

Decree 60/CP dated 6 June 1997 by the Government

Instructions for the implementation of regulations of the Civil Code on civil relationships containing foreign elements

The Government

Pursuant to the Law on Governmental Organization on 30 September 1992;

According to the Civil Code on 28 October 1995;

Under Resolution dated 28 October 1995 by the National Assembly on the implementation of the Civil Code;

On the proposal of the Minister of Justice

Decree

Chapter I

General Provisions

Article 1. The scope of the Decree

This Decree provides instructions for the legal application to civil relationships containing foreign elements stipulated in the Civil Code of the Socialist Republic of Vietnam (hereinafter called the Vietnam Civil Code).

“Civil relationships containing foreign elements” stipulated in the Vietnam Civil Code include civil relationships in the following cases:

- With the participation of foreigners or foreign legal entities;

- With foundations to establish, change or end the relationships abroad;

- With assets related to the relationships abroad.

“Foreigners” mentioned in this Article shall be those having no Vietnamese citizenship, including citizens of foreign countries and those without Vietnamese citizenship.

“Foreign legal entities” mentioned in this Article shall be organizations with legal status as stipulated by foreign laws.

Article 2. Application of the Vietnam Civil Code

The regulations of the Vietnam Civil Code shall be applied to civil relationships containing foreign elements, except in the cases of the application of international treaties (Article 3), international practices (Article 4), or foreign laws (Article 5).

Article 3. Application of international treaties

In case the international treaties signed or participated in by the Socialist Republic of Vietnam contain regulations on legal application different from the regulations in the Vietnam Civil Code and other legal documents of Vietnam, the regulations of international treaties shall be applied.

Article 4. Application of international practices

In case the Vietnam Civil Code, other legal documents of Vietnam, and international treaties signed or participated in by the Socialist Republic of Vietnam do not stipulate, or the civil contracts contain no agreement on the laws applied to the civil relationships containing foreign elements, international practices shall be applied to choose the applicable laws. If the application of or the consequences of this application of international practices are contrary to the regulations in Article 2 to Article 11 of the Vietnam Civil Code and other fundamental principles of Vietnamese laws, the Vietnamese laws shall be applied.

Article 5. Application of foreign laws

1. Foreign laws shall be applied to the civil relationships containing foreign elements in the following cases:

a. As stipulated by the Vietnam Civil Code and other legal documents of Vietnam;

b. As stipulated in international treaties signed or participated in by the Socialist Republic of Vietnam;

c. As agreed in the contracts and if these agreements are not contrary to the regulations of the Vietnam Civil Code and other legal documents of Vietnam.

2. In case the application of or the consequences of this application of foreign laws are contrary to the regulations in Article 2 to Article 11 of the Vietnam Civil Code and other fundamental principles of Vietnamese laws, the Vietnamese laws shall be applied.

3. In case foreign laws are applied as stipulated in Item 1 of this Article and the laws of that country refer to the Vietnamese laws, the Vietnamese laws shall be applied; if the laws of that country refer to those of a third country, the third country's laws shall be applied.

Chapter II

Specific Provisions

Article 6. Foreigner's civil legal capacity

A foreigner shall have civil legal capacity in Vietnam as Vietnamese citizens, except the case in which the Vietnam Civil Code and other legal documents of Vietnam stipulate that s/he is unable to have or has not full civil rights and obligations like Vietnamese citizens.

Article 7. Foreigner's civil capacity to act

1. Foreigner's civil capacity to act shall be identified in conformity with the laws of the country where s/he bears citizenship.

Civil capacity to act of those without citizenship shall be identified according to the laws of the country where they register permanent residence. In case of no permanent residence, the Vietnamese laws shall be applied. The civil capacity to act of foreigners with two or more foreign citizenships shall be identified under the laws of the country where s/he register the citizenship and permanent residence at the moment when the civil relationship arises. In case s/he is not permanently residing in one of the countries where s/he bears the citizenship, the laws of the country where s/he has the citizenship and the closest relations in terms of property and legal records shall be applied.

2. In case the foreigner establishes and implements a civil transaction in Vietnam, his/her civil capacity to act shall be identified as stipulated in Article 19 to Article 25 of the Vietnam Civil Code.

Article 8. Foreign entity's civil legal capacity

1. The civil legal capacity of a foreign entity shall be identified under the laws of the country where the entity registers the citizenship.

2. In case a foreign entity establishes and realizes a civil transaction in Vietnam, his/her civil legal capacity shall be identified as stipulated in Article 96 of the Vietnam Civil Code.

Article 9. Property ownership

1. The establishment and termination of the ownership, and its contents, over property shall be identified under the laws of the country where the property is available, except in the following

cases:

- a. The establishment and termination of ownership, and its contents, over oceangoing vessels shall be identified under the laws of the country of which the vessel is carrying the national flag;
 - b. The ownership over airplanes shall be identified under the laws of the country where the airplanes are registered;
 - c. The ownership over personal property being transported shall be identified under the laws of the destination country, except the relevant parties have other agreements.
2. Assets shall be defined as real or personal property under the laws of the country where the assets are available.
 3. Assets of the Socialist Republic of Vietnam shall enjoy a judicial exemption. If the assets are used for business purposes, the judicial exemption shall not be applied, except there are other regulations under Vietnamese laws.

Article 10. Civil contracts

1. The forms of civil contracts shall be defined by the laws of the country where the contracts are made.

In case the civil contracts are made in a foreign country and violate the laws of this country in terms of the contract form while corresponding to the regulations in Article 400 of the Vietnam Civil Code, the contracts shall maintain validity in Vietnam in terms of the contract form.

2. The rights and obligations of all participants of civil contracts shall be defined under the laws of the country where the contracts are implemented, except the parties have other agreements. In case the place of implementation is not clearly noted in the contracts, the identification of the implementation place shall be made under Vietnamese laws.

3. Civil contracts made and fully realized in Vietnam shall conform to the regulations in Article 394 to Article 420 of the Vietnam Civil Code.

4. Civil contracts concerning real property in Vietnam or Vietnamese airplanes and sea vessels shall conform to the regulations of the Vietnam Civil Code, the Maritime Code of Vietnam, the Vietnam Law on Civil Aviation and other legal documents of Vietnam.

Article 11. Compensation for damages out of contract

1. The compensation for the damages out of contract shall be made under the laws of the country where the damaging action takes place or where the actual consequences arise from the damaging action.

In case a foreign organization or individual causes damages to the Vietnamese State, organizations and individuals, or vice versa, within the air space and territorial waters under the competence of the Socialist Republic of Vietnam, the compensation will be made under Article 609 to Article 633 of the Vietnam Civil Code.

2. The laws applied to the compensation for damages caused by airplanes/sea vessels within international airspace or open seas shall be defined under Vietnamese laws on civil aviation and maritime activities.

3. In case the damaging action takes place out of the territories of the Socialist Republic of Vietnam and both damage doer and victim are Vietnamese citizens/legal entities, the compensation shall be done under the regulations in Article 609 to Article 633 of the Vietnam Civil Code.

Article 12. Copyright

1. The Socialist Republic of Vietnam protects the copyright of foreigners and foreign legal entities over all literary, artistic and scientific works published and introduced for the first time in Vietnam or composed and expressed in some certain forms in Vietnam, except the works not protected by the State under Article 749 of the Vietnam Civil Code.

2. Foreign authors and foreign legal entities with the copyright protected under Item 1 of this Article shall have all rights as stipulated in Article 750 to Article 766 of the Vietnam Civil Code.

3. In case the international conventions on copyright protection signed or participated in by the Socialist Republic of Vietnam contain regulations different from Items 1 and 2 of this Article, those international conventions shall be applied.

Article 13. Industrial property

1. The Socialist Republic of Vietnam protects the industrial property of foreigners and foreign legal entities over the items of industrial property which have been licensed with a protection certificate by Vietnamese competent agencies.

2. The protection of the industrial property of foreigners and foreign legal entities in Vietnam shall conform to the regulations in Article 788 to Article 805 of the Vietnam Civil Code.

3. In case the international conventions on the protection of industrial property signed or participated in by the Socialist Republic of Vietnam contain regulations different from Items 1 and 2 of this Article, those international conventions shall be applied.

Article 14. Technological transfer

1. The technological transfer within Vietnam between Vietnamese individuals/legal entities and foreigners/foreign legal entities, the technological transfer from foreign countries to Vietnam and vice versa shall conform to the regulations in Article 806 to Article 825 of the Vietnam Civil Code and other legal documents of Vietnam on technological transfer.

2. In case the international conventions on technological transfer signed or participated in by the Socialist Republic of Vietnam contain regulations different from Item 1 of this Article, those international conventions shall be applied.

Chapter III

Implementation Provisions

Article 15. Implementation validity

1. This Decree shall come into effect within 15 days after the signing date.

2. The Ministers, heads of the ministry-level agencies, heads of the Governmental Offices and Chairpersons of the People's Committees of provinces and centrally-administered cities shall be responsible to implement this Decree.

For the Government
On behalf of the Prime Minister

Deputy Prime Minister

Phan Van Khai

(signed)