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# Green Certification in Construction: Key Legal Issues and Disputes

8 April 2026

## PRESENTED BY



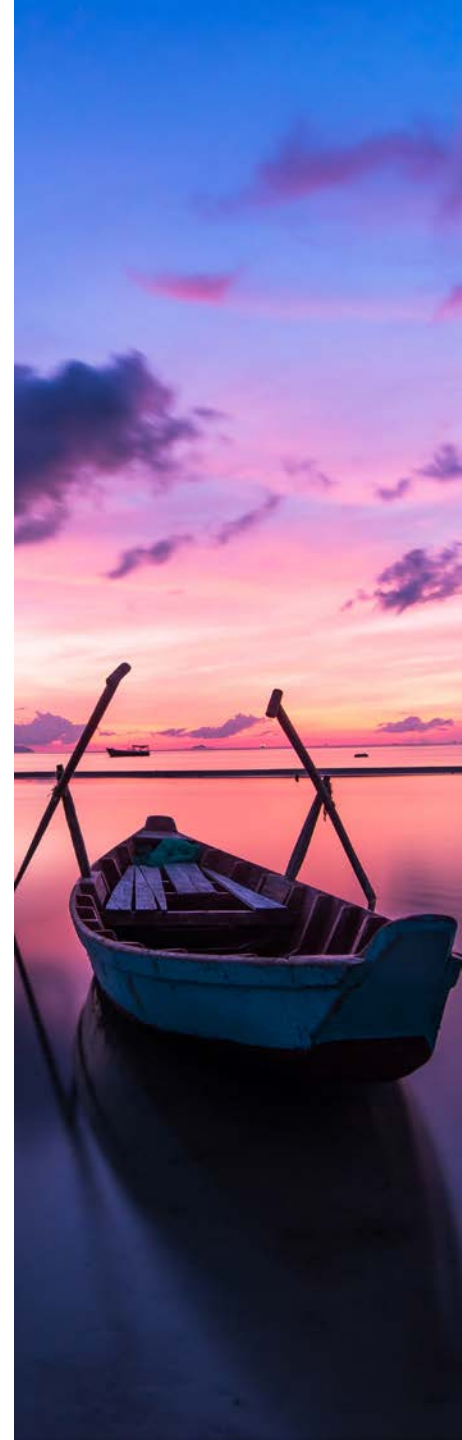
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**Minh Nguyen** has more than 15 years of working experience in dispute resolution, compliance, corporate, mergers and acquisitions, labour and intellectual property for various top-tier international law firms.

**Minh Nguyen** is also:

- Awardee of the prestigious Fulbright Scholarship
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- Member of the Legal Science Council of the Vietnam International Arbitration Centre
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## **A. VIETNAMESE CONTEXT**

1. Vietnamese legal framework
2. Green buildings in Vietnam

## **B. KEY LEGAL ISSUES WITH GREEN CERTIFICATE**

1. Defining the Certification Obligation
2. Nature of the Obligations
3. Allocation of Responsibilities
4. Standard of Care
5. Remedies for Failure to Obtain Certification



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## A. VIETNAMESE CONTEXT

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1.  
**VIETNAMESE  
LEGAL FRAMEWORK**

2.  
Green buildings  
In Vietnam

- (1) Vietnam construction law **does not mandate green buildings**, but actively encourages the development, construction, and certification of energy-efficient buildings, resource saving buildings, and green buildings.
- (2) “Green building” concept was first introduced in Decree No. 15/2021/ND-CP elaborating on certain regulations on the management of construction projects (expired on 30 December 2024) as: *“a building that, in its design, construction or operation, meets the energy- and resource-efficient criteria and standards; ensures amenities and quality of life inside the building and protects environment outside the building.”*
- (3) **Decision No. 21/2025/QD-TTg** of the Prime Minister of Vietnam dated 4 July 2025 on environmental criteria and verification of investment projects under the green taxonomy establishes **Vietnam’s first “National Green Taxonomy”**.

## A. VIETNAMESE CONTEXT

1.  
**VIETNAMESE  
LEGAL FRAMEWORK**

2.  
Green buildings  
In Vietnam

Green construction under Decision No. 21/2025/QĐ-TTg:

### Environmental approval from competent State authorities

- Environmental Impact Assessment approval, Environmental Permit, or Registration (unless exempt)

### Eligible project types

- New or renovated **housing** that meets green building objectives and promotes energy efficiency; or
- New or renovated **public works** that are environmentally friendly and energy-efficient.

### Certification and technical performance

- Certification by a licensed green building certification organization (domestic or international)
- Meeting technical requirements, including:
  - ✓ Greenhouse gas emissions reduction; and
  - ✓ Use of refrigerants with global warming potential (GWP) and ozone depletion potential (ODP) at or below the thresholds prescribed under Vietnam's regulatory management roadmap.

## A. VIETNAMESE CONTEXT



Green building owners may benefit from **Green credit** (preferential financing) and **Green bonds** (incentives relating to service pricing in the securities sector).

- Similar to other countries, green certification in construction has become increasingly prevalent in Vietnam, driven by Vietnam's COP26 commitments and by growing regulatory and commercial incentives linked to certification.

## A. VIETNAMESE CONTEXT

1.  
Vietnamese  
Legal Framework

2.  
**GREEN BUILDINGS  
IN VIETNAM**

### IFC's 2025 Report re. Overview of Vietnam green building market

About 780 certified green buildings

Nearly 18.7 million m2 gross floor area (GFA)  
certified

Concentrated in apartments (30.29%),  
followed by industrial factories (26.05%),  
warehouses (13.54%), and offices  
(12.27%)



### Common green certification system



Excellence in **Design** for **Greater Efficiencies** (**EDGE**)  
developed by the International Finance Corporation (IFC)



Leadership in Energy & Environmental **Design** (**LEED**)  
developed by the US Green Building Council



Green Mark developed by the Building and Construction  
Authority of Singapore

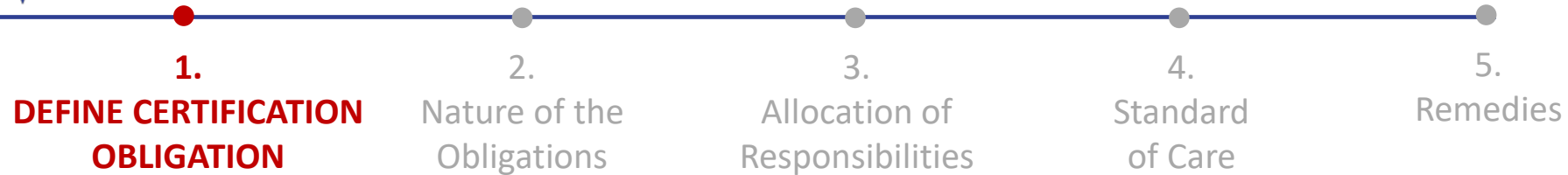


Leadership in Energy and Environmental Design - Local  
Operation Unit (**LOTUS**) developed by the Vietnam Green  
Building Council (VGBC) in 2010. LOTUS is **specifically  
designed to fit Vietnam's** climate conditions and building  
regulations



B. KEY LEGAL ISSUES WITH  
GREEN CERTIFICATION IN CONSTRUCTION

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE

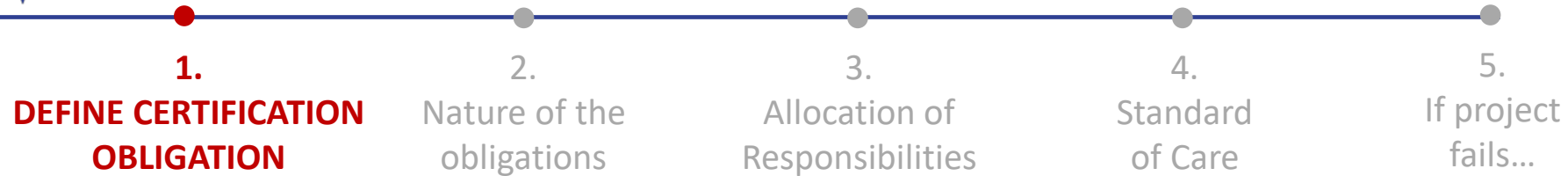


Key elements to define the certification obligation:

- (1) What is the certification system? (*e.g. LEED, EDGE, Green Mark*)
- (2) What is the certification version? (*e.g. LEED v4, LEED v5*)
- (3) What is the target level of the certification? (*e.g. LEED Gold, EDGE Advanced*)
- (4) Are there any specific benchmarks/credits that should be stated? (*e.g. 20% energy reduction*)

This can be particularly important in complex projects, given the flexibility of scoring systems and multiple pathways to achieve a certification level.

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



### CASE STUDY: BAIN V. VERTEX ARCHITECTS (ILLINOIS, US; 2010)

**Claimant:** Bain (Homeowner)

**Respondent:** Vertex Architects (Architect)

**Cause of action:** The homeowner brought a breach of contract claim alleging that the architect failed to design and deliver a “*sustainable green modern single-family home*” and failed to “*diligently pursue and obtain for the Project certification from the USGBC LEED for Homes Program*”.

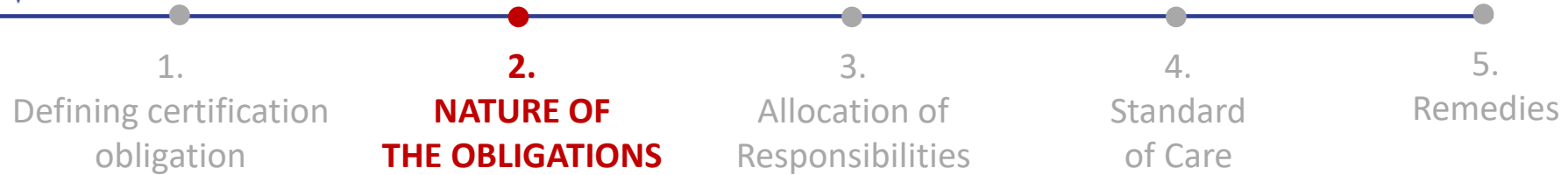
**Outcome:** The case was dismissed following the claimant’s motion to dismiss.

**Key issue:** Whether general and undefined terms such as “sustainable” or “green” are sufficient to establish a clear contractual obligation, including an obligation to obtain a specific certification?

**Observations:**

- (1) Broad and undefined terms are insufficient to determine whether certification constitutes a binding obligation or merely an aspirational goal.
- (2) Using subjective terminology exposes designers and contractors to uncertain and potentially unintended liability.
- (3) Green building obligations should be defined by reference to specific certification systems, versions, and measurable criteria.

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



**Certification depends on factors beyond control:**

- Construction quality
- Use of new or untested materials
- Assessment by third-party certifiers



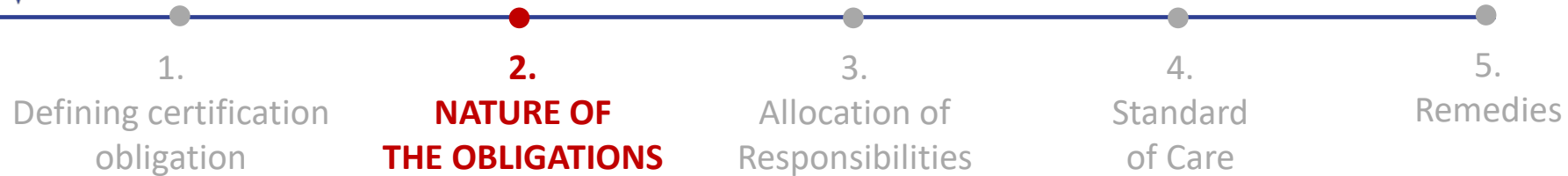
**This raises the question whether the obligation is:**

- Outcome-based; or**  
(i.e. guarantee of certification)
- Conduct-based,**  
requiring reasonable skill and care/reasonable endeavours



**The nature of the obligation must be clearly specified in the contract**

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



### CASE STUDY: SOUTHERN BUILDERS, INC. V. SHAW DEVELOPMENT, LLC (US; 2007)

**Claimant:** Shaw Development (Owner)

**Respondent:** Southern Builders (Contractor)

**Cause of action:** The owner brought claims for negligence and breach of contract arising from the contractor's alleged failure to deliver a project capable of achieving LEED Silver certification within the timeframe required to qualify for a state green building tax credit.

**Outcome:** The case was settled out of court.

**Key issue:** Whether the contractor was contractually obligated to ensure that the project would achieve LEED Silver certification, or merely to construct the project in accordance with the design and specifications of that certification?

**Observations:**

- (1) Although described as “*designed to comply with LEED Silver*,” the contract did not require the contractor to obtain such certification. Instead, it stated that the contractor was responsible for building according to the drawings and specifications of LEED Silver.  
=> The contractor would be liable only if it failed to do so—even if certification was ultimately not achieved.
- (2) In the absence of clear contractual language, the contractor's obligation was design-compliance based, rather than outcome-based.

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



Once the nature of the obligation is determined, the key issue becomes **how responsibility for achieving certification is allocated** among project participants.



**The contract should clearly define the scope of work and role of each party to ensure that the certification process is properly managed.**



AIA E204-2017

Sustainable Projects Exhibit:  
distributed responsibility  
approach



ConsensusDocs  
310-2011

Green Building Addendum:  
centralised responsibility  
approach

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



### AIA E204-2017

Sustainable Projects Exhibit: distributed responsibility approach

Released by the American Institute of Architects (AIA) in 2017, which is intended to be attached as an exhibit to an existing agreement.

- (1) The architect may take on responsibility for coordinating & submitting certification documentation, including appeals against certification decisions.
- (2) Neither architect nor contractor guarantees the certification outcome.

➤ **Certification is a shared process rather than a single-party obligation.**

### ConsensusDocs 310-2011

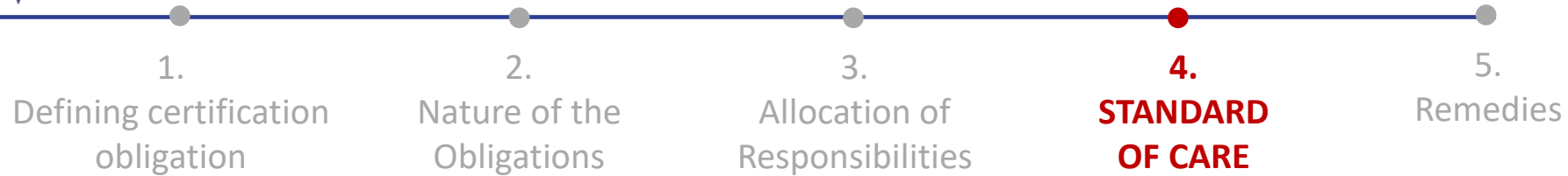
Green Building Addendum: centralised responsibility approach

It is a library of construction documents written by a coalition of owners, design & construction firms in the US. First published in 2009 and revised in 2011

- (1) A Green Building Facilitator (GBF) is a contractual person or entity that has the contractual responsibility to coordinate with the architect/engineer/contractor, compile documentation, and manage certification submissions.
- (2) The GBF is designated by the owner and/or any project participant or an independent party (other than the owner).

➤ **Responsibility is structurally centralised in the designated GBF.**

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



The complexity of green certification also raises questions as to whether a heightened standard of care applies.

Traditionally, architects are required to perform services to be consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances

In the context of green buildings, this standard becomes less clear.



**Should the benchmark be an ordinary architect or should it be a professional with specific experience in green design or certification systems? (e.g. LEED Accredited Professional)**

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



Remedies if the project fails to obtain green certificate:

- (1) Damage (consequential & liquidated damages); and/or
- (2) Specific performance

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



### 5.1 Damage

Damages may include both **consequential damages** and **liquidated damages**.

#### Consequential damages may include:

- loss of governmental incentives (e.g. tax credits);
- reduction in asset value;
- loss of operational benefits (e.g. energy or water savings);
- reputational loss (e.g. pre-marketing of a “green” project).

#### Case study: Southern Builders, Inc. v. Shaw Development, LLC (US; 2007)

The contractor failed to deliver a LEED Silver project within the timeframe required under a state tax credit programme. As a result, the owner lost more than USD 600,000 in tax incentives.

- Failure to achieve certification may result in significant consequential losses linked to regulatory or financial incentives.

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



### 5.1 Damage

#### 5.1.1 Vietnamese law

Law on Construction 2025:

Article 86.2. *Compensation for damage shall be determined on the basis of the damage actually incurred, predetermined damages corresponding to the obligations which are not fulfilled, and the extent of such breach.*

#### 5.1.2 Contract forms

##### a) AIA E204-2017

The Owner, contractor and architect waive claims against each other for consequential damages resulting from failure of the project to achieve the sustainability objective.

##### b) ConsensusDocs 310

No automatic waiver of consequential damage if there is no express agreement between the parties.

## B. KEY LEGAL ISSUES IN GREEN CERTIFICATE



### 5.2 Specific performance

Where certification is not achieved, the owner may require the contractor or consultant to take corrective measures, depending on the contract. This may include:

- Rectifying non-compliant works (*e.g. replacing materials, improving insulation, upgrading systems*)
- Providing missing documentation or resubmitting for certification (*e.g. completing LEED credit documentation, re-applying to certifier*)
- Carrying out additional works to achieve required credits (*e.g. installing energy-efficient equipment to secure additional points*)

Specific performance may be limited where certification depends on third-party assessment or factors beyond the contractor's control.

- Remedies often shift from achieving certification to compensating for the failure to achieve it.

### Key legal issues in green certification in construction:

#### (1) Unclear certification obligations

Vague terms (“green”, “sustainable”) create uncertainty as to whether obtaining the green certification is a binding commitment or not.

#### (2) Ambiguity in nature of obligations

Outcome-based (guarantee) or conduct-based (reasonable skill and care) must be clearly defined in the contract.

**(3) Allocation of responsibilities** to obtain the green certification must be clearly defined in the contract.

**(4) Uncertain standard of care:** Potential higher standard for professionals with construction sustainability expertise.

**(5) Remedies:** Damage (Consequential or liquidated damage) or Specific performance?



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