:

Secondly

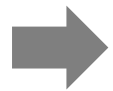


## 2. Recording statement, interrogating:

- Situation 2: The proceedings authorities interrogate/take statement all day long and continuous days



This act does not violate the proceedings.



Participants have the right to request a delay/postpone the meeting due to health issues.



### 3. Providing evidence:

- What should you do when receiving a formal letter from investigation authority requesting you to provide the documents related to an investigation, but cannot provide due to the large volume of the documents ?



- Explain in writing your request for consideration and support.
- Prove that the barriers and difficulties are objective and beyond your capacity.
- Request the authority to collect necessary documents only.



- You should clearly understand your rights and obligations when participating in the criminal proceedings in Vietnam.
- All legal issues can only be resolved by laws.
- Inviting lawyer to defend.



# THANK YOU FOR LISTENING

## LE & TRAN

— Vietnam's Premier Business Litigation Firm —

LE & TRAN Building

No.9, Area 284 Nguyen Trong Tuyen Street,

Ward 10, Phu Nhuan District, Ho Chi Minh City

T (+84 28) 3842 1242

F (+84 28) 3844 4080

E [info@letranlaw.com](mailto:info@letranlaw.com)

[www.letranlaw.com](http://www.letranlaw.com)