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Vietnam Court Case Notes

No. 1 | June 2026

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Key content

Welcome to the inaugural issue of Vietnam Court Case Notes, an EY Law Vietnam Limited Liability Company (EY Law Vietnam) publication that examines key Vietnamese court decisions through a functional comparative lens.

Vietnam's legal system is a civil law system. However, many of Vietnam's most significant commercial counterparties (including multinational corporations, international banks, private equity funds, and their advisers) are trained in the common law tradition. When these market participants encounter Vietnamese legal concepts, they naturally map those concepts onto the common law framework they know. This series is designed to bridge that gap: not by advising on any particular foreign law, but by using the analytical concepts of the common law tradition to explain how Vietnamese law addresses recurring commercial problems.

This approach is particularly timely. Vietnam has formally launched its International Financial Centres (IFC) in Ho Chi Minh City and Da Nang, supported by a new Law on the Specialised Court (effective 1 January 2026). The IFC framework introduces international-standard dispute resolution mechanisms and as international market participants prepare to operate within this regime, the need for analysis that speaks the language of both legal traditions has never been greater.

Key points of focus under this June update:

- Case Law No. 78/2025/AL - No registration, no equity: The limits of conduct-based ownership in Vietnam
- Case Law No. 81/2025/AL - When does a contractual debt become a proprietary claim? Re-characterisation, restitution and the vanishing limitation period
- Cross-case theme: Formalism, conduct, and the limits of expectation

1 Case Law No. 78/2025/AL¹ - No registration, no equity: The limits of conduct-based ownership in Vietnam

Executive takeaways

Vietnam's Council of Judges of the Supreme People's Court confirms that membership interests in a limited liability company arise only through completed statutory procedures reflected in the Enterprise Registration Certificate (ERC). Even 12 years of profit distributions and written acknowledgement of capital contribution do not create equity status absent formal registration.

The case illustrates a fundamental divergence between Vietnam and the common law tradition. In jurisdictions following that tradition, equity-based or purpose-based remedies may deliver proprietary outcomes when formalities fail. Vietnam's publicity-based, constitutive registration system deliberately excludes such conduct-based ownership claims – a systemic choice favouring transparency and creditor protection over investor reliance.

The case in brief: A “silent” partner for 12 years

The dispute involved an individual (Mr. H) who contributed approximately VND2.75 billion to a company in the early 2000s. The arrangement was made orally among family members and later confirmed in a written “members’ council” minute in 2017, which acknowledged Mr H's contribution and his right to one-third of profits. For over 12 years, Mr H was treated as a partner and received profit distributions totaling approximately VND7 billion.

The missing link: the company never updated its ERC to include Mr. H, nor did it formally register a capital increase from VND6 billion to the total contributed amount. When the relationship deteriorated, Mr. H sued to be recognized as a formal member with a 33.3% equity stake.

The holding: Registration is constitutive of membership

The lower courts accepted Mr. H's claim. The Supreme People's Court reversed, drawing a critical distinction:

- Charter capital: Requires strict statutory adherence. Specifically, a clear agreement to increase charter capital and the subsequent amendment of the ERC. This is “capital contribution” within the meaning of the Law on Enterprises: contributing assets to form or increase the charter capital of a company.
- Business capital: Funds contributed for business operations (here, to lease land for factory expansion) without a formal capital increase procedure are treated as capital for business purposes, which is a contractual arrangement rather than an equity interest.

The bottom line: even long-term profit sharing and written confirmations do not displace the publicity requirement embedded in the ERC system. Vietnam's rule is a systemic choice to tie proprietary consequences to registration, not conduct.

¹ Case Law No. 78/2025/AL is issued on the basis of Cassation Decision No. 17/2022/KDTM-GDT dated 13 December 2022.

The equity gap: A comparative perspective

This judgment illustrates a friction point for foreign investors. In jurisdictions following the common law tradition, Mr. H's position might have been protected by remedies that are notably absent in Vietnam's civil law framework. Consider the following functional comparisons – not as statements of any particular foreign law, but as illustrations of alternative approaches to the same commercial problem.

Purpose-based proprietary claims

Where funds are transferred for a specific and exclusive purpose (such as subscribing for shares or becoming a company member), common law systems may recognise that, if the stated purpose fails, the transferor retains a proprietary interest in the funds. The practical consequence is significant: such a claim would rank ahead of general creditors in an insolvency scenario, because the funds were never beneficially the company's property.

Case Law No. 78/2025/AL treats the failed membership purpose as, at best, a breach of contract. The investor is left as an unsecured creditor.

Conduct-based proprietary claims

Common law systems may also recognise that where parties embark on a joint enterprise, contribute capital, and share profits over an extended period, it may be unconscionable for one party to deny the other's proprietary interest. The contributing party's claim is grounded not in formalities but in the course of dealing between the parties.

Vietnam's Supreme People's Court explicitly rejected this approach. Despite 12 years of profit sharing and a written confirmation of capital contribution, the absence of administrative registration was fatal to any proprietary claim.

Reliance-based proprietary claims

In the common law tradition, proprietary relief may be available where a contributor relies, to their detriment, on assurances of ownership – even if the relevant formalities were never perfected. This is particularly relevant where, as here, the contributing party's inability to register was partly attributable to practical circumstances where Mr H was overseas without Vietnamese identification documents at the material time.

Vietnam recognises no such reliance-based proprietary doctrine.

Informal associations and participant protection

In the common law tradition, where an incorporated entity is in substance an informal association – formed on the basis of personal relationships with the understanding that all parties would participate – courts may grant remedies where participants' reasonable expectations of involvement are defeated. Mr. H's arrangement had many hallmarks of such an informal association: the family relationship, the oral understandings, and the extended course of dealing. Under Vietnamese law, however, the statutory company form governs exclusively. There is no mechanism for courts to look behind the corporate formalities to assess the parties' underlying intentions or expectations.

Why this case matters systemically:

- **No de facto membership:** Conduct, minutes, and distributions (even sustained for 12 years) do not produce equity status absent ERC updates.
- **Profit sharing is not ownership:** A contractual right to share profits is fundamentally different from a proprietary share in the company.
- **Registration is constitutive, not declaratory:** ERC amendments create membership. They do not merely record it.

- **Insolvency exposure:** Unregistered contributors are treated as unsecured creditors, not owners. This materially changes priority and recovery.
- **IFC relevance:** As Vietnam's IFCs become operational, foreign investors will contribute capital to IFC-registered entities. Case Law No. 78/2025/AL confirms that the constitutive registration requirement applies with full force. The IFC regime does not import conduct-based ownership doctrines from the common law tradition.

Practical implications and action plan

1. Immediate portfolio audit

Review any capital injections that have not yet been reflected in an updated ERC. For each flagged instance, classify the historical contribution explicitly as:

- A loan (with interest and security)
- A business cooperation contract (BCC) contribution under the Law on Investment (contractual revenue share)
- Capital awaiting registration (with strict contingency and escrow protections)

2. Structuring forward: Conditional contributions and escrow

Contributions should be paid into escrow and released only upon the ERC amendment recording the capital increase and the new member. If registration fails by a longstop date, funds are returned or converted to a predefined loan. This structure functionally replicates the purpose-based proprietary protections available in common law jurisdictions - without importing foreign legal concepts - by using Vietnamese-law contractual mechanisms.

3. The BCC as a safety net

Where equity registration is impractical or delayed, the Investment Law's BCC framework offers a contractual vehicle for profit-sharing arrangements that does not depend on ERC amendment. For IFC-operating entities, a well-drafted BCC with arbitration and governing-law clauses may provide protections that an informal equity understanding cannot.

4. Terminology discipline

In minutes and resolutions, use "increase charter capital and admit member" only when ERC changes are intended. Otherwise, label the arrangement as a loan, advance, or BCC contribution. Do not deploy contributed funds as "equity" until the ERC is updated.

2 Case Law No. 81/2025/AL² - When does a contractual debt become a proprietary claim? Re-characterisation, restitution, and the vanishing limitation period

Executive takeaways

Vietnam's Council of Judges of the Supreme People's Court re-characterised a claim for unpaid service fees (after mutual contract termination and express debt acknowledgement) from a "service contract dispute" (subject to a limitation period) to a "civil claim for recovery of property" (no limitation period under Article 155 (2) of the Civil Code 2015).

The Court's reasoning reveals an implicit restitutionary logic: once the contractual relationship has ended and there is no longer any legal basis for the debtor to retain the sum owed, the obligation to return that sum is doctrinally grounded in the normative principles of the law of restitution for unjustified enrichment (even though the Court frames the remedy in property-law terms).

This case merits close attention as it signals a role for non-contractual restitutionary claims in the commercial context that has not yet received adequate consideration in Vietnamese legal practice.

The case in brief

Company M (a Japanese service provider) and Company A (a Vietnamese manufacturer) entered into a technical services contract in July 2012. After Company A requested early termination in November 2012, the parties agreed to terminate. Company M issued six commercial invoices totalling JPY26.3 million for services rendered. Company A's Chairman and senior management repeatedly confirmed, in both meetings and in writing, that payment would be made.

No payment was ever made. Company M sued in 2018. Company A's sole defence: the limitation period for commercial contract disputes had expired.

The lower courts accepted the limitation defence and dismissed the case. The Supreme People's Court reversed, holding that because (i) the contract had been mutually terminated and (ii) the outstanding debt had been expressly acknowledged by the debtor, the claim was not a "service contract dispute" but a "civil dispute for recovery of property" - to which no limitation period applies under Article 155 (2) of the Civil Code 2015.

The novel legal question: Why is this no longer a contractual claim?

The Court's re-characterisation raises an interesting question. The debt arose from services actually rendered during the performance of the contract. The invoices were issued in accordance with the contractual payment terms. It flows from these facts that the obligation to pay for services already performed should be considered as an accrued contractual right that survives termination. Contract termination discharges future performance obligations. It does not extinguish payment obligations for work already completed.

Why, then, did the Supreme People's Court treat this as a non-contractual claim?

The Court's reasoning (paragraphs 5-6) proceeds as follows: the parties terminated the contract; Company A acknowledged the specific amount owed. Therefore, "the parties no longer dispute the contract" and the claim must be classified as a civil claim for recovery of property. The logic appears to be that once the contractual relationship has ended and no dispute remains about performance or breach, the nature of the obligation transforms. What was previously a contractual payment obligation becomes an independent obligation to return the property belonging to the creditor.

² Case Law No. 81/2025/AL is issued on the basis of Cassation Decision No. 13/2022/KDTM-GDT dated 12 December 2022.

This reasoning is not without difficulty. Even in systems where contract termination has a retroactive effect, the obligation to pay for benefits already received typically retains its connection to the contractual framework. The mere fact that the debtor has acknowledged the debt does not, on its own, sever the contractual origin of the obligation. A debt does not change its character simply because the debtor admits it exists.

The restitutionary foundation: Unjustified enrichment as the source

We suggest that the Court's approach is best understood through the lens of the law of restitution for unjustified enrichment, even though the Court does not expressly invoke this doctrine:

- The contract has been terminated. While the original contract provided the legal basis for Company A's receipt of services, and correspondingly for Company M's entitlement to payment, that contractual basis has now fallen away.
- Company A retains the benefit of the services rendered but has not paid for them. Company A has been enriched (it received technical services) at the expense of Company M (which provided those services and incurred costs).
- After termination, there is no subsisting legal basis for Company A to retain the sum representing the value of those services. The contractual framework that would have provided such a basis has been dissolved by mutual agreement.
- The enrichment is therefore unjustified. Company A must make restitution; i.e., to return the sum that, post-termination, it has no legal basis to retain.

Under this analysis, the "recovery of property" classification used by the Court is the procedural vehicle through which the restitutionary obligation is given effect. The specific provision for recovery of property is located in the Civil Code outside the formal chapter on unjustified enrichment. However, doctrinally, the law of restitution for unjustified enrichment is the normative source of the return obligation imposed by the Civil Code.

The defendant holds the claimant's property without legal basis. Therefore, the defendant must return it. This is the core logic of restitution for unjustified enrichment, expressed in the language of property recovery.

This interpretation also explains why the limitation period disappears. Under Article 155 (2), claims for the protection of ownership rights are not subject to any limitation period. If the creditor's claim is properly understood as a proprietary right to recover assets that are being retained without legal basis, then the absence of a limitation period is doctrinally coherent: ownership does not expire with time.

The unresolved tension: Accrued contractual rights and restitutionary re-characterisation

The case leaves an important question open. It is not self-evident why a debt that was actually incurred during the performance of a valid contract (invoiced, confirmed, and quantified within the contractual framework) should be treated as a non-contractual claim simply because the contract was subsequently terminated.

This tension could be addressed by maintaining the distinction between accrued rights and executory obligations. A right to payment that has already accrued (i.e., the services have been performed and the payment has fallen due) is not affected by subsequent termination. The creditor's claim remains contractual, and the applicable limitation period runs from the date the debt became due, though the debtor's acknowledgement may restart that period.

The approach under Case Law No. 81/2025/AL is different. It treats the combination of termination and acknowledgement as severing the claim from its contractual origin and reconstituting it as an independent proprietary right. The practical result is powerful: the limitation period is eliminated entirely. But the doctrinal path (i.e., why the contractual origin of the debt is displaced) is not fully articulated in the Court's reasoning. Future case law development may clarify whether the re-characterisation is available in all cases of post-termination acknowledged debts, or only where additional factors are present.

Practical implications

- **Post-termination settlement agreements:** When terminating a service agreement, parties should execute a standalone settlement agreement that clearly specifies the nature, amount, and due date of any remaining obligations. Under Case Law No. 81/2025/AL, such a settlement (coupled with the debtor's acknowledgment) may transform the underlying commercial claim into a proprietary recovery right with no limitation period.
- **Governing law strategy:** Where the original contract is governed by foreign law, the re-characterisation into a "civil claim for recovery of property" might bring the claim within Vietnamese domestic civil law. IFC-operating entities should consider whether their dispute resolution clauses adequately address the scenario where a contractual claim is re-characterised by a Vietnamese court into a non-contractual one.
- **Debt acknowledgment as a double-edged sword:** For debtors, this case confirms that acknowledging a debt after contract termination may eliminate the limitation defence entirely. Corporate treasury and legal teams should ensure that post-termination correspondence is carefully reviewed.
- **Drafting tip - preservation of contractual characterisation:** Creditors who wish to rely on the contractual framework (for example, to enforce a foreign governing-law or arbitration clause) should consider including a clause that expressly preserves the contractual characterisation of all accrued payment obligations notwithstanding termination.

3 Cross-case theme: Formalism, conduct, and the limits of expectation

Read together, Case Law No. 78/2025/AL and Case Law No. 81/2025/AL illuminate a distinctive feature of Vietnamese commercial law: its preference for formal legal categories over conduct-based reasoning.

Case Law No. 78/2025/AL says that registration trumps years of profit sharing. No matter how long parties have acted as though an equity relationship exists, proprietary consequences attach only to formal, registered acts.

Case Law No. 81/2025/AL provides that when formalities do align (mutual termination combined with express acknowledgment) the law will re-characterise claims in ways that remove procedural barriers, giving the creditor a stronger position than the original contractual framework alone would have provided.

The message is consistent: document everything, register everything, acknowledge nothing inadvertently. Further, when disputes arise, consider whether the claim may be more accurately characterised not as a contractual dispute, but as a proprietary recovery right grounded in the normative principles of restitution for unjustified enrichment.

Methodology

The comparative observations in this series draw on general principles widely recognised across common law jurisdictions. They are intended to assist readers familiar with the common law tradition in understanding how Vietnamese law resolves comparable commercial problems. These observations do not constitute advice on the law of any specific foreign jurisdiction. EY Law Vietnam advises exclusively on Vietnamese law. Where a reader's specific transaction requires advice on any foreign governing law, separate foreign law counsel should be engaged.

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APAC No. 16110601

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