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VIET NAM

**FOOD  
DONATION  
LAW AND  
POLICY**

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# INTRODUCTION

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## PURPOSE OF THIS GUIDE

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Food loss and waste (FLW) is one of the greatest food system challenges of this era. An estimated one-third of food produced globally is ultimately lost or wasted along the supply chain.<sup>1</sup> This amounts to approximately 1.3 billion tons of food each year that ends up in landfills.<sup>2</sup> FLW occurs at every stage of the supply chain for a variety of reasons: during harvest and processing (packaging) due to low market prices, high labor costs, and demand for perfect-looking produce; during distribution due to spoilage; during the retail phase due to the overestimating of customer demand by grocery stores and restaurants; and during the consumption phase due to inefficient shopping and cooking practices and confusion and inconsistency around date labels.<sup>3</sup>

These inefficiencies have significant environmental, economic, and social consequences. Food that is lost or wasted has a huge carbon footprint of 3.3 gigatons,<sup>4</sup> wasting roughly 28% of agricultural land<sup>5</sup> and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.<sup>6</sup> Collectively, this damage costs approximately US\$940 billion per year.<sup>7</sup> Meanwhile, more than 820 million people are undernourished, and one in nine is food insecure.<sup>8</sup> The international community has sought to address this paradox and mobilize efforts to reduce food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.<sup>9</sup>

In many countries, food donation is a popular and logical solution, redirecting safe, surplus food destined for landfills into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, nongovernmental organizations that provide them to local beneficiary agencies such as soup kitchens, shelters, and community pantries to feed low-income, food-insecure individuals. As food insecurity and FLW continue to rise, new and innovative models of food recovery have emerged around the world.

However, uncertainty surrounds food donation laws and regulations. To help address the most pressing questions, the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) collaborated to create The Global Food Donation Policy Atlas.<sup>10</sup> This multiyear, innovative partnership maps the laws and policies affecting donations worldwide. The project aims to identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation, and share best practices and recommendations for overcoming these barriers.

**This Guide focuses on Viet Nam (hereinafter “Vietnam”)**, where an estimated 8.8 million tons of food is wasted annually, accounting for nearly 2% of the country’s gross domestic product (GDP).<sup>11</sup> FLPC and GFN, in collaboration with partners in Vietnam,<sup>12</sup> developed this resource to help food donors, food banks, and other intermediaries (hereinafter collectively referred to as “food recovery organizations”) understand the relevant legal frameworks that affect food waste reduction and food donation efforts in Vietnam. This Guide also offers recommendations for policy action to improve the legal landscape for food redistribution and instructs individuals and institutions in other countries that are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in Vietnam, this Guide provides an overview of the legal frameworks most relevant to food donation. The subsequent sections look more closely at laws generally applicable to food donation: food safety laws and regulations, date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and/or tax policy disincentives, food waste diversion laws that penalize food waste or require recovery, and government grants and incentives for donation.

# STATE OF FOOD INSECURITY, WASTE, AND RECOVERY IN VIETNAM

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Regarding hunger, malnutrition, and food insecurity, Vietnam has made substantial progress.<sup>13</sup> Vietnam is currently home to 98 million people.<sup>14</sup> In 2020, 5% of Vietnam’s population was undernourished, a 1% decrease from 2019.<sup>15</sup> While hunger rates in the country have steadily declined over the past decade, hunger remains a pertinent issue particularly among rural and ethnic minority populations. According to the 2023 Global Hunger Index, Vietnam has a moderate level of hunger, ranking 54 out of 125 countries, with a score of 11.4.<sup>16</sup>

In 2015 the Vietnamese government launched the National Action Programme (NAP) to reach “Zero Hunger” by 2025, seeking to lower malnutrition and stunted growth rates through improved nutrition and sustainable food production, as aligned with the United Nations’ Sustainable Development Goal 2.<sup>17</sup> The NAP has five targets to achieve by 2025: ensure households have enough food and nutrition all year, reduce malnutrition in children under 2, develop sustainable food systems, increase the income and yield of smallholders, and reduce FLW.<sup>18</sup>

While the Ministry of Agriculture and Rural Development (MARD) is the lead, the Ministry of Planning and Investment (MPI), the Ministry of Finance (MOF), the Ministry of Health (MOH), the Ministry of Labour – Invalids and Social Affairs (MOLISA), the Ministry of Information and Communication (MIC), and the Ministry of Industry and Trade (MOIT) are all involved in the implementation of NAP activities to achieve “Zero Hunger.”<sup>19</sup> The interministerial campaign is funded by the national poverty reduction program, with more than VND545 billion (USD\$23.7 million) allocated to implementation from 2018 to 2025.<sup>20</sup>

Additionally, Vietnam has launched the National Action Plan on Food Systems Transformation toward Transparency, Responsibility, and Sustainability by 2030.<sup>21</sup> This comprehensive plan aims to overhaul Vietnam’s food systems, making them more sustainable, transparent, and responsible, with a particular focus on food and nutrition security.<sup>22</sup> Notably, it includes measures to reduce FLW and add value to food surplus, such as interventions on-farm and innovations in food storage, processing, and distribution systems.<sup>23</sup>

Vietnam grapples with significant FLW, with roughly 8.8 million tons of food wasted annually, placing it second in the Asia-Pacific region for food waste.<sup>24</sup> This waste incurs losses of around US\$3.9 billion yearly, nearly 2% of Vietnam’s GDP.<sup>25</sup> The majority of this waste (32%) occurs in the vegetable sector, while the meat and fish sectors see 14% and 12% loss rates, respectively.<sup>26</sup> There is significant room for process improvement and education. A study by CEL Consulting found that only 14% of farming households or farms in Vietnam understand the importance of the cold supply chain in preservation, processing, transportation, and distribution to consumers.<sup>27</sup>

The food recovery sector, led by Food Bank Vietnam, is relatively nascent in Vietnam. Food Bank Vietnam is a network of 12 warehouses—an additional eight warehouses are in the process of launching at the time of this writing—across the country. Up to the first half of 2024, it served 18 million meals and redistributed 26 million kilograms of food and vegetables.<sup>28</sup> Vietnam also has some innovations to rescue and redistribute unsold or nearly expired goods. For example, the food marketplace Bách Hóa Xanh gives away unlikely-to-sell vegetables for free to shoppers who arrive after 7 p.m.<sup>29</sup> According to interviewed stakeholders, despite the burgeoning success of Food Bank Vietnam, current channels for donating and distributing surplus food remain few, fragmented, and not yet networked.

As Vietnam seeks to reduce FLW and mitigate food insecurity, food recovery organizations like Food Bank Vietnam and current and potential food donors must recognize and understand food donation laws. The remaining sections of this Guide provide an overview of Vietnam’s food donation legal framework and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders. They also include tailored recommendations to improve the policy landscape.



# OVERVIEW OF VIETNAM'S RELEVANT LEGAL FRAMEWORK

Vietnam operates under a socialist republic framework and is known for its single-party system governed by the Communist Party of Vietnam.<sup>30</sup> The government structure is defined by the country's constitution,<sup>31</sup> which organizes the state's powers into three main branches: the executive, the legislature, and the judiciary. The president of Vietnam serves as the state's head, representing Vietnam in domestic and foreign affairs.

## The executive

The prime minister is the head of government, overseeing a cabinet of ministers responsible for various sectors of national administration and governance.<sup>32</sup> The executive branch implements laws, policies, and decisions of the state and ensures the efficient management of the state apparatus.

## The legislature

Legislative power in Vietnam is vested in the National Assembly, a unicameral body that is the highest organ of state power. The National Assembly makes and amends laws, decides on important national matters, and oversees the activities of the executive and judiciary branch.<sup>33</sup> It comprises deputies that are elected for a five-year term. The assembly meets twice a year and works through its standing committees when not in session. The Assembly meets twice a year and works through its Standing Committee when not in session. It can hold special meetings if requested by the President, Standing Committee of the National Assembly, the Prime Minister, or at least one-third of the assembly's delegates.<sup>34</sup> It has the power to elect the president, prime minister, chief justice of the Supreme People's Court, and procurator general of the Supreme People's Procuracy, the highest prosecutorial office in the country.

## The judiciary

The judicial branch of Vietnam includes the system of People's Courts and People's Procuracies. People's Courts: including The Supreme People's Court, local People's Courts, Military Tribunals and the other tribunals established by law.<sup>35</sup> The Supreme People's Court is the highest court of appeal and oversees the judicial system, ensuring its uniformity.<sup>36</sup> When exercise of judicial power, the People's Court has the following duties and rights: detects and makes recommendations on the constitutionality and legality of legal documents; interprets and applies laws; adjudicates disputes, other cases and matters; handles criminal offenses and ensuring justice is served; other duties and rights as prescribed by law.<sup>37</sup>

## People's Procuracies

The Supreme People's Procuracy oversees the enforcement of the law by Ministries, Ministerial-level organs, other Government agencies, local administration, economic entities, mass organizations, people's military organs and citizens. It exercises the right to prosecution, ensures serious and uniform implementation of the law. Local People's Procuracy and Military Procuracy oversee the execution of the law and exercise the right to prosecution as stipulated by the law.<sup>38</sup>

The role of courts in Vietnam is primarily to interpret and apply the law in judicial proceedings, ensuring legal compliance and justice. The judicial system resolves civil, criminal, and administrative disputes while it safeguards the rights and obligations of individuals and organizations as stipulated by law.

## Local government

Vietnam does not have states or provinces with autonomous legislative powers like those found in federal systems. Instead, the country is divided into 58 provinces and five centrally controlled municipalities, which include major cities such as Hanoi, Ho Chi Minh City, Da Nang, Hai Phong and Can Tho.<sup>39</sup> These municipalities have a status equivalent to provinces. The provincial and city governments are responsible for local administration and governance within the framework established by the central government.<sup>40</sup> They implement national laws, policies, and plans at the local level; manage local resources; and deal with local issues and development projects.

## Key ministries for food waste and recovery

### **Ministry of Agriculture and Rural Development (MARD)**

The MARD is responsible for agricultural production, rural development, and food security. It oversees policies and programs that promote sustainable agriculture, food safety, and the development of rural areas.<sup>41</sup> The MARD could play a crucial role in reducing food waste by implementing sustainable agricultural practices, promoting efficient food production systems, and supporting initiatives that recover and redistribute surplus food to reduce hunger.

### **Ministry of Health (MOH)**

The MOH oversees public health, medical services, and the regulation of food safety standards.<sup>42</sup> It ensures the health and well-being of the population through various health programs and policies.<sup>43</sup> The MOH would be relevant to food waste policies by setting donated food safety standards, ensuring that recovered food is safe for consumption, and supporting nutrition programs that use surplus food to address hunger and malnutrition.

### **Ministry of Labour - Invalids and Social Affairs (MOLISA)**

The MOLISA focuses on labor policies, social welfare, and support for vulnerable populations, including poverty reduction and social security programs.<sup>44</sup> It can facilitate food donation and recovery programs by integrating them into social welfare initiatives, supporting vulnerable populations with access to nutritious food, and promoting social enterprises that focus on food redistribution.

### **Ministry of Information and Communication (MIC)**

The MIC manages communication policies, information technology, and media regulations.<sup>45</sup> It plays a key role in public information dissemination and the promotion of government policies.<sup>46</sup> The MIC could be essential for raising public awareness about food waste issues and promoting behavioral changes through media campaigns.

### **Ministry of Industry and Trade (MOIT)**

The MOIT regulates industrial policies, trade activities, and market development.<sup>47</sup> It supports economic growth through promoting trade and industrial development.<sup>48</sup> The MOIT could influence food waste reduction by encouraging industries to adopt waste-minimization practices and supporting the development of markets for surplus food.

# LEGAL ISSUES RELEVANT TO FOOD DONATION

## LEGAL ISSUE AREA RANKING AT A GLANCE

Food safety for donations	Date labeling	Liability protection	Tax incentives	Tax barriers	Food waste deterrence policies	Government grants and incentives	National law or policy
<b>Moderate policy</b>	<b>Weak policy</b>	<b>No policy</b>	<b>No policy</b>	<b>Yes</b>	<b>No policy</b>	<b>No policy</b>	<b>No policy</b>

## NATIONAL FLW LAWS, POLICIES, OR STRATEGIES

Food systems are multifaceted. In most countries, many different ministries or departments regulate food and agriculture. This means that efforts to address FLW similarly span various government entities. As a result, despite stated goals to reduce food waste, many governments lack internal cohesion around the issue, resulting in lackluster, disjointed, or even contradictory policy landscapes. Uniting the myriad government agencies and initiatives—along with stakeholders in the private sector and civil society—under a national FLW strategy or through food waste or donation-specific laws prioritizes FLW on the forefront of the national agenda, aligns all actors, and equips them to tackle the issue efficiently. Such a policy or strategy also clarifies governance, delineating clear roles and responsibilities of different entities, which is critical for implementation, accountability, and collaboration across sectors, toward a clearly established national goal. Beyond identifying FLW as a problem that governments must tackle, it is critical that a policy or strategy clearly prioritizes how it should be solved and sets concrete targets.

Currently, Vietnam does not have a government law, plan, goal, or strategy specifically relating to FLW, though FLW is included in other food security strategies.

### NATIONAL STRATEGY RECOMMENDATIONS

#### 1. SET A NATIONAL FLW REDUCTION AND FOOD REDISTRIBUTION GOAL.

By setting a national FLW reduction goal, governments would take the first step to reducing levels of food waste and ensuring safe, surplus food is not destined for landfills. A unified, codified national goal prioritizes FLW on the national agenda and dedicates sufficient resources to meeting the goal. Defining a specific reduction goal and establishing an initial benchmark number from which to improve also enables efficient measurement and reporting toward that goal.



A best practice would include a subgoal for how much diverted food waste should be donated to hunger relief. It would also consider the means by which food waste is reduced. California, in the United States, exemplifies a state-level FLW reduction goal that incorporates food redistribution.<sup>49</sup> The law sets an ambitious statewide target of recovering 20% of all edible food that would otherwise be sent to landfills to feed people in need by 2025.<sup>50</sup>

## **2. PUBLISH A NATIONAL STRATEGY AROUND FLW, SPEARHEADED BY A DESIGNATED LEAD AGENCY.**

Crafting and disseminating a unified national strategy specifically targeting FLW reduction—with special attention to surplus food redistribution—can significantly streamline and amplify national efforts to meet the established goal. The strategy should include a mandate for a dedicated ministry or working group to focus on FLW. Currently, FLW issues are often dispersed across various departments, leading to fragmented approaches and diluted focus. Designating a lead ministry or a dedicated working group within an existing structure can provide the concentrated effort required to tackle FLW issues comprehensively.

For example, Brazil’s approach to reducing FLW encompasses a comprehensive intersectoral strategy that involves 20 government ministries, private-sector players, and civil society organizations.<sup>51</sup> The strategy focuses on a broad-based whole of government and food system approach, including the entire food supply chain from production to consumption. Further, Argentina’s National Plan for the Reduction of Food Loss and Waste, initiated in 2019, targets FLW across the entire food value chain.<sup>52</sup> It includes interventions such as improving technology in food processing to extend shelf life, developing better transportation and storage infrastructure, and promoting efficient market mechanisms to ensure timely food distribution.<sup>53</sup>

Developing and publishing a national strategy is an important step toward meeting national FLW goals and advancing food redistribution. Critical elements of a strategy include establishing leadership over the implementation of the plan and making clear which ministry are tasked with ensuring progress on the issue so that FLW does not fall through the cracks. The lead ministry should be supported by all relevant departments, including the public and the agriculture and food industries, through a full government engagement process. The strategy should establish timely reporting requirements to assess ongoing progress. Ideally, it should be complemented with a comprehensive public campaign to ensure each stakeholder understands its role in achieving national targets.

## **FOOD SAFETY FOR DONATIONS**

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In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. For example, the law may not allow food to be sold due to labeling errors—such as labels that are upside-down or list incorrect weight or volume—even though the food remains safe for donation and consumption. Due to confusion about food donation safety requirements, safe, surplus food that could be redirected to populations in need is often destined for landfills.

Food safety in Vietnam is regulated under the Law No. 55/2010/QH12 on Food Safety (hereinafter the “Law on Food Safety”), which was adopted by the Vietnamese National Assembly in 2010.<sup>54</sup> The Vietnam Food Safety Authority (VFA), which operates under the Ministry of Health, enforces the law. The law outlines the responsibilities of food producers and traders, setting forth requirements for food production, trading, labeling, and advertising to guarantee food safety throughout the supply chain.<sup>55</sup>

An update to the regulatory framework was made with Decree 15/2018/ND-CP, which aims to reduce regulatory burdens and enhance international trade by aligning Vietnam’s food safety standards more closely with international best practices.<sup>56</sup> This update made significant changes, such as reducing the necessity for certain administrative procedures and inspections, and shifted toward a system where businesses are expected to self-declare their compliance with food safety regulations.<sup>57</sup>

These laws and regulations focus on the practice of food production and food trade. Based on how they define food production<sup>58</sup> and food trading,<sup>59</sup> it appears as though they would apply to any food distributed and thus would include food offered for donation. While the law mentions food donation, it is not explicitly defined in “food trading,” causing confusion among donors and food recovery organizations about what rules apply to food that is donated versus food that is sold. Article 8.5 of Law No. 05/2007/QH12 on product and goods quality confirms that all are prohibited from using foods or pharmaceuticals of poor quality or with expired use duration for charity purposes or donation.<sup>60</sup> This means that organizations and individuals looking to donate food must ensure that the food is safe to eat, properly labeled, and not beyond its expiration date as well as complies with all other requirements outlined in Vietnam’s food safety regulations.

## **FOOD SAFETY POLICY RECOMMENDATIONS**

### **1. AMEND THE LAW ON FOOD SAFETY TO OUTLINE PROCESSES SPECIFIC TO DONATED FOOD.**

While it is clearly prohibited to donate food that is expired or of poor quality, there may still be uncertainty about which provisions within the Law on Food Safety pertain to donated foods. To eliminate this uncertainty, the law should be updated to feature additional clarity and guidance regarding food that is destined for donation. This could also be accomplished through an additional decree further elucidating how labeling, adulteration, and hygienic processing and handling apply equally to donated foods, or carving out any unnecessary regulatory burdens with which donated food need not comply (such as labeling rules needed for sale but not necessarily for food safety). Clarifying donation-specific rules will significantly ease the burden on food donors and food recovery organizations seeking to comply with food safety provisions and may increase food donation. Understanding which food safety requirements apply to donated food is important for minimizing potential harm to donation recipients and ensuring that food safe for consumption is donated rather than discarded.

### **2. UPDATE AND DISSEMINATE CLARIFYING GUIDANCE ON FOOD SAFETY REQUIREMENTS RELEVANT TO FOOD DONATION.**

In addition to or in lieu of a donation-specific section in the Law on Food Safety, clear guidance from food safety enforcement agencies—primarily the VFA under the Ministry of Health (MOH)—on which food safety provisions or other requirements apply to donated food would ease concerns of food donors and food recovery organizations and likely lead to increased and safer donation. The MOH should issue robust guidelines on food donation that identify the constraints in which donors can safely and legally donate surplus foods and food recovery organizations can determine what donations to accept. In crafting and disseminating the guidelines, the MOH and the Ministry of Agriculture and Rural Development (MARD) should align the content with the overarching sustainability and antihunger goals of Vietnam, highlighting the importance of healthy food donation in reaching national food waste and food security goals. Guidance can quickly and informally help food recovery organizations understand food safety obligations, as updated legislation may require longer timelines. Complementing the issuance of guidance with an accessible educational awareness campaign around food donation will likely result in more careful consideration of food donation.

For example, the Singaporean government issued guidance on food safety for donations in 2016 under the National Environment Agency. Entitled “Guidelines on Food Donation,” it clarifies food safety standards for the procurement, processing, and distribution of donated food.<sup>61</sup> It also outlines the specific and differentiated responsibilities of donors and food recovery organizations, such as the labeling of donated food, required food hygiene measures, and temperature and transportation best practices.<sup>62</sup>

## DATE LABELS

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A major driver of food waste and an obstacle to food donation is the disposal of foods that do not pose a food safety concern due to date labels—such as “sell by,” “use by,” or “best by”—affixed to food items. From country to country, many donors and consumers interpret such date labels as indicators of food safety. Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than safety, and few foods become more likely to carry foodborne illnesses over time. Donors and food recovery organizations, however, being cautious about food safety liability, may discard food once the date passes even if the food is perfectly safe to consume. Many countries prohibit the distribution of food past its date label—whether the date label indicates safety or quality. Under this policy, donors and food recovery organizations have no choice but to discard food that is past its date label.

In other countries that have measured the impact of date labels, research shows that consumers generally confuse date labels with indicators of safety rather than quality. In the United Kingdom, for example, consumers discard about 22% of food they could have eaten due to confusion over date labeling.<sup>63</sup> Similarly, 84% of Americans report throwing away food after the “expiration date” passes due to safety concerns, even if there is minimal risk of a foodborne illness at that time.<sup>64</sup> This confusion occurs in the home, but it also impacts food businesses’ willingness to donate, creating a stigma against past-date food among food donation recipients.

The date labeling regulations in Vietnam contribute to confusion, thereby undermining other efforts to reduce food waste. They are primarily governed by the Law on Food Safety, which mandates that all prepackaged food products must have clear labels indicating the expiration or “use by” dates to ensure consumer safety,<sup>65</sup> with penalties for noncompliance.<sup>66</sup> Article 44 requires that a food item’s shelf life be written as “expiry date,” “use by,” or “best before,” but it does not further clarify a methodology for selecting the terminology. “Expiration date” is defined as the date referring to the specified time of use, after which a good no longer retains its inherent quality characteristics<sup>67</sup> and therefore relates to the quality of the food item, rather than its safety. The law does not include a distinction between safety and quality dates.<sup>68</sup> Further, as previously mentioned, it is prohibited to use foods or pharmaceuticals of poor quality or with expired use duration for charity purposes or donation.<sup>69</sup>

Thus, no clear guidance helps determine if a food remains safe to consume or donate post-date, causing confusion and undue waste in the Vietnamese population.<sup>70</sup> Without clarifying a definition of “expiry date” that shifts it to a safety-based label or introducing alternative terminology used to distinguish safety- and quality-based dates, food system actors assume that the affixed date refers to safety and consequently that past-date food cannot be donated.





### 1. ADOPT A DUAL DATE LABELING SCHEME TO CLEARLY DISTINGUISH BETWEEN SAFETY- AND QUALITY-BASED LABELS AND PERMIT FOOD DONATION AFTER THE QUALITY-BASED DATE PASSES.

An optimized date labeling system will provide one standard label to indicate quality and another to indicate safety until a specific date. Each food would bear one of these two labels, depending on whether the food increases in safety risk post-date. This date labeling scheme is recommended by the United Nations' *Codex Alimentarius*.<sup>71</sup> Specifically, the *Codex Alimentarius* recommends using a “use-by date” or “expiration date” to indicate safety and a “best-before date” or “best quality-before date” to indicate quality.<sup>72</sup> The standards also state that national laws should require a food to have only *one* date label: either a quality-based label or a safety-based label.<sup>73</sup>

Recently, China's Anti-Food Waste Law established guidance for food date labeling, introducing two different terms for date labeling: “best before (最佳食用日期)” for quality and “expiration (保质日期)” for safety, adding nuance to the previously used single term for “shelf-life” (保质期).<sup>74</sup> Vietnam should follow in China's footsteps—aligned with the *Codex Alimentarius*—and adopt the recommended language of “best before” and “use by.” This labeling scheme would provide greater certainty to consumers, food donors, and food recovery organizations on the meaning of these dates and may reduce the amount of food that is thrown away.

Many other countries and the food industry itself are moving toward this dual date labeling system beyond the global endorsement of such practice by the *Codex Alimentarius*. For example, the European Union requires that the date label on any food products use only one of two standard labels. “Best before” is required for foods where the label indicates quality, while “use by” is required for foods that may pose an increased safety risk after the date.<sup>75</sup> Several EU member states have issued guidance clarifying the impact of these dates on food donation, and others have enacted legislation that explicitly allows for donation after the “best before” date but not after the “use by” date.<sup>76</sup> The Consumer Goods Forum, a global network of 400 consumer goods companies across 70 countries, has also called for the standardization and adoption of a dual date labeling system with separate quality and safety date label phrases to distinguish between foods.<sup>77</sup>

### 2. ADOPT A DECREE PERMITTING FOOD DONATION AFTER THE QUALITY-BASED DATE.

Once the government standardizes date labels to distinguish between quality- and safety-based labels, it should issue a decree clarifying that packaged foods may be donated after the quality-based date. This will ensure that cautious food donors and food recovery organizations do not interpret the date label as a safety provision and erroneously believe that food may not be donated after a quality-based date.

For example, China's guidance encourages donation and the sale of food near the expiration date at preferential prices.<sup>78</sup> The United Kingdom, whose dual date labeling system clearly identifies quality- and safety-based dates, also provides a model for Vietnam to implement the recommended best practices. Its policies and guidance on food donation state that food with a safety-based date may not be distributed post-date for sale or donation, but food with a quality-based date may be sold or donated post-date.<sup>79</sup>

Until the Vietnamese government implements a dual date labeling scheme, it should amend the Law on Food Safety or adopt a separate decree to explicitly permit the donation of certain foods that do not pose a safety



risk after the affixed date. For example, to enhance food security through food donation during the COVID-19 pandemic, the Costa Rican government issued such guidance.<sup>80</sup> Implementation of such a decree in Vietnam may be bolstered by administering technical support to retailers, manufacturers, and other potential donors. Since actors are accustomed to discarding food once the date passes, new training and protocols must be developed to ensure past-quality-date goods are processed safely to food recovery organizations.

### **3. PROMOTE CONSUMER EDUCATION AND AWARENESS ON THE MEANING OF DATE LABELS.**

Given that many Vietnamese consumers may mistakenly perceive date labels as indicators of safety, increasing the sale, consumption, or donation of food after these dates will require a change in behavior. National consumer education will be critical to inform donors, food recovery organizations, and consumers that the dates on certain foods do not indicate safety but freshness.

Joint public- and private-sector initiatives may help stakeholders understand that date labels should not restrict donation. Any clarification or standardization to this regime, such as the introduction of a dual labeling requirement, will also require campaigns to educate and increase awareness among donors, food recovery organizations, and consumers about the new interpretations.

## **LIABILITY PROTECTION**

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A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. This fear is particularly heightened when the applicable law provides for “strict liability” (i.e., a donor or food recovery organization that did not act maliciously or intend to inflict harm may still be held legally and financially responsible for any resulting damage). Other countries, including Argentina, Brazil, and the United States, have established protections for both food donors and food recovery organizations to limit the likelihood that these actors will be held responsible for harm.

Currently, Vietnam does not have a “Good Samaritan” law specifically protecting food donors or food recovery organizations from civil or criminal liability resulting from food donation. At the time of this writing, there were no reported cases in which a plaintiff brought a civil claim against a donor or distributor for harm resulting from food received free of charge.<sup>81</sup>

The new Law on Protection of Consumer Rights No. 19/2023/QH15 (CPL 2023) promulgated by the National Assembly on June 20, 2023 entered into force on July 1, 2024.<sup>82</sup> It provides a framework to protect consumers against defective goods or poor services. Under the law, businesses are held accountable for the quality and safety of their products, and breaches result in compensation for any damages caused by defective products.<sup>83</sup> Under article 34, traders must provide compensation in the event that their defective goods cause damage to the life, health, and property of consumers, even if they were not aware of or at fault for the defects.<sup>84</sup> For the purposes of this law, traders include manufacturers, importers, organizations, or individuals serving as commercial intermediaries for products or those that directly supply products and goods to consumers.<sup>85</sup> It is important to note that, under the law, if the producer, manufacturer, importer, or intermediary are not identifiable, the organization or individual that directly supplied the product to the consumer will be required to provide the compensation.<sup>86</sup>

Article 35 includes an exemption to this liability if the trader can prove that the defect could not be detected with available scientific or technical knowledge, or if they gave consumers adequate information (as outlined in articles 32 and 33) about the defect but the consumer deliberately used it anyway and caused damage.<sup>87</sup>

The liability clauses of the consumer protection law also apply to food products.<sup>88</sup> Businesses selling food items must ensure that their products are safe and meet the quality standards advertised. If a food product is contaminated or otherwise unsafe, the seller is liable for any harm that results from its consumption.<sup>89</sup> This includes all forms of food products, whether processed, fresh, or otherwise.

However, for donated products, the donor is responsible only if a known defect was not communicated to the recipient. Article 461 of the Civil Code handles defects of donated property.<sup>90</sup> Although it does not specifically reference food donation, the article requires that “givers” (donors) should notify recipients of any defects in a gift.<sup>91</sup> If the giver fails to do so, they must be liable to compensate for the damage caused to the recipient; if the giver does not know the defects of the donated property, they need not be liable to compensate for damage.<sup>92</sup> Consulted legal experts determined that a food bank would be considered a “giver” in this scenario. Therefore, it appears unlikely that a donor would be held liable for any ill effects, except for cases of malintent.

Nonetheless, liability concerns remain top of mind for donors due to uncertainty about the legal implications in the unlikely event of a food safety concern.

## LIABILITY PROTECTION POLICY RECOMMENDATIONS

### 1. ENACT A NATIONAL “GOOD SAMARITAN” LAW APPLICABLE TO FOOD DONATION.

To dispel any concerns related to liability, the government should adopt legislation that establishes clear liability protections for food donors and food recovery organizations that act in good faith, similar to those offered in Argentina, Brazil, and the United States. For example, Brazil’s Food Waste and Donation Law<sup>93</sup> protects food donors and food recovery organizations from liability in the event that a beneficiary alleges harm arising from donated food unless the beneficiary proves the harmful food was provided in an act of malice.<sup>94</sup> Food qualifies as “suitable” for donation if it meets three criteria: (1) The expiration date affixed to the food has not passed, and, if applicable, the food has been stored in proper conditions as instructed. (2) The integrity and safety of the food has not been compromised. And (3) the food must retain its nutritional properties and be safe to consume, even if the food appears damaged or “commercially undesirable.”<sup>95</sup> The law states that donors can provide food to beneficiaries either directly (through direct donations) or indirectly (through an intermediary such as a food bank), and liability is limited for both donors and any intermediaries that handle donated food.<sup>96</sup>

With liability protections established in legislation, food donors and recovery organizations would have a broader, clearer grant of protection, applicable to incidences of harm that result only from food that meets all relevant food safety rules. Of course, this liability protection should not be absolute, and food donors and intermediaries should not be shielded from legal and financial responsibility if they demonstrate knowing or willful misconduct or recklessness when handling food prior to delivery.

## TAX POLICY

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Reducing FLW results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding food that is never consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food recovery organizations provide jobs or sponsor community development, and recipients of donated food can spend limited financial resources on other basic goods and services.

Yet food donation can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded at no cost. As a result, it is often easier and less

expensive for farmers, businesses, and individuals to throw away food rather than donate it. Some countries have addressed this issue by offering tax incentives and removing financial barriers to food donation.

## INCENTIVES

Tax incentives can significantly support food donation and help reduce FLW. For example, corporate donors may be more likely to donate surplus food to food recovery if they receive a charitable deduction to offset the cost of transportation and logistics. Vietnam does not currently offer any tax deductions or incentives for food donation.

In Vietnam individual contributions to certain approved charities can be deducted from personal income tax (PIT).<sup>97</sup> However, donations and gifts—whether in-kind or cash—are nondeductible expenses for the corporate income tax (CIT) unless they fall into narrow, specific categories (i.e., education, health care, scientific research, natural disasters, or charitable homes).<sup>98</sup> As it is not included in the categories of tax-deductible contributions, food donated in Vietnam is not eligible for preferential tax treatment or incentives, a notable area for improvement according to interviewed stakeholders.

## BARRIERS

While certain tax schemes may encourage food donations, they may also stand as potential deterrents. In many countries, the value-added tax (VAT) presents a financial barrier to donating food. The VAT is levied at every stage of the supply chain through a series of debits (output VAT) and credits (input VAT). The output VAT is the amount that a VAT-registered business will charge on its own sale of the good to businesses downstream or to the end consumer, whereas the input VAT is the amount the VAT-registered business paid when it acquired the inputs or ingredients. The VAT-registered business subtracts the input VAT that it paid on products from the output VAT that it charged when selling the product and then pays the balance to the government.<sup>99</sup>

Vietnam has three VAT rates: 0%, 5%, and 10% (the standard rate), depending on designation.<sup>100</sup> Certain agricultural products are exempt entirely while others fall into the reduced 5% category, depending on the necessity of the products.<sup>101</sup>

Article 5 of the Law on Value-added Tax carves out “cultivation and husbandry products” as well as unprocessed or preliminarily processed reared and fished aquatic products as nontaxable objects, and article 8.2(g) establishes fresh food at the 5% tax rate.<sup>102</sup> All other products are subject to a 10% VAT rate, though from July 1, 2024 to December 31, 2024 the VAT applicable to all other foods is temporarily decreased from 10% to 8%.<sup>103</sup>

It appears that food donation activity would not be considered a VAT-taxable event. For exempt agricultural products, no output VAT need be charged, but input VAT paid on related purchases may be credited.<sup>104</sup> Because donors can earn credits for food thrown away, this poses an economic burden.

While no stakeholder interviewed mentioned that VAT is a significant barrier to food donation, it may nonetheless add economic burden to donors that paid input VAT on the purchase of products that ultimately went unsold for donation and, therefore, cannot reclaim those credits.





### 1. INCLUDE FOOD DONATION IN THE CATEGORY OF TAX-DEDUCTIBLE CONTRIBUTIONS.

The process of donating food can incur costs to a business related to transportation, logistics, and staff time. Food donors and recipient organizations alike shoulder the expenses associated with selecting viable food to donate, package, store, and transport. Without a significant tax incentive, in many cases, it is easier and less expensive for potential donors to send surplus food to landfills as waste. Providing a tax credit or deduction could help offset these costs and increase food donation.

A number of countries have implemented tax incentives to encourage food donation. For example, in the United States, taxpayers that donate property that could otherwise provide them income, including food products, are eligible for a tax deduction. U.S. taxpayers that donate food are eligible for two deductions: the general deduction that applies to all charitable contributions and an enhanced tax deduction that allows qualified food donations to be valued nearly twice as high as they would be under the general deduction.<sup>105</sup> The cap for this deduction is 15% of income, which serves as a best practice cap when establishing tax incentives.<sup>106</sup>

As previously stated, in Vietnam only donations and gifts in specific categories (i.e., education, health care, scientific research, natural disasters, or charitable homes) are deductible under CIT.<sup>107</sup> To encourage more food donation and help offset the costs associated, in-kind food donation should be added to the list of tax-deductible contributions.

### 2. OFFER TAX CREDITS FOR FOOD DONATION AND ACTIVITIES TO REDUCE FLW.

While a tax deduction may incentivize food donation among certain corporate donors, offering a tax credit for food donations is more likely to encourage donation among a broader group of supply chain actors. Some businesses and farms may not generate enough net taxable profit to benefit from a tax deduction or to offset the associated expenses of recovery and donation. Compared with a tax deduction, which reduces a taxpayer's taxable income and determines the amount of taxes that must be paid, a tax credit is a direct dollar-for-dollar subtraction from the taxes owed.<sup>108</sup> Tax credits are applied evenly across tax brackets and would therefore have a greater impact for small, low-revenue businesses than tax deductions.

There is already precedent in Vietnam to issue tax credits for specific sectors encouraged by the Vietnamese government ("encouraged sectors" include environmental protection, healthcare, technology, and renewable energy).<sup>109</sup> The government may elect to limit the total credit by setting a percentage on the value of donated food that a business could claim in a given tax year, with or without a cap on the total dollar amount. The government could also limit the credit to be available only to smaller entities.

## FOOD WASTE DETERRENCE POLICIES

To reduce the environmental impacts of food waste and support food security efforts, some countries enforce food donation requirements or impose monetary penalties for food that is sent to landfills (often known as organic waste bans or waste taxes). This category of laws and policies—known as food waste deterrence policies—is an incredibly promising lever to make food waste financially burdensome for food waste generators, positively influence business behavior, and promote sustainable food systems.



Currently, Vietnam does not have any policy that penalizes food waste or obliges certain food system stakeholders to donate safe, surplus food. However, the Vietnamese government has publicly applauded China's legislative efforts to reduce excess food waste through the Anti-Food Waste Law and may be well positioned to follow suit.<sup>110</sup> China's 2020 law launched initiatives to fight food waste in the catering sector, establish a food donation system, and develop further rules to govern expired foods, among other food waste mitigation strategies. While it provides a framework for both donation requirements and food waste penalties, it does not yet require either one.<sup>111</sup>

## FOOD WASTE DETERRENCE POLICY RECOMMENDATIONS

### 1. ADOPT A NATIONWIDE FOOD WASTE DETERRENCE POLICY THAT REQUIRES THE DONATION OF SURPLUS FOOD AND/OR IMPOSES MONETARY PENALTIES FOR FOOD WASTE WHEN IT IS STILL SUITABLE FOR HUMAN CONSUMPTION.

Vietnam should consider different policy interventions to financially deter food waste and/or require the donation of surplus food that is still suitable for human consumption. These laws could apply to specific food waste generators (e.g., businesses of a certain size), as determined by the government. To institutionalize this, a law may impose a food donation requirement for any food items considered safe for human consumption. For example, provisions could require restaurants, grocers, and other establishments that sell retail or wholesale food to package and donate all safe food items that are prepared but not sold or consumed. In this way, the law would prohibit the disposal of foods that would otherwise be appropriate for donation. Europe has a few examples of such requirements. In the Czech Republic, Law No. 180/2016 on foodstuffs and tobacco requires food retailers with supermarkets of more than 400 square meters to engage in food redistribution actions.<sup>112</sup> France's n°2016-138 Law on Fighting Against Food Waste similarly obliges supermarkets of more than 400 square meters to establish relationships with relevant charitable organizations to donate surplus food.<sup>113</sup> The French donation requirement was extended to institutional feeding/mass catering entities in 2019,<sup>114</sup> and the penalty was increased.<sup>115</sup>

Furthermore, Vietnam should consider imposing monetary penalties for the disposal or destruction of food that remains fit for human consumption. Such a policy may complement a food donation requirement or stand on its own to make food donation more economical than food disposal. For example, the Ecuadorian government bans the destruction of food that is fit for human consumption and provides a hierarchy of alternative uses such as donation, animal feed, production of renewable energy, and composting.<sup>116</sup> The law applies to a broad scope of actors across the food supply chain and imposes sanctions on those that fail to comply.<sup>117</sup>

## GOVERNMENT GRANTS AND INCENTIVES

Grant and incentive programs funded at the national or local levels offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives insufficient to offset the costs of donation, where a lack of infrastructure limits food recovery efforts, or where there are no tax incentives for food donation. For example, government grants can help food donors and food recovery organizations acquire equipment and resources necessary for recovering, storing, processing, and transporting food for donation. Government funding can also support new innovations and emerging technologies that will make food donation more efficient and sustainable. Currently, no specific government grants support food donation activity or infrastructure in Vietnam.

### 1. DEVELOP GOVERNMENT GRANT OPPORTUNITIES FOR FOOD DONATION INFRASTRUCTURE.

Grant and incentive programs funded at the national or local levels offer an important resource for food donation initiatives, as cost is a main barrier preventing food businesses from donating. More specifically, transportation and storage costs, especially capital costs, are substantial expenses that manufacturers, retailers, and restaurants need to overcome to donate food.

Accordingly, the Vietnamese government should establish government grant programs targeted at creating infrastructure to help food recovery organizations harvest, store, process, and transport surplus food. Grants should be broad enough to allow food recovery organizations to purchase or lease transportation vehicles (e.g., refrigerated trucks) and storage facilities (e.g., warehouses and processing facilities), to pay staff and volunteers, and to fund other such activities that reasonably assist the organization in providing wholesome food to food-insecure individuals. Providing financial support for food donation logistics will enable food recovery organizations to significantly enhance their impact, reduce the economic and environmental costs of food waste, and support those in need.

Further, relevant government agencies should publicize the programs and enhance data collection to ensure that funding reaches vulnerable areas where food donation is not feasible.

Some countries have grant programs to encourage food recovery. For example, in 2019 Argentina's Ministry of Agribusiness launched a contest to grant non-reimbursable financing for innovative food loss solutions in the country's horticultural sector.<sup>118</sup> The government's National Food Loss and Waste Reduction Program administers the grant in partnership with the Inter-American Development Bank. The Vietnamese government could create a similar grant program to help food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. The government could also provide grants to support new innovations and emerging technologies that will make food donation more efficient and sustainable.

### 2. DEVELOP PROGRAMS TO INCENTIVIZE FOOD DONATIONS VIA RECOGNITION AND ADDITIONAL BENEFITS.

Not all efforts to reduce FLW require government funding. The government should consider no-cost or low-cost methods to incentivize food donations and reduce food waste. For example, businesses are very cognizant of their public reputations and how that can affect their profit margins. Many see recognition and publicity of their philanthropy as integral to their business strategy.

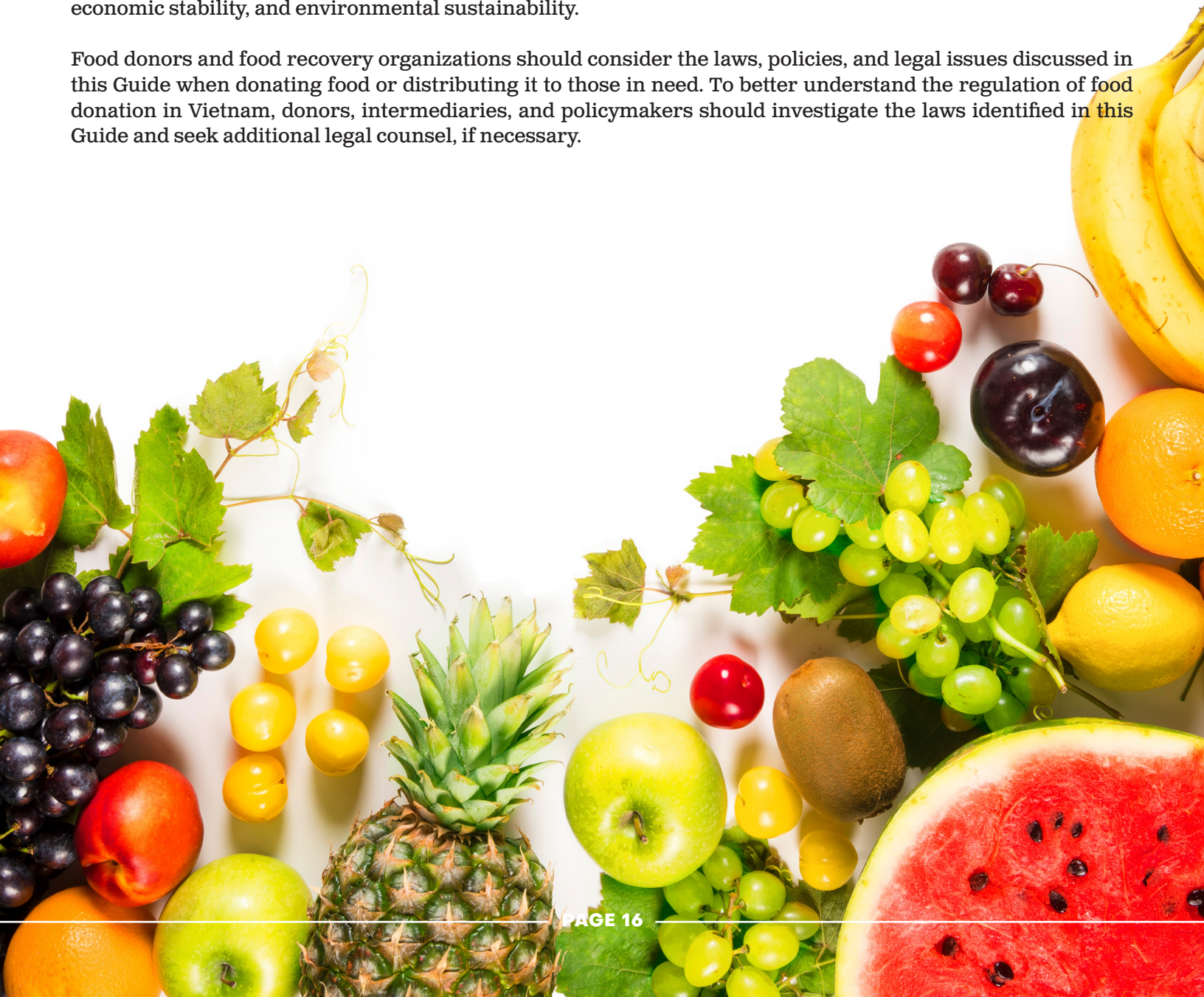
Thus, the government should set up recognition programs with clear, objective requirements for food systems actors to be recognized as community champions that donate food or create other innovative ways to reduce FLW. For example, by awarding appreciation certificates to businesses that donate surplus food and promoting them through the Ministry of Health's website, the ministry may motivate more businesses to donate rather than discard surplus food.

# CONCLUSION

This Guide identifies Vietnam’s current laws, policies, and programs that relate to FLW and food donation as well as offers tailored recommendations to improve the food donation policy landscape. While the central government is primarily responsible for guaranteeing food security and advancing sustainable food systems, food recovery organizations acting in a private capacity can provide an additional social safety net. Even though levels of food waste in Vietnam remain high, efforts to curb excess waste and increase food donation are under way. There is significant opportunity to mirror Vietnam’s success addressing hunger and poverty with an effective approach to mitigating FLW.

To bolster the progress of Vietnam’s national food security and food waste goals, legislation that minimizes any obstacles to food donation and provides adequate donation incentives—such as liability protection laws, supportive tax policy, food waste deterrence policies, government grants and incentives, or regulations and guidance that clarify food safety and date labeling laws applied to food donation—will be critical. This Guide provides a starting point from which policymakers, private-sector actors, and civil society may better understand the current laws and policies relevant to food donation. It also offers specific recommendations and a foundation for dialogue about FLW prevention and the value of food recovery to Vietnam’s food security, economic stability, and environmental sustainability.

Food donors and food recovery organizations should consider the laws, policies, and legal issues discussed in this Guide when donating food or distributing it to those in need. To better understand the regulation of food donation in Vietnam, donors, intermediaries, and policymakers should investigate the laws identified in this Guide and seek additional legal counsel, if necessary.





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