

**THE JUDGES' COUNCIL
OF SUPREME PEOPLE'S
COURT**

No.: 03/2012/NQ-HĐTP

THE SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom – Happiness

Hanoi, December 03rd, 2012

RESOLUTION

PROVIDING GUIDELINE FOR THE IMPLEMENTATION OF A NUMBER OF PROVISIONS IN PART ONE "GENERAL PROVISIONS" OF THE CIVIL PROCEDURE CODE THAT ARE AMENDED AND SUPPLEMENTED ACCORDING TO LAW ON AMENDMENTS AND SUPPLEMENTS TO A NUMBER OF THE CIVIL PROCEDURE CODE

THE JUDGES' COUNCIL OF SUPREME PEOPLE'S COURT

Pursuant to the Law on organization of People's Courts;

To implement conformably and consistently Part one "General Provisions" of the civil procedure code that are amended and supplemented according to the Law on amendments and supplements to a number of the Civil Procedure Code dated March 29th, 2011 (hereinafter referred to as the CPC);

After receiving unified opinions of the Chairpersons of the Supreme People's Procuracy and the Minister of Justice,

RESOLVES:

Article 1. Scope of regulation

This Resolution provides guideline for the implementation of a number of general provisions to ensure the conformable and consistent implementation of Part One "General Provisions" of the Civil Procedure Code.

Article 2. Tasks and power to resolve civil cases

1. Pursuant to the Law on Organization of People's Courts and Chapter III Part One of the CPC, tasks and power of Civil, Economic, Labor tribunals of People's Courts of provinces or central-affiliated cities in civil procedures are specified as follows:

a) Civil tribunals shall have tasks and power to settle civil, marriage and family disputes and petitions specified in Articles 25, 26, 27 and 28 of the CPC;

b) Economic tribunals shall have tasks and power to settle business and trade disputes and petitions specified in Articles 29 and 30 of the CPC; business and trade disputes where one or both parties have not conducted business registration but both have profitable purposes;

c) Labor tribunals shall have tasks and power to settle labor disputes and petitions specified in Articles 31 and 32 of the CPC;

d) In case where it is difficult to determine the tribunal whose tasks and power covers a dispute or petition though being pursuant to guidelines in points a, b and c clause 1 of this Article, the Executive judge of People's Courts of province or central-affiliated city shall make decision to assign a tribunal to settle such dispute/petition according to general procedures. If it is not until the civil case has been accepted by a tribunal is it discovered that such case falls within tasks and

power of another tribunal, the former one shall continue the settlement of the civil case according to general provisions; in such case, numbers, codes and subjects shall be written on the judgment/decision according to the guidance in Article 3 of this Resolution.

2. The Civil, Economic, Labor tribunals of the Supreme People's Court shall conduct cassation or reopening trials of the corresponding cases guided in clause 1 of this Article where effective judgment and decision of People's Courts of provinces are appealed against.

Article 3. Provisions for numbers, codes and subjects of civil judgments/decisions

Apart from writing the judgment/decision's number and year of issue, codes and subjects in judgments/decisions on the settlement of civil, marriage and family, business, trade and labor disputes and petitions shall be written as follows:

1. Regarding judgments and decisions on settlement of civil disputes

a) Codes:

- For first-instance judgments: DS-ST

Ex: No.: 20/2013/DS-ST

- For appellate judgments: DS-PT

Ex: No.: 10/2013/DS-PT

- For cassation decisions: DS-GĐT

Ex: No.: 05/2013/DS-GĐT

- For reopening decisions: DS-TT

Ex: No.: 01/2013/DS-TT

b) Subjects:

- The types of the disputes accepted by the Courts must be determined according to provisions of Article 25 of the CPC to be written in the subjects of the judgments/decisions.

Ex: The dispute accepted by the Court is a dispute between an individual and an individual about Vietnamese nationality specified in clause 1 Article 25 of the CPC, then the subject shall be written: "V/v tranh chấp giữa cá nhân với cá nhân về quốc tịch Việt Nam" (Re. dispute over the Vietnamese nationality among individuals).

- In case the corresponding provision of Article 25 of the CPC prescribes about group of disputes, the types of disputes to be settled shall be specified.

Ex: The dispute accepted by the Court is a dispute about civil contracts provided for in clause 3 Article 25 of the CPC, the type of civil dispute shall be specified; if the contract is a house lease contract, then the subject shall be written: "V/v tranh chấp về hợp đồng dân sự thuê nhà ở" (Re. dispute over house-leasing civil contract); if the contract is a passenger-transporting contract, then the subject shall be written: "V/v tranh chấp về hợp đồng dân sự vận chuyển hành khách" (Re. dispute over passenger-transporting civil contract).

2. Regarding decisions on settlement of civil matters

a) Signs:

- For first-instance decisions: QĐDS-ST

Ex: No.: 01/2013/QĐDS-ST

- For appellate decisions: QĐDS-PT

Ex: No.: 10/2013/QĐDS-PT

- For cassation decisions: QĐDS-GĐT

Ex: No.: 15/2013/QĐDS-GĐT

- For reopening decisions: QĐDS-TT

Ex: No.: 10/2013/QĐDS-TT.

b) Subjects:

The types of the petitions accepted by the Courts must be determined according to provisions of Article 26 of the CPC to be written in the subjects of the decisions.

Ex: If the petition accepted by the Court is a petition to declare a person missing specified in clause 3 Article 26 of the CPC, then the subject shall be written: "“V/v yêu cầu tuyên bố một người mất tích” (Re. petition to declare a person missing)

3. Regarding judgments/decisions on the settlement of family, business, trade, labor disputes and petitions, the writing of signs and subjects shall be carried out according to provisions for the ones of judgments and decisions on the settlement of civil disputes and petitions, where “DS” shall be replaced by the corresponding signs, including “HNGĐ”; “KDTM”; “LĐ”.

Ex:

- For first-instance judgments for settlement of business and trade disputes: No.: 09/2013/KDTM-ST.

- For first-instance for settlement of labor petitions: No.: 10/2013/QĐLĐ-ST.

Article 4. Provisions in clause 9 Article 25 and clause 6 Article 26 of the CPC

1. If the petitioners for notarization, witness, persons with related rights and interests and competent state agencies according to regulations of the Law on Notarization have disputes with each other on the declaration of notarized documents invalid may petition the Courts to declare the notarized documents invalid as provided for in clause 9 Article 25 of the CPC.

2. If the petitioners for notarization, witness, persons with related rights and interests and competent state agencies according to regulations of the Law on Notarization believe that the notarization is unconformable to law and petition the Courts to declare the notarized documents invalid, they may petition the Courts to declare the notarized documents invalid as prescribed in clause 6 Article 26 of the CPC.

Article 5. Provisions in clause 10 Article 25 and clause 7 Article 26 of the CPC

1. Regarding properties forfeited to enforce judgments being in disputes about right to ownership, the involved parties and people involved in the disputes (specified in Article 75 of the Law on Civil judgment enforcement) may initiate lawsuits over the disputes related to the forfeited properties to enforce judgments specified in clause 10 Article 25 of the CPC to petition the Courts to determine the ownership and division of common properties.

Ex 1: According to the judgment of the Court, A must pay VND 500,000,000 to B. A did not voluntarily execute the judgment and the judgment enforcement agency notifies A of the forfeiture of his/her land use right being A's property. C and D deem that the land use right is common property of A, C and D and initiate lawsuits to petition the Court to determine the possessions of C and D in the common property of A, C and D. In such case, the Court shall base itself on the provisions in clause 1 Article 74 of the Law on civil judgment enforcement and clause 10 Article 25 of the CPC to decide to accept and settle the case according to general procedures.

Ex 1: According to the judgment of the Court, A must pay VND 500,000,000 to B. A did not voluntarily enforce the judgment and the judgment enforcement agency coerces the land use right bearing A's name to serve the judgment enforcement. C deems that the land use right is his/her own property that bears A's name because on his/her behalf and initiate lawsuits to petition the Court to verify his/her ownership towards such land use right. In such case, the Court shall base itself on provisions of Article 75 of the Law on civil judgment enforcement and clause 10 Article 25 of the CPC to accept and settle such case according to general procedures.

2. Petitions for determination of the right to ownership and the right to enjoyment towards property; division of common property for the judgment enforcement according to law provisions to enforce civil judgment (clause 1 Article 74 of the Law on civil judgment enforcement) falling within the jurisdiction of the Court according to provisions clause 7 Article 26 of the CPC. To be specific:

a) There are grounds for presuming that such property is within the ownership of the judgment debtor, the ownership rates of the judgment debtor shall be determined to ensure the judgment enforcement;

b) There are grounds for presuming that such property is a common property and the judgment debtor is one of the owners, the ownership rates of the judgment debtor in the common property shall be determined to ensure the judgment enforcement;

c) There are grounds for presuming that the land use right belongs to the judgment debtor, his/her land use right shall be determined to ensure the judgment enforcement;

d) There are grounds for presuming that the land use right is a common property and the judgment debtor is one of the owners, the ownership rates of the judgment debtor in the common property shall be determined to ensure the judgment enforcement;

Ex: According to the Court's judgment, A must pay VND 500,000,000 to B but A fails to voluntarily execute the judgment, then the judgment enforcement agency notifies A of the forfeiture of land use right being A's property but A deems that such land use right is a common property of A and C. A and C do not determine their contributions in the common property nor initiate lawsuits. In such case, if B petitions for determination of the contribution of the judgment debtor in the common property, the Court shall base itself on provisions of clause 1 Article 74 of the Law on civil judgment enforcement and clause 7 Article 26 of the CPC to accept and settle such case according to general procedures.

Article 6. Provisions of Article 29 of the CPC

1. Individuals and/or organizations with business registration are individuals and/or organizations that have obtained Certificate of Business registration issued by business registration authorities according to law provisions, including:

- a) Individual, household, artel (according to the Civil Code 2005, the Law on Commerce and other legislative documents pertaining to business registration);
- b) Enterprise (according to the Law on Enterprise and legislative documents providing guidance on the implementation thereof);
- c) Cooperatives, cooperative unions (according to the Law on Cooperatives and legislative documents providing guidance on the implementation thereof);
- d) Other individuals and organizations according to law provisions for business registration.

2. Purpose of profits of individuals and/or organizations in business and trade activities are desires of such individuals/organizations to collect profits, regardless of whether or not such profits are collected from such business/trade activities.

3. Business and/or trade activities are activities for the profitable purpose, including the goods purchase, service provision, commercial investment and promotion and other activities for profitable purpose specified in clause 1 Article 3 of the Law on Commerce. Business and trade activities are not only direct activities according to business and/or trade registration but also other activities serving the promotion and increase of the efficiency of business and/or trade activities.

Ex: "A" limited liability company obtained the Certificate of Business registration in field of apparel. The operation of "A" Company is not only within the production of apparels to the market but also the purchase of raw materials for the production, construction of workshops, purchase of equipment, lease of vehicles for transporting employees or for the purchase of televisions for employees to relax after work, etc.

4. Regarding disputes specified in Article 29 of the CPC, individuals and/or organizations are not required to obtain business registration but are only required to have profitable purpose from the business and/or trade activities; if only 1 party has profitable purpose, such dispute shall be civil dispute provided for in clause 4 Article 25 of the CPC.

5. Disputes between a company and its members or among members of a company regarding the establishment, operation, dissolution, merger, amalgamation, division or organizational transformation of a company specified in clause 3 Article 29 of the CPC shall be separated as follows:

a) A dispute between a company and its members is a dispute regarding the capital holding of each member in the company (usually, such capital holding is calculated by money or by objects or the value of the right to ownership of industrial property); regarding the face value of stocks and the issued stocks (applicable to joint stock companies); regarding the right to ownership to a part of asset of the company in proportion to the contribution to the company; regarding the right to receive prohibits or obligation to bear the losses in proportion to the contribution to the company; regarding the petitions to the company for transform or settlement of loans of the company, disposal of asset and of contracts that the company has concluded when conducting the dissolution of the company; or regarding other matters related to the establishment, operation, dissolution, merger, amalgamation, division or organizational transformation of the company.

b) A dispute among members of a company is a dispute between members of a company regarding value of their contributions to the company; regarding the transfer of capital holdings

in the company between members of the company or the transfer of capital holding in the company of a member of the company to a person who is not a member of the company; regarding the transfer of bearer shares and registered shares; regarding face value of stocks, issued stocks and bonds of the joint stock company or regarding the right to ownership of the property in proportion to the shares of each member of the company; regarding the right to receive profits or the obligation to bear the losses and to settle loans of the company; regarding the disposal of property and the sharing of loans of members of the company in case the company is dissolved; or regarding other matters between members of the company related to the establishment, operation, dissolution, merger, amalgamation, division or organizational transformation of the company.

c) When implementing guidance in points a and b clause 5 of this Article, any dispute between the company and its members or among members of the company not related to the establishment, operation, resolution, merger, amalgamation or organization transformation of such company but only related to other relationship like labor or civil relationship (for example disputes regarding social insurance, employee benefits, labor contract, loan contract, property borrowing contract, etc.) shall not be a dispute regarding business and/or trade specified in clause 3 Article 29 of the CPC. On a case-by-case basis, a dispute shall be determined to be a civil or labor dispute.

Article 7. Provisions of clause 3 Article 33 of the CPC

1. Overseas involved parties include:

a) Involved parties being foreigners who do not settle, study or work in Vietnam and are present in Vietnam at the time the Courts accept the civil cases;

b) Involved parties being Vietnamese persons who settle, study or work in foreign countries and are present in or absent from Vietnam at the time the Courts accept the civil cases;

c) Involved parties being foreigners who settle, study or work in Vietnam and are absent from Vietnam at the time the Courts accept the civil cases;

d) Involved parties being Vietnamese persons who settle, study or work in Vietnam and are absent from Vietnam at the time the Courts accept the civil cases;

dd) Agencies or organizations, regardless of whether they are foreign or Vietnamese agencies/organizations, which do not have headquarters, branches or representative offices in Vietnam at the time the Courts accept the civil cases.

2. Regarding petitions for dissolution of illegal marriage, settlement of divorce and disputes about rights and obligations of spouses, parents and children, about adoption of parents or children and guardians between Vietnamese citizens residing in border area and citizens of neighbor countries, as prescribed in clause 3 Article 102 of the Law on Marriage and Family, fall within the jurisdiction of People's Courts of districts or provincial cities where the Vietnamese citizens reside.

3. Overseas properties

Overseas properties are properties determined according to regulations in the Civil Code 2005 outside the Socialist Republic of Vietnam at the time the Courts accept the civil cases.

4. Overseas representative offices of the Socialist Republic of Vietnam, foreign Courts and/or competent authorities shall be petitioned for judicial assistance.

Overseas representative offices of the Socialist Republic of Vietnam, foreign Courts and/or competent authorities shall be petitioned for judicial assistance in cases where it is necessary to conduct one or a number of civil procedure activities overseas during the settlement of civil cases that Vietnamese Courts cannot do and overseas representative offices of the Socialist Republic of Vietnam or foreign Courts and/or competent authorities shall be petitioned to carry out according to international treaties to which Vietnam is a signatory or on the principle of reciprocity.

5. Not changing the jurisdiction of courts

a) Regarding civil cases other than those specified in clause 3 Article 33 of the CPC, guided in clauses 1, 2, 3 and 4 of this Article and accepted *intra vires* by People's Courts of districts, if an issue arises during the settlement, like an involved party or a property is overseas or it is necessary that overseas representative offices of the Socialist Republic of Vietnam or foreign Courts and/or competent authorities are petitioned for judicial assistance, according to provisions of Article 412 of the CPC, the People's Court of district which has accepted the civil case shall continue the settlement of such case.

b) Regarding civil cases specified in clause 3 Article 33 of the CPC, guided in clauses 1, 2, 3 and 4 of this Article and accepted *intra vires* by People's Courts of provinces, if during the settlement of such case, there is no longer involved party or property being overseas and it is no longer necessary to petition an overseas representative office of the Socialist Republic of Vietnam or a foreign Court or competent authority for judicial assistance, according to provisions of Article 412 of the CPC, the People's Court of province which has accepted the civil case shall continue the settlement of such case.

Article 8. Provisions of Article 35 of the CPC

1. For general rules, territorial jurisdiction of Courts to settle civil lawsuits shall be determined according to provisions of point a clause 1 Article 35 of the CPC.

2. If involved parties reach an agreement in writing, they may petition the Court where the plaintiff resides or works, applicable to plaintiffs being individuals, or where the plaintiff is headquartered, applicable to plaintiffs being agencies or organizations, to settle. Such agreement must not be contrary to provisions of Articles 33 and 34 of the CPC.

Ex: In a case, plaintiff A resides in M district of N province and defendant B resides in X district of Y province. According to the rule, the Court of X district Y province where defendant B resides shall have the jurisdiction. If parties reach an agreement that the Court of where plaintiff A resides has the jurisdiction, the jurisdiction of Court level shall be ensured. If the case falls within the jurisdiction of the district-level Court, the agreement shall be approved only when involved parties have reached an agreement that the case will be settled by the Court of M district of N province. If involved parties reach an agreement that the case will be settled by the Court of N province, such agreement shall be rejected.

3. Regarding dispute over real estate specified in point c clause 1 Article 35 of the CPC, only the Court where exists such real estate shall have the jurisdiction to settle it.

4. In cases regarding marriage and family, property inheritance, etc, if there is dispute regarding real estate, the jurisdiction of Court shall be determined according to provisions on points a and b clause 1 Article 35 of the CPC.

5. The determination of places of residence/work/head-office specified in Article 35 of the CPC shall be determined at the time of submission of petitions or petitions for settlement of civil cases.

Article 9. Provisions of Article 36 of the CPC

1. When considering the petition of a plaintiff to choose a Court to settle a civil case, apart from complying with regulations in Articles 33 and 34 of the CPC on jurisdiction of Court levels, the following matters shall be paid attention to:

a) For cases which are provided for in Article 36 of the CPC that petitions for the choosing of Courts to settle civil cases must be conditional, the Court shall accept the petitions only when such conditions are satisfied.

Ex: Point a clause 1 Article 36 of the CPC states that: "If the plaintiffs do not know where the defendants reside or work or where their head-offices are located, they may ask the courts of the areas where the defendants last reside or work or where the head-offices of the defendants are last located or where the defendants' properties are located to settle cases". Thus, only in cases where the plaintiffs do not know where the defendants reside or work or where their head-offices are located may the plaintiffs petition the courts of the areas where the defendants last reside or work or where the head-offices of the defendants are last located or where the defendants' properties are located to settle cases.

b) For cases which are provided for in Article 36 of the CPC that petitions for the choosing of Courts to settle civil cases are unconditional, the Court shall accept such petitions.

Ex: Point d clause 1 Article 36 of the CPC states that: "If disputes are over compensation for non-contractual damage, the plaintiffs may ask the courts of the areas where they reside, work or are headquartered or where the damage is caused to settle them". Thus, in such case, the petitions for choosing Courts to settle the civil disputes do not require any conditions and the plaintiffs may petition the Courts where they reside, work or where their head offices are located or where exists the damages subject to settlement and the Courts shall accept such petitions.

2. In cases where the plaintiffs/petitioners may choose multiple Courts which are jurisdictional to settle civil cases (ex: The Court where the defendant last resides or works or where its head office is located or where exists the defendant's property specified in point a clause 1 Article 36 of the CPC), then when receiving the petitions, the Court shall explain them that only one of Courts provided for in the Article has the jurisdiction to settle the civil cases so that they can choose. Therefore, the petitioners must state in the petitions the undertaking to not initiate lawsuits or not initiate lawsuits in other Courts.

In case where the petitions submit the petitions to different Courts according to law provisions, the Courts that first accept such petitions shall have the jurisdiction to settle the civil cases.

Other Courts which have not accepted the petitions shall return the petitions to the involved parties according to provisions of point dd clause 1 Article 168 of the CPC to. If they have accepted the petitions, according to point dd Article 168 and point i clause 1 Article 192 of the CPC, they shall make decisions to terminate the resolution of civil cases and cross out such cases

in their acceptance books and return the petitions enclosed with the accompanying materials and evidences to the involved parties.

If the involved parties have paid the court fee advances, the Courts shall return them the court fee advances pursuant to clause 3 Article 193 of the CPC.

Article 10. Provisions of clause 1 Article 37 of the CPC

When deeming that the accepted civil cases do not within their jurisdiction but of other Courts, the Courts which have accepted such cases shall issue decisions to forward the dossiers of such civil cases to the jurisdictional Courts and cross out such cases in their acceptance books. If the involved parties have paid the court fee advances, the Courts forwarding the dossiers of the civil cases shall not return such advances to the involved parties; such advance amounts shall be handled when the jurisdictional Courts process the cases. The decisions to forward the civil cases shall bear the signatures of the Judges being assigned to take charge of the cases and the seals of the Courts in charge. Such decisions shall be immediately sent to the Procuracies of the same levels and relevant individuals, agencies and organizations. The jurisdictional Courts which have received the decisions to forward the civil cases and the dossiers of such cases shall recorded them in their acceptance books and continue the proceeding of such cases according to general provisions.

Article 11. Decisions of the Courts in specific cases

1. In case where there are disputes and petitions are submitted to the Courts for settlement, if when the Courts have accepted the cases and during the preparation for first-instance trials, involved parties reach agreements on the settlement of the whole cases, the Courts shall write up minutes on such agreements and make decisions to recognize the agreements of involved parties according to provisions of Article 187 of the CPC.

2. If involved parties petition for recognition of voluntary divorce, child custody and property division upon divorces; petition for recognition of agreements on the change of post-divorce child custodian as prescribed in clauses 2 and 3 Article 28 of the CPC; however, when the Courts have accepted the matters and during the settlement of such matters, parties apply for change in the agreements, the settlement shall be proceeded as follows:

a) If involved parties would like to replace the whole or a part of the agreement with a new agreement, the Court shall continue the settlement of the civil matters according to general procedures;

b) If one or both parties would like to change the whole or a part of the agreement but fail to reach another agreement on the matter that has been priorly agreed and are drawn into dispute, the application for recognition shall be considered to be withdrawn. The Court shall base itself on Article 311 and point c clause 1 Article 192 of the CPC to make a decision to terminate the settlement of the civil matter. In such case, the Court shall explain the involved parties that they must initiate civil lawsuits according to general procedures if they would like the Court to settle the matter.

Article 12. Provisions of Article 43 of the CPC

“Court clerks” specified in Article 43 of the CPC are proceeding officers including public employees who are appointed to work as “Court clerks” and who are appointed to work as “Legal experts”, “Ombudspersons” who are assigned by the Executive Judges of the Courts to proceed civil cases and exercise tasks and powers specified in Article 43 of the CPC.

Article 13. Provisions of Article 46 of the CPC

1. According to regulations in clause 1 Article 46 of the CPC, the proceeding officers must refuse to process the procedures or must be replaced, in case they are relatives of the involved parties (including plaintiffs, defendants and persons with relevant interests and duties) in the civil lawsuits.
2. Relatives of involved parties are persons who have the following relationships with the involved parties:
 - a) Being husbands, wives, natural fathers, natural mothers, adoptive fathers, adoptive mothers, natural children, adoptive children of the involved parties;
 - b) Being paternal grandfathers, paternal grandmothers, maternal grandfathers, maternal grandmothers, full brothers or full sisters of the involved parties;
 - c) Being paternal uncles, maternal uncles, paternal aunts, maternal aunts of the involved parties;
 - d) Being grandchildren, nephews or nieces of the involved parties.
3. Having good grounds presuming that they are not impartial while on duty means excepting for cases specified in clauses 1 and 2 Article 46 of the CPC, in other cases (such as romantic relationship, relationship between parents of wife and parents of husband, work relationship, economic relationship, etc.), there are good grounds presuming that the Judges, People's Jurors, Procurators or the Court Clerks are not impartial while on duty. Ex: The People's Juror is the plaintiff's twinning brother; the Judge is the son in law of the defendant; the person with relevant interests and duties is the Head of the office where the wife of the Judge works, etc. and there are good grounds presuming that in actual life, they have a close relationship with each other or have an economic relationship, etc.

It is considered that there are good grounds to believe that they may not be impartial while on duty if within the same civil lawsuit trial, the Procurator, the Judge, the People's Juror and the Court Clerk are mutual relatives, or if the Judge, the People's Juror or the Procurator who is assigned to adjudicate the appellate trial for a civil lawsuit having their relatives being the Judge, the People's Juror or the Procurator have conducted the first-instance trial, appellate trial of that lawsuit.

Article 14. Provisions in clauses 2 and 3 Article 47 of the CPC

1. As prescribed in clause 2 Article 47 of the CPC, the Judge and the People's Juror must refuse to process the procedures or must be replaced if they are members of the same panel and are relatives. However, when there are two persons in the Trial Panel are relatives, only one of them shall be replaced or compelled to refuse. The determination of persons to be replaced shall be decided by the Executive Judge of the Court, applicable to the replacement before the opening of the trial, or by the Trial Panel, applicable to the replacement during the trial. The determination of whether the Judge and the People's Juror in the same Trial Panel are mutual relatives is performed according to the guidance in clause 2 Article 13 of this Resolution.
2. As prescribed in clause 3 Article 47 of the CPC, the Judge and the People's Jurors must refuse to process the procedures or must be replaced if they "have participated in the first-instance trial or appellate trial of the same case". A person having participated in the first-instance trial or appellate trial of the same case means the person who has participated in settling the case and has

issued the first-instance trial judgment or appellate trial judgment or decision on termination of the lawsuit settlement.

Article 15. Provisions of clause 2 Article 51 of the CPC

1. At court sessions, the persons who petition replacement of proceeding officers must clearly state the reasons for and grounds of their petitions.

The Trial Panel shall hear the replaced persons presenting their opinions on the petitions for replacement of proceeding officers.

The petitions for replacement of people conducting legal proceedings and the statements of the petitioners or of the people petitioned to be replaced must be fully recorded in the minutes of the court session. The Trial Panel shall discuss them at the deliberation room and base itself on the provisions of Articles 46, 47, 48 and 49 of the CPC and the guidance in Articles 13 and 14 of this Resolution to decide under the majority rule whether to replace the proceeding officers.

In case where the proceeding officers are decided to be replaced, the decision shall clearly state the postponement of the court session and petition the competent persons to assign another person for the replacement within three days from the day on which the decision and the duration of court session postponement are received.

2. The decision on replacement or non-replacement of the proceeding officers must be publicly announced at the court session by the Trial Panel. The decision on replacement of the proceeding officers must be immediately sent to competent persons specified in clause 2 Article 51 of the CPC.

Article 16. Provisions of clause 3 Article 57 of the CPC

As prescribed in clause 3 Article 57 of the CPC: “The involved parties being persons aged full 18 years or older shall have full civil procedure act capacity, except for persons lacking legal capacity, persons with limited capacity of exercise or except otherwise provided for by law”. Thus, apart from excepting persons with lack of legal capacity and persons with limited capacity of exercise, if in case of otherwise provided for by law, persons who are not full 18 years may have full civil procedure act capacity and vice versa, persons who are full years may not have full civil procedure act capacity. Hence, to determine exactly the civil procedure act capacity of a specific person, apart from the provisions of the CPC, the Court shall consider whether there is a legislative document otherwise provides for his/her civil procedure act capacity.

Ex 1: For case where a person is aged full 18 years but has full civil procedure act capacity. As prescribed in Article 9 of the Law on marriage and family, a female aged 18 years or older may get married and as guided in point a section 1 of Resolution No. 02/2000/NQ-HĐTP dated 23-12-2000 by the Judge's Council of the Supreme People's Court, a female turning 18 years old who gets married is not contrary to law provisions; thus, she shall be entitled to participate to civil procedures for a marriage and family case by herself.

Ex 2: For case where a person is aged full 18 years but does not have full civil procedure act capacity. As prescribed in Article 41 of the Law on Marriage and Family, a parent may be forbidden from caring or educating his/her children, managing own-property of his/her children or being legal representative of his/her children under a decision issued by the Court; thus, within the duration being forbidden by the Court from being the legal representative of his/her children, the parent must not participate in civil procedures as the legal representative of his/her children.

Article 17. Provisions of point dd clause 2 Article 58 of the CPC

1. Involved parties shall be allowed to take notes, make photocopies of documents and/or evidences included in the case files before the Courts open the court trials for the cases. When being petitioned to take notes or make photocopies of documents and/or evidences, involved parties shall file applications to the competent Courts. If the involved parties have directly come to Courts to present their application for taking notes and making photocopies of documents and evidences, they shall send written applications to the Courts as well. If the involved parties are illiterate, the Court shall record to minutes clearly stating their petitions. Such minutes shall be read out to the petitioners then shall bear signatures or fingerprints of the petitioners.

Applications or written petitions must specify names of documents and evidences to be taken notes or made photocopies.

2. On the basis of petitions of the involved parties, the Courts shall enable them to take notes and make photocopies of documents and evidences that they have petitioned. However, according to regulations on the storage of case files, regarding responsibility of officers and public employees of proceeding authorities in the storage of case files, the Court shall petition involved parties to exercise the right to take notes and make photocopies of documents and evidences included in case files as follows:

a) The Courts shall provided involved parties with documents and evidences to be taken notes and to be made photocopies at their petitions so that they can take notes and make photocopies using their cameras or other technical means. Such documents and evidences must be related to the case files and must not be relevant to the State secrets, professional secrets, business secrets or private secrets. If the Courts refuse to provide documents at the petitions of the involved parties, explanation must be made.

b) In case where the involved parties do not have cameras or other technical means to take notes or make photocopies by themselves and petition the Courts to do it for them, depending on specific conditions and human resources of the Courts, involved parties must pay the photocopy fees to the Courts according to general provisions, if the Courts agree to help them to make photocopies. The photocopies may be made immediately or within a reasonable duration designated by the Courts.

c) Documents and evidences must be taken notes or made photocopies at the head offices of the Courts under the supervision of Courts' officers according to law on the protection of the State secrets, professional secrets, business secrets and private secrets.

Article 18. Provisions of Article 63 of the CPC

1. On a case-by-case basis, any person who is petitioned by an involved party to be defense counsel of his/her legitimate rights and interests must present to the Court the following papers and documents:

a) Regarding Lawyers, a letter of introduction of the Law office which he/she is a member of or which he/she has signed a contract with which appoints him/her to participate in procedures at Court shall be presented and enclosed with his/her Lawyer's card;

b) Regarding Legal aid providers or persons participating in the provision of legal aid, the letter of introduction of the organization providing legal aid appointing him/her to participate

in the procedure must be presented and enclosed with his/her Legal-aid provider's card or his/her card of freelance legal-aid provider.

c) Regarding persons other than those specified in point a and b of this Clause, documents containing the petition of the involved party for the protection of his/her legitimate lawful rights and interests; documents of the People's Committee of commune, ward or town where such involved party resides or of the agency or organization where he/she works certifying that he/she has no previous conviction, is not currently charged with a criminal act, is other than those liable to an administrative handling measure and is not a cadre or public employee in a Court, Procuracy or Police Department and one of identity papers (like ID card, passport, family register, etc) shall be presented.

2. Within three working days from the day on which satisfactory papers and documents are received, the assigned Judge shall consider settling the case. If conditions are fully satisfied, such person shall be issued with the certificate of defense counsel of legitimate rights and interests of the involved party so that he/she can participate in the procedures. If conditions are not fully satisfied, written notification shall be sent to the involved party and the person applying for being the defense counsel of legitimate rights and interests of the involved party containing the explanation.

3. During the settlement of a case, if a defense counsel of rights and interests of an involved party performs any acts specified in Article 385 of the CPC, the Judge assigned to settle the case shall file a record of the violation of such person. The record must bear the signature of the person who makes it, of the violator and of the witness. If the violator refuses to append signature to the record, the Judge shall clearly state on the record such refusal. In case where it is deemed that that such violator continues participating in the procedures as the defense counsel of legitimate rights and interests of the involved party will make the settlement of the case partial, the Judge shall not allowed such person to continue participating in the procedures as such role and send written notification to him/her and the involved party.

4. If it is not until the Court is opened does the involved party petition a person to be his/her defense counsel of rights and interests, the Trial Panel shall approve such petition if such person satisfies conditions guided in clause 1 of this Article and such approval does not obstruct the settlement of the case by the Trial Panel.

The Trial Panel shall not approve the petition of the involved party to postpone the court session to petition a person to be his/her defense counsel of rights and interests.

Article 19. Provisions of clause 2 Article 64 of the CPC

Defense counsels of legitimate rights and interests of involved parties may take notes and make photocopies of necessary documents in the case files to defend legitimate rights and interests of the involved parties according to guidance in Article 17 of this Resolution.

Article 20. Provisions in clauses 3, 8 and 9 Article 66 of the CPC

1. Regarding clause 3 Article 66 of the CPC

a) Being "related to the State secret" means being related to matters (information, news, contents, etc.) in legislative documents of competent agencies which are classified by the law to be "Tuyệt mật" (1st-degree top secret), "Tối mật" (2nd-degree top secret), or "Mật" (Confidential).

b) Being “related to professional secrets, business secrets, private secrets” means being related to professional secrets, business secrets or private secrets of the witness which are protected by the legislation.

c) Regarding “adversely affect or harm the involved parties being close relatives of the witness”.

c1) The determination fo relatives of a witness shall be conducted according to the guidance in clause 2 Article 13 of this Resolution;

c2) “Adversely affect the involved parties” means cases where it may asversely affect the happiness, honor, dignity or prestige or other of the life, work or business of the involved parties who are relatives of the witness if he/she declares what he/she knows;

d) If the witness refuse to make declaration due to reasons guided in points a, b and c clause 1 of this Article, the Judge shall explain them that if his/her refusal to make declaration is ungrounded, he/she must take responsibility according to law.

2. Regarding clause 8 Article 66 of the CPC

a) The trial panel may issue decisions to escort a witness to the court session when the following conditions are fully satisfied:

a1) The witness has been duly summoned;

a2) The witness was not present at the court session without plausible reasons;

a3) The absence of the witness from the court session obstructs the settlement of the case;

a4) The witness may be escorted to the court session before the Trial Panel enter the deliberation room for deliberation.

b) The decision to escort the witness shall be immediately sent to Security Police and legal aid forces of People’s Police forces which are competent to be exercised according to regulations in the Circular No. 15/2003/TT-BCA (V19) dated 10-9-2003 by the Ministry of Public Security guiding legal aid activities of Security Police forces and legal aid of People’s Police forces.

3. Regarding clause 9 Article 66 of the CPC

During the prepartion for the trial and at the court session, the Judge or the Trial Panel shall petition the witness to undetake before the Court to exercise his/her rights and obligations, unless the witness is a minor person. Such undertaking shall include:

a) The undertaking that he/she has been clearly explained by the Court the rights and obligations of a witness;

b) The undertaking that he/she makes honest declaration at the Court;

c) The undertaking that he/she take fully legal responsibility for his/her declaration.

During the preparation for the trial, the undertaking of the witness shall be recorded in the witness-testimony taking minute. At the court session, the undertaking of the witness shall be recorded in the minute of the court session.

Article 21. Provisions of Article 73 of the CPC

As prescribed in clause 2 Article 73 of the CPC, agencies or organizations initiating lawsuits to protect lawful rights and interests of other people shall be also legal

representatives in civil procedures of the protected people. In such cases, the agencies or organizations initiating lawsuits shall participate in the procedures through their legal representatives of proxy representatives.

Article 22. Provisions of Article 75 of the CPC

1. As prescribed in point b clause 1 Article 75 of the CPC, a person who is acting as a legal representative in civil procedures for a involved party must not be a legal representative of another person in the same case whose legitimate rights and interests are contrary to those of the represented person. Thus, in a case, a person shall be the legal representative for the involved party he/she is doing.

Ex: B is being the legal representative for the wife who lacks of legal capacity must not be the legal representative for his/her full brother/sister who is a minor in the same case if lawful rights and interests of the wife and his/her brother/sister are contrary to each other. In such case, B shall be only the legal representative for the wife in the civil procedures.

2. As prescribed in clause 3 Article 75 of the CPC, a cadre or a public employee of a Court, Procuracy or Police Department must not act as a legal representative in civil procedures in any of the following cases:

a) He/she is a legal representative of his/her office or a representative authorized by his/her office;

b) He/she is a legal representative of a party (which is not his/her office) in a case.

Article 23. Provisions for the prescriptive periods of lawsuit provided for in clause 3 Article 159 of the CPC

1. Regarding civil disputes for which legislative documents provide regulations on prescriptive periods for initiating lawsuit, such regulations shall be applicable.

Ex 1: For disputes over insurance contracts, as prescribed in Article 30 of the Law on Insurance Business, prescriptive periods of lawsuit against a insurance contract shall be 3 years from the time the dispute arises;

Ex 2: For labor disputes involving individuals, as prescribed in clause 2 Article 202 of the Labor Code, prescriptive periods for initiating lawsuits over labor disputes involving individuals shall be 01 year from the date of determination of the acts which are believed to have infringed their legitimate rights and interests by each party.

Ex 3: For disputes over the division of inheritance, verification of the inheritor's lawful right to inheritance of a person or refusal of the inheritor's lawful right to inheritance of another person, as prescribed in Article 645 of the Civil Code 2005, the prescriptive period of lawsuit shall be 10 years from the time of commencing inheritance.

2. Prescriptive periods shall not apply to the following disputes:

a) Disputes over property ownership mean disputes to find out who have the right to possess, use and dispose such property;

Ex: Disputes to find out the persons having housing ownership; any lawsuit initiated shall be accepted by the Court; the approval or disapproval shall be based on law.

b) Disputes over claim back of properties under others' management or in others' possession mean disputes over properties under the ownership and legal use of a person but under the management and possession of another person;

Ex: The house is within the ownership of A but is under the management of B; A has documents to prove that the house is within his/her ownership and initiates a lawsuit for claiming his/her house back, then the Court shall accept the case; the approval or disapproval shall be based on other law provisions.

c) Disputes over the land use right according to legislation on land are disputes to find out the person having the right to use such land.

3. Regarding civil disputes arising from civil transaction (contracts for loan of property, contracts for bailment/lease of property, contracts for property package lease, processing contracts, transport contracts, contracts of transferring land use right, contracts of leasing land use right, contracts of sub-lease of land use right):

a) For disputes arising from civil transaction, the prescriptive periods specified in corresponding legislative documents shall be applicable.

Ex: Disputes over house leasing contracts, prescriptive periods applicable to contracts for lease of property shall be determined according to regulations in Article 427 of the Civil Code 2005 which is 02 year.

b) For disputes over the property ownership, over the claiming back of property or claiming back of land use right under the other's management or possession through civil transaction, then the prescriptive periods for initiating lawsuits shall not be applicable.

Ex 1: On 01-01-2008, A lended out VND 500,000,000 to B for 1-year period. On 01/01/2009, B failed to pay back the principal as well as the interest. 03/4/2011, A initiated a lawsuit petitioning the Court to force B to payback the principal and the interest. The Court shall not settle the claims for payment of interest because the prescriptive period of lawsuit has expired. The prescriptive period shall not apply to the principal and the Court shall accept the case according to general procedures.

Ex 2: In case where the property lessor is involved in the dispute over the property leasing contract, the prescriptive period for initiating a lawsuit over the property leasing contract shall be determined according to provisions of Article 427 of the Civil Code 2005. Regarding the dispute over the claiming back of leased property which is under the management/possession of another person, pursuant to the guidance in point a clause 3 Article 159 of the CPC and point b clause 3 of this Article, no prescriptive period shall be applicable.

Ex 3: For disputes over the intellectual property rights in which there are disputes to find out the ownership towards such intellectual property rights, no prescriptive period shall be applicable. Regarding disputes over the transaction of intellectual property rights, the corresponding prescriptive periods shall be applied.

4. Regarding civil disputes where no legislative document provides for the prescriptive period and the disputes do not fall in cases specified in point a clause 3 Article 159 of the CPC and guided in clause 2 and point b clause 3 of this Article, the prescriptive period of civil lawsuits shall be 02 years from the day on which the individuals/agencies/organizations know that their lawful rights and interests are infringed upon.

Ex: Article 11 of the Law on Railway provides for that: “The prescriptive periods for lawsuit to petition settlement of disputes over contracts in railway business activities shall comply with the provisions of legislation on civil procedures and legislation on commercial arbitration”.

5. The prescriptive periods shall be calculated from the date the legitimate rights and interests of individuals, agencies or organizations, public interests or the State's interests are infringed upon and shall be considered follows:

a) Regarding civil obligations which parties have reached agreements on or when the law has provided for time limit for such obligations, if the obliged parties fail to fulfill their obligations within the time limit, the expiry of the fulfillment of the obligations shall be considered the date of infringement;

b) Regarding civil obligations which parties have not reached agreements on or when the law has not provided for time limit for such obligations but as prescribed in law, parties may fulfill their obligations or petition for fulfillment of obligations anytime as well as the time of fulfillment shall be priorly notified to other parties within a suitable time; past such time limit, if the obliged parties fail to fulfill the obligations, the notified expire date shall be considered the date of infringement;

c) Past the time limit for the fulfillment of a civil obligation, if parties have reached an agreement on the extension of time for the fulfillment of such obligation, the determination of date of infringement of lawful rights and interests shall be based on the day on which the agreement expires and shall be conducted according to provisions in points a and b Clause 5 of this Article;

d) During the execution of a contract, if there is a violation against the obligations specified in the contract, the date of violation shall be considered the date of infringement, unless otherwise agreed by the parties. If one party unilaterally suspend the execution of the contract, the date of unilateral suspension shall be considered the date of infringement.

dd) For cases of petitioning compensation for damage by the infringement of property, health, life, etc., the day on which the property, health, life, etc. is infringed upon shall be considered the date of infringement.

e) In a legal relationship or in a civil transaction, if the infringement occurs at different time, the prescriptive periods of lawsuit shall be calculated from the time the last infringement occurs.

g) In cases guided in points a, b, c, d, dd and e clause 5 of this Article, if otherwise agreed by the parties on the starting of the prescriptive periods of lawsuit, such periods shall be determined according to such agreement.

6. As prescribed in Article 160 of the CPC, provisions of the Civil Code 2005 regarding the prescriptive periods shall be applicable to civil procedures; thus, the non-application of prescriptive periods, time periods excluded from prescriptive periods, the re-commencement of prescriptive periods for initiating lawsuits, etc. shall comply with provisions of the Civil Code 2005.

Article 24. Provisions for the prescriptive periods of petition provided for in clause 4 Article 159 of the CPC

1. Regarding petitions for settlement of civil matters for which legislative documents provide regulations on prescriptive periods of petition, such regulations shall be applicable.

Ex 1: For petitions for repeal of the arbitral award, the time limit for making petition shall be 30 days from the day on which the arbitral award is received as prescribed in Article 69 of the Law on commercial arbitration.

Ex 2: For petitions for non-recognition of foreign Courts' civil judgments/decisions which are not petitioned to be enforced in Vietnam, the time limit for making petitions shall be 30 days from the day on which the foreign Courts' civil judgments/decisions which are not petitioned to be enforced in Vietnam specified in Article 360 of the CPC.

2. For petitions for settlement of civil matters which no legislative document provides for prescriptive periods, the prescriptive periods of petition to Courts for settlement of a civil matter shall be 01 year from the day on which the right to petition is exercised, except for case specified in clause 4 Article 159 of the CPC and guided in clause 3 of this Article.

Ex: For petitions for declaration of notarized documents to be invalid specified in clause 6 Article 26 of the CPC and Article 45 of the Law on Notarization, the prescriptive periods of petition to Courts for declaration of notarized documents to be invalid shall be 01 year from the day on which the right to petition is exercised.

3. For petitions for the settlement of the following civil matters related to the civil rights regarding personal records of individuals, the prescriptive periods shall not be applicable:

a) Petitions for declaring a person lacking legal capacity or having limited civil act capacity; petitions for repealing decisions on declaration of a person lacking legal capacity or having limited civil act capacity specified in Article 319 and 322 of the CPC;

b) Petitions for declaring a person missing; petitions for repealing decisions on declaration of a person missing specified in Article 330 and Article 333 of the CPC;

c) Petitions for declaring a person dead; petitions for repealing decisions on declaration of a person dead specified in Article 335 and Article 338 of the CPC;

d) Petitions for limitation of a number of rights of parents towards underage children as prescribed in Article 41 of the Law on marriage and family;

dd) Other cases provided for by law.

4. Commencement of the prescriptive periods of petition

The prescriptive periods of petition shall be calculated from the day on which the right to petition is exercised.

Ex: As provided for in Article 45 of the Law on Notarization, the Notaries, the notarization petitioners, the witnesses, persons with relevant rights and interests and competent agencies may petition the Courts to declare a notarized document to be invalid when there are grounds for presuming that the notarization is contrary to law. In such cases, the prescriptive periods of petition shall be calculated from the day on which the right to petition is exercised. The day on which the right to petition is exercised is the day on which the notarization is known to be contrary to law.

Article 25. Procedural forms

The following procedural forms are enclosed with this Resolution:

1. First-instance civil judgment (Form No. 01);

2. The Certificate of defense counsels of legitimate rights and interests of involved parties (Form No. 02).

Article 26. Effect

1. This Resolution was passed on 03-12-2012 by the Judge's Council of the Supreme People's Court and takes effect from 01-7-2013.

Resolution No. 01/2005/NQ-HĐTP dated 31-3-2005 by the Judge's Council of the Supreme People's Court and documents guiding matters that are also provided for in this Resolution which are promulgated before the effective date of this Resolution shall be annulled from 01-7-2013.

2. Civil, marriage and family, economic and labor cases which have been accepted by the Courts but have not been brought in to first-instance trials, appellate trials or cassation trials or reopening trials shall be settled according to guidance provided for in this Resolution.

Guidance in this Resolution shall not apply to appeal according to cassation or reopening procedures against Courts' judgments and decisions that have taken legal effect before the effective date of the Resolution, except otherwise grounds of appeal.

**PP. THE JUDGE'S COUNCIL
THE EXECUTIVE JUDGE**

Truong Hoa Binh