

THE GOVERNMENT

No: 138/2006/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

Hanoi, November 15, 2006

DECREE

**DETAILING THE IMPLEMENTATION OF THE CIVIL CODE'S PROVISIONS ON CIVIL
RELATIONS INVOLVING FOREIGN ELEMENTS**

THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on Organization of the Government;
Pursuant to the June 14, 2005 Civil Code;
Pursuant to the National Assembly's Resolution No. 45/2005/QH11 of June 14, 2005, on the
implementation of the Civil Code;
At the proposal of the Minister of Justice,*

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Governing scope

This Decree details the implementation of the Civil Code's provisions on the application of the laws of Vietnam and foreign countries, treaties and international practice to civil relations involving foreign elements.

Article 2.- Subjects of application

This Decree applies to Vietnamese agencies, organizations and individuals; foreign agencies, organizations and individuals engaged in civil relations involving foreign elements.

Article 3.- Interpretation of terms

In this Decree, the terms below are construed as follows:

1. "Civil relations involving foreign elements" means:

a/ Civil, marriage and family, business, commercial and labor relations in which at least one party is a foreign agency, organization or individual or overseas Vietnamese;

b/ Civil, marriage and family, business, commercial and labors relations of which the parties are Vietnamese citizens or organizations but the bases for establishment, alteration or termination comply with foreign laws or arise overseas or assets related to which are located overseas

2. "Foreigners" means those who do not have Vietnamese nationality, including foreign nationals and stateless persons.

3. "Overseas Vietnamese" means Vietnamese nationals who are residing and working permanently in foreign countries.

4. "Foreign agencies and organizations" means agencies and organizations other than Vietnamese agencies and organizations, which are set up under foreign laws, including international agencies and organizations set up under international law.
5. "Foreign legal persons" means legal persons set up under foreign laws.
6. "Entry into a civil contract in absentia" means the entry into a civil contract through electronic means or other means without the presence of contractual parties at the same place to sign the contract.

Article 4.- Application of the civil law of the Socialist Republic of Vietnam, treaties, foreign laws and international practice

1. The application of the civil law of the Socialist Republic of Vietnam, treaties, foreign laws and international practice shall comply with Article 759 of the Civil Code.
2. In case of disparities between the provisions of Part VII of the Civil Code and those of a specialized law regarding the same contents, the provisions of that specialized law shall be applied.
3. When the laws of a foreign country with different legal systems are selected or invoked for application, the involved parties may request the application of the legal system to which they have the closest relations regarding citizens' rights and duties.

Article 5.- Involved parties' burden of proof for law application requests

In case of application of laws to stateless persons or foreigners with two or more foreign nationalities under Article 760 of the Civil Code or application of laws of foreign countries with different legal systems under Clause 3, Article 4 of this Decree, the involved parties are obliged to prove to Vietnamese competent agencies their closest relations regarding citizens' rights and duties to the legal system requested for application. When the involved parties fail to prove their closest relations regarding citizens' rights and duties to the legal system requested for application, Vietnamese laws shall be applied.

Chapter II

SPECIFIC PROVISIONS

Article 6.- Civil legal capacity of foreigners

1. The application of a law to determine the civil legal capacity of a foreigner shall comply with Article 761 of the Civil Code.

The civil legal capacity of a foreigner residing in Vietnam is determined according to the provisions of Article 14 thru Article 16 of the Civil Code.

2. The application of a law to determine the civil legal capacity of a stateless person or a foreigner with two or more nationalities shall comply with Article 760 of the Civil Code, Article 5 and Clause 1, Article 6, of this Decree.

Article 7.- Civil act capacity of foreigners

1. The application of a law to determine the civil act capacity of a foreigner shall comply with Article 762 of the Civil Code.

When a foreigner establishes or enters into a civil transaction in Vietnam, his/her civil act capacity is determined according to the provisions of Article 17 thru Article 23 of the Civil Code.

2. The application of a law to determine the civil act capacity of a stateless person or a foreigner with two or more nationalities shall comply with Article 760 of the Civil Code, Article 5 and Clause 1, Article 7, of this Decree.

Article 8.- Determination of persons as having no, having lost, or having been restricted in, civil act capacity

1. The application of a law to determine a person as having no, having lost, or having been restricted in, civil act capacity shall comply with Article 763 of the Civil Code.

The determination of a foreigner residing in Vietnam as having no, having lost, or having been restricted in, civil act capacity shall comply with the provisions of Article 21 thru Article 23 of the Civil Code.

2. The application of a law to determine a stateless person or a foreigner with two or more nationalities as having no, having lost, or having been restricted in, civil act capacity shall comply with Article 760 of the Civil Code, Article 5 and Clause 1, Article 8, of this Decree.

Article 9.- Determination of persons as missing or dead

1. The application of a law to determine a person as missing or dead shall comply with Article 764 of the Civil Code.

The determination of a foreigner residing in Vietnam as missing or dead shall comply with provisions of Article 78 thru Article 83 of the Civil Code.

2. The application of a law to determine a stateless person or a person with two or more nationalities as missing or dead shall comply with Article 760 of the Civil Code, Article 5 and Clause 1, Article 9, of this Decree.

Article 10.- Civil legal capacity of foreign legal persons

1. The application of a law to determine the civil legal capacity of a foreign legal person shall comply with Article 765 of the Civil Code.

2. When a foreign legal person establishes or performs civil transactions in Vietnam, the civil legal capacity of that foreign legal person is determined in accordance with Article 86 of the Civil Code.

Article 11.- Property ownership rights

1. The application of the law on property ownership rights shall comply with Article 766 of the Civil Code.

2. When the establishment, exercise, alteration and termination of property ownership rights or the contents of ownership rights are allowed to be regulated by the law of the Socialist Republic of Vietnam, the provisions of Part II of the Civil Code and relevant legal documents shall be applied thereto.

Article 12.- At-law inheritance involving foreign elements

1. The application of the law on at-law inheritance shall comply with Article 767 of the Civil Code.
2. The determination of whether an estate is immovable or movable shall comply with the law of the country where exists that estate.
3. When the estate leavers are stateless persons or persons with two or more nationalities, the determination of the applicable law on at-law inheritance shall comply with Article 760 of the Civil Code, Article 5 and Clauses 1 and 2, Article 12, of this Decree.

Article 13.- Testamentary inheritance

1. The capacity to make, adjust, supplement, change, replace or cancel testaments shall be determined in accordance with the law of the country of which the testator is a citizen. When the testator is a stateless person or a person with two or more nationalities, the application of the law on testamentary inheritance shall comply with Article 760 of the Civil Code and this Decree.
2. The form of a testament must comply with the law of the country where the testament is made. Testaments of Vietnamese people which are made in foreign countries will be considered lawful in Vietnam, if they comply with Vietnam's law on the forms of testaments.

Article 14.- Places and time for entry into a contract in absentia

1. The application of the law on the place and time for entry into a contract in absentia shall comply with Article 771 of the Civil Code.
2. The place and time for entry into a contract via electronic means to which the offering party is a Vietnamese agency, organization or individual are determined in accordance with the Law on E-Transactions and relevant legal documents of Vietnam.

Article 15.- Civil contracts

1. The application of the law on the contents of civil contracts shall comply with Article 769 of the Civil Code.
2. The application of the law on the forms of civil contracts shall comply with Article 770 of the Civil Code.
3. When the law of the Socialist Republic of Vietnam on the contents and forms of civil contracts is applied, the provisions of Section 7, Chapter XVII, and Chapter XVIII, Part Three of the Civil Code and relevant legal documents shall be applied.

Article 16.- Unilateral civil transactions

The contents and form of a unilateral civil transaction is determined in accordance with the law of the country where the party that voluntarily performs the unilateral civil transaction resides or conducts principal operations.

Article 17.- Compensation for damage outside contract

1. The application of the law on compensation for damage outside contract shall comply with Article 773 of the Civil Code.
2. In case of application of the law of the Socialist Republic of Vietnam on compensation for damage outside contract, the provisions of Chapter XXI, Part Three of the Civil Code and relevant legal documents shall be applied.

Article 18.- Copyright and related rights

1. The copyright of foreign individuals or organizations is protected in Vietnam in accordance with the provisions of Article 736 thru Article 743 of the Civil Code, relevant provisions of the Law on Intellectual Property, relevant legal documents of Vietnam and treaties to which Vietnam is a contracting party.

2. Copyright-related rights of foreign individuals and organizations are protected in Vietnam in accordance with the provisions of Article 744 thru Article 749 of the Civil Code, relevant provisions of the Law on Intellectual Property and other relevant provisions of Vietnam and treaties to which Vietnam is a contracting party.

Article 19.- Protection of industrial property rights and the rights to plant varieties

The protection of industrial property rights and the rights to plant varieties of foreign individuals and legal persons in Vietnam shall comply with the provisions of Article 750 thru Article 753 of the Civil Code, relevant provisions of the Law on Intellectual Property, other relevant legal documents of Vietnam and treaties to which Vietnam is a contracting party.

Article 20.- Technology transfer involving foreign elements

When the involved parties do not agree in the contracts on the application of foreign laws or when treaties to which Vietnam is a contracting party do not provide for technology transfer, technology transfer between Vietnamese individuals or legal persons and foreign individuals or legal persons, and technology transfer from any foreign country into Vietnam and from Vietnam to any foreign country shall comply with the provisions of Article 754 thru Article 757 of the Civil Code, relevant provisions of the Law on Technology Transfer and relevant legal documents of Vietnam.

Article 21.- Statute of limitations for initiation of lawsuits

The statute of limitations for initiation of lawsuits shall comply with Article 777 of the Civil Code.

Chapter III

IMPLEMENTATION PROVISIONS

Article 22.- Implementation effect and organization of implementation

1. This Decree takes effect 15 days after its publication in "CONG BAO" and replaces the Government's Decree No. 60/CP of June 6, 1997, guiding the implementation of the 1995 Civil Code regarding civil relations involving foreign elements.

2. When requested by courts or state agencies competent to settle affairs or disputes arising from civil relations involving foreign elements, the Ministry of Foreign Affairs and the Ministry of Justice shall assist the requesting agencies in determining applicable laws and provide applicable foreign legal documents.

3. Ministers, heads of ministerial-level agencies and government-attached agencies, and presidents of provincial/municipal People's Committees shall implement this Decree.