

LAW  
ON MARRIAGE AND FAMILY

*Pursuant to the Constitution of the Socialist Republic of Vietnam;*

*The National Assembly promulgates the Law on Marriage and Family.*

Chapter I

GENERAL PROVISIONS

**Article 1. Scope of regulation**

This Law prescribes the marriage and family regime, legal standards for conduct by family members; responsibilities of individuals, organizations, the State and society in the building and consolidation of the marriage and family regime.

**Article 2. Fundamental principles of the marriage and family regime**

1. Voluntary, progressive and monogamous marriage in which husband and wife are equal.
2. Marriage between Vietnamese citizens of different nationalities or religions, between religious and non-religious people, between people with beliefs and people without beliefs, and between Vietnamese citizens and foreigners shall be respected and protected by law.
3. To build prosperous, progressive and happy families; family members have the obligation to respect, attend to, care for, and assist one another; to treat children without discrimination.
4. The State and society and families shall protect and support children, elderly people and persons with disabilities in exercising marriage and family rights; assist mothers in properly fulfilling their lofty motherhood functions; and implement family planning.
5. To perpetuate and promote the Vietnamese nation's fine cultural traditions and ethics on marriage and family.

### **Article 3. Interpretation of terms**

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

1. Marriage means the relation between husband and wife after they get married.
2. Family means a group of persons closely bound together by marriage, blood ties or raising relations, thus giving rise to obligations and rights among them as prescribed in this Law.
3. Marriage and family regime means all provisions of law on marriage, divorce; rights and obligations between husband and wife, parents and children, and among other family members; support; identification of parents and children; marriage and family relations involving foreign elements and other matters related to marriage and family.
4. Marriage and family practices means rules of conduct with clear contents on rights and obligations of parties in marriage and family relations, which are repetitive over a long period of time and widely accepted in an area, a region or a community.
5. Getting married means a man and a woman's establishment of the husband and wife relation according to the provisions of this Law on marriage conditions and registration.
6. Illegally marriage means a man and a woman's marriage already registered at a competent state agency in which either or both of them violate(s) the marriage conditions prescribed in Article 8 of this Law.
7. Cohabitation as husband and wife means a man and a woman's organization of their living together and consideration of themselves as husband and wife.
8. Underage marriage means getting married when one or both partners has or have not reached the marriage age prescribed at Point a, Clause 1, Article 8 of this Law.
9. Forcing marriage or divorce means threatening, intimidating spiritually, maltreating, ill-treating, demanding property or another act to force a person to get married or to divorce against his/her will.
10. Obstructing marriage or divorce means threatening, intimidating spiritually, maltreating, ill-treating, demanding property or another act to obstruct the marriage of a person eligible to get married under this Law or to force a person to maintain the marriage relation against his/her will.

11. Sham marriage means making use of a marriage for the purpose of immigration, residence or naturalization in Vietnam or a foreign country; for enjoying preferential regimes of the State or for another purpose other than that of building a family.
12. Demanding property in marriage means making excessive material demand and considering it a marriage condition in order to obstruct a voluntary marriage between a man and a woman.
13. Marriage period means the duration of existence of the husband and wife relation, counting from the date of marriage registration to the date of marriage termination.
14. Divorce means termination of the husband and wife relation under a court's legally effective judgment or decision.
15. Sham divorce means making use of a divorce to shirk property obligations or violate the policy and law on population or for another purpose other than that of terminating a marriage.
16. Family members include husband, wife; natural parent, adoptive parent, stepfather, stepmother, parent-in-law; natural child, adopted child, stepchild, child-in-law; full sibling, paternal half-sibling, maternal half-sibling, brother- or sister-in law of full sibling, paternal half-sibling or maternal half-sibling; paternal grandparent, maternal grandparent; paternal grandchild, maternal grandchild; blood paternal aunt, maternal aunt, paternal uncle, maternal uncle, niece and nephew.
17. People of the same direct blood line are those in the consanguineous relationship in which a person gives birth to another in a successive order.
18. Relatives within three generations are people born of the same stock with parents constituting the first generation; full siblings, paternal half-siblings and maternal half-siblings constituting the second generation; and children of paternal aunts, maternal aunts, paternal uncles, maternal uncles constituting the third generation.
19. Next of kin include people with marriage relation or raising relation, people of the same direct blood line and relatives within three generations.
20. Essential needs means ordinary needs for food, clothing, accommodation, learning, medical care and other ordinary needs which are indispensable in the life of each person and family.
21. Giving birth with assisted reproductive technology means giving birth through artificial insemination or in vitro fertilization.

22. Altruistic gestational surrogacy means a pregnancy carried voluntarily for non-commercial purpose by a woman for a couple of whom the wife is unable to carry a pregnancy and give birth even if assisted reproductive technology is applied. The voluntary gestational carrier is impregnated and gives birth through the transfer into her uterus of an embryo created by in vitro fertilization from the ovule of the wife and sperm of the husband.

23. Commercial gestational surrogacy means a pregnancy carried by a woman for another person through assisted reproductive technology for enjoying economic or other benefits.

24. Support means an act whereby a person has the obligation to contribute money or other kinds of property to meet the essential needs of another person who does not live together with but has marriage, blood or raising relation with the former and is a minor or an adult who has no working capacity and no property to support himself/herself, or meets with financial difficulties as prescribed by this Law.

25. Marriage and family relation involving foreign elements means the marriage and family relation in which at least one partner is a foreigner or an overseas Vietnamese or in which partners are Vietnamese citizens but the bases for establishing, changing or terminating that relation are governed by a foreign law, or that relation arises abroad or the property related to that relation is located abroad.

#### Article 4. The State's and society's responsibilities for marriage and family

1. The State shall adopt policies and measures to protect marriage and family and create conditions for males and females to establish voluntary, progressive, monogamous marriage in which husband and wife are equal; build prosperous, progressive and happy families fulfilling all of their functions; intensify the dissemination and popularization of and education about the law on marriage and family; and mobilize people to abolish backward marriage and family customs and practices and promote fine traditions, customs and practices embodying the identity of each nationality.

2. The Government shall perform the unified state management of marriage and family. Ministries and ministerial-level agencies shall perform the state management of marriage and family as assigned by the Government. People's Committees at all levels and other agencies shall perform the state management of marriage and family in accordance with law.

3. Agencies and organizations shall educate and mobilize their cadres, civil servants, public employees, laborers and members as well as every citizen to build cultured

families; promptly conciliate family discords and protect the lawful rights and interests of family members. Schools shall coordinate with families in educating about, disseminating and popularizing the marriage and family law among young generations.

### **Article 5. Protection of the marriage and family regime**

1. Marriage and family relations established and implemented in accordance with this Law shall be respected and protected by law.

2. The following acts are prohibited:

a/ Sham marriage or sham divorce;

b/ Underage marriage, forcing a person into marriage, deceiving a person into marriage, obstructing marriage;

c/ A married person getting married to or cohabitating as husband and wife with another person, or an unmarried person getting married to or cohabitating as husband and wife with a married person;

d/ Getting married or cohabitating as husband and wife between people of the same direct blood line; relatives within three generations; adoptive parent and adopted child; or former adoptive parent and adopted child, father-in-law and daughter-in-law, mother-in-law and son-in-law, or stepparent and stepchild;

dd/ Demanding property in marriage;

e/ Forcing a person into divorce; deceiving a person into divorce; obstructing divorce;

g/ Giving birth with assisted reproductive technology for commercial purpose, commercial gestational surrogacy, prenatal sex selection, cloning;

h/ Domestic violence;

i/ Taking advantage of marriage and family rights for human trafficking, labor exploitation or sexual abuse or committing another act for self-seeking purposes.

2. All acts of violating the marriage and family law shall be handled strictly in accordance with law.

Agencies, organizations and individuals have the right to request a court or another competent agency to take measures to promptly stop and handle violators of the marriage and family law.

3. The honor, dignity, prestige, privacy and other privacy rights of parties shall be respected and protected in the course of settlement of marriage and family-related cases and matters.

#### **Article 6. Application of the Civil Code and other relevant laws**

For cases not prescribed by this Law, provisions of the Civil Code and other laws related to marriage and family relations may apply to marriage and family relations.

#### **Article 7. Application of marriage and family practices**

1. For cases not prescribed by law or not agreed by involved parties, fine practices which embody the identity of each nationality, are not contrary to the principles prescribed in Article 2 and do not involve prohibited acts prescribed in this Law may apply.

2. The Government shall detail Clause 1 of this Article.

### Chapter II

### GETTING MARRIED

#### **Article 8. Conditions for getting married**

1. A man and a woman wishing to marry each other must satisfy the following conditions:

a/ The man is full 20 years or older, the woman is full 18 years or older;

b/ The marriage is voluntarily decided by the man and woman;

c/ The man and woman do not lose the civil act capacity;

d/ The marriage does not fall into one of the cases prescribed at Points a, b, c and d, Clause 2, Article 5 of this Law.

2. The State shall not recognize marriage between persons of the same sex.

#### **Article 9. Marriage registration**

1. A marriage shall be registered with a competent state agency in accordance with this Law and the law on civil status.

A marriage which is not registered under this Clause is legally invalid.

2. A divorced couple who wish to re-establish their husband and wife relation shall register their re-marriage.

## **Article 10. Persons having the right to request annulment of illegal marriage**

1. A person who is forced or deceived into a marriage has, as prescribed by the civil procedure law, the right to request by himself/herself, or propose a person or an organization prescribed in Clause 2 of this Article to request, a court to annul his/her illegal marriage due to violation of Point b, Clause 1, Article 8 of this Law.

2. The following persons, agencies and organizations have, as prescribed by the civil procedure law, the right to request a court to annul an illegal marriage due to violation of Point a, c or d, Clause 1, Article 8 of this Law;

a/ The spouse of a married person who gets married to another person; parent, child, guardian or another at-law representative of a person who gets married illegally;

b/ The state management agency in charge of families;

c/ The state management agency in charge of children;

d/ The women's union.

3. When detecting an illegal marriage, other persons, agencies or organizations have the right to propose an agency or organization prescribed at Point b, c, or d, Clause 2 of this Article to request a court to annul such marriage.

## **Article 11. Handling of illegal marriage**

1. A court shall handle illegal marriage in accordance with this Law and the civil procedure law.

2. In case at the time of a court's settlement of a request for annulment of an illegal marriage, both partners fully satisfy the marriage conditions prescribed in Article 8 of this Law and request recognition of their marriage relation, the court shall recognize that relation. In this case, the marriage relation shall be established from the time both partners fully satisfy the marriage conditions as prescribed by this Law.

3. A court's decision annulling an illegal marriage or recognizing a marriage relation shall be sent to the agency having registered that marriage for recording in the civil status register; to the two partners of the illegal marriage; and to related persons, agencies and organizations as prescribed by the civil procedure law.

4. The Supreme People's Court shall assume the prime responsibility for, and coordinate with the Supreme People's Procuracy and the Ministry of Justice in, guiding this Article.

## **Article 12. Legal consequences of the annulment of illegal marriage**

1. When an illegal marriage is annulled, the two partners of such marriage shall stop their husband and wife relation.
2. The rights and obligations of parents and children shall be settled according to provisions on rights and obligations of parents and children upon divorce.
3. Property relations, obligations and contracts between the parties shall be settled according to Article 16 of this Law.

### **Article 13. Handling of ultra vires marriage registration**

For a marriage which is registered ultra vires, a competent state agency shall, upon request, withdraw and cancel the marriage certificate in accordance with the civil status law and request two partners to re-register their marriage with a competent state agency. In this case, the marriage relation shall be established on the date of **the previous marriage registration**.

### **Article 14. Settlement of consequences of men and women cohabiting as husband and wife without marriage registration**

1. A man and woman eligible for getting married under this Law who cohabit as husband and wife without registering their marriage have no rights and obligations between husband and wife. Rights and obligations toward their children, property, obligations and contracts between the partners must comply with Articles 15 and 16 of this Law.
2. For a man and woman who cohabit as husband and wife under Clause 1 of this Article and later register their marriage in accordance with law, their marriage relation shall be established from the time of marriage registration.

### **Article 15. Rights and obligations of parents and children for men and women cohabiting as husband and wife without marriage registration**

Rights and obligations between a man and woman cohabiting as husband and wife and their children must comply this Law's provisions on rights and obligations of parents and children.

### **Article 16. Settlement of property relations and obligations and contracts between men and women cohabiting as husband and wife without marriage registration**

1. Property relations, obligations and contracts between a man and woman cohabiting as husband and wife without marriage registration shall be settled under the partners'



agreement. In case there is no agreement, they shall be settled in accordance with the Civil Code and other relevant laws.

2. The settlement of property relations must ensure lawful rights and interests of women and children. Housework and other related work to maintain the cohabitation shall be regarded as income-generating labor.

### Chapter III

#### RELATIONSHIP BETWEEN HUSBAND AND WIFE

##### **Section 1. PERSONAL RIGHTS AND OBLIGATIONS**

###### **Article 17. Equality in rights and obligations between husband and wife**

Husband and wife are equal, having equal rights and obligations in all family affairs and in the performance of citizens' rights and obligations prescribed in the Constitution, this Law and relevant laws.

###### **Article 18. Protection of personal rights and obligations of husband and wife**

Personal rights and obligations of husband and wife prescribed in this Law, the Civil Code and other relevant laws shall be respected and protected.

###### **Article 19. Husband and wife attachment**

1. Husband and wife have the obligations to love, be faithful to, respect, attend to, care for, and help each other and share family work.

2. Unless otherwise agreed by them or due to requirements of their occupations, work or study, or participation in political, economic, cultural or social activities or for another plausible reason, husband and wife have the obligation to live together.

###### **Article 20. Selection of domicile of husband and wife**

The domicile of husband and wife shall be selected as agreed by themselves without being bound by customs, practices or administrative boundaries.

###### **Article 21. Respect for honor, dignity and prestige of husband and wife**

Husband and wife have the obligation to respect, preserve and protect each other's honor, dignity and prestige.

###### **Article 22. Respect for the right to freedom of belief and religion of husband and wife**

Husband and wife have the obligation to respect each other's right to freedom of belief and religion.

**Article 23. Rights and obligations to study, work and take part in political, economic, cultural and social activities**

Husband and wife have the right and obligation to create conditions for each other to select professions; study and raise their educational levels and professional qualifications and skills; and take part in political, economic, cultural and social activities.

**Section 2. REPRESENTATION BETWEEN HUSBAND AND WIFE**

**Article 24. Bases for determination of representation between husband and wife**

1. The representation between husband and wife in establishing, making and terminating transactions shall be determined in accordance with this Law, the Civil Code and other relevant laws.
2. Husband and wife may authorize each other to establish, make or terminate transactions which, as prescribed by this Law, the Civil Code and other relevant laws, shall be agreed upon by both spouses.
3. A spouse may represent the other when the latter loses his/her civil act capacity while the former is eligible to act as the guardian or when the latter has his/her civil act capacity restricted while the former is designated by a court to act as the at-law representative of his her spouse, unless the latter is required by law to perform by himself/herself related rights and obligations.

When a spouse loses his/her civil act capacity and the other requests a court to settle divorce, the court shall designate another person to represent the partner who has lost his/her civil act capacity for settlement of divorce in accordance with the Civil Code's provisions on guardianship.

**Article 25. Representation between husband and wife in business relations**

1. When husband and wife jointly run a business, unless otherwise agreed by the husband and wife before taking part in the business relation or otherwise prescribed by this Law and other relevant laws, the spouse directly involved in the business relation is the lawful representative of the other in that relation.
2. In case husband and wife put their common property into business activities, Article of this Law shall apply.

**Article 26. Representation between husband and wife in case only one spouse is named in the ownership or use right certificate of common property**

1. Representation between husband and wife in establishing, making and terminating transactions related to their common property with ownership or use right certificates on which only one spouse is named must comply with Articles 24 and 25 of this Law.
2. In case the spouse named in the property ownership or use right certificate establishes, makes and terminates on his/her own a transaction with a third party in contravention of this Law's provisions on representation between husband and wife, that transaction is invalid, unless the interests of the third party in good faith are protected as prescribed by law.

**Article 27. Joint liability of husband and wife**

1. Husband and wife shall take joint liability for transactions prescribed in Clause 1, Article 30, which are made by either of them, or other transactions made in conformity with provisions on representation of Articles 24, 25 and 26, of this Law.
2. Husband and wife shall take joint liability for the obligations prescribed in Article of this Law.

**Section 3. MATRIMONIAL PROPERTY REGIME**

**Article 28. Application of the matrimonial property regime**

1. Husband and wife have the right to choose to apply the statutory or agreed property regime.

The statutory matrimonial property regime is prescribed in Articles 33 thru 46 and Articles 59 thru 64 of this Law.

The agreed matrimonial property regime must comply with Articles 47, 48, 49, 50 and 59 of this Law.

2. Articles 29, 30, 31 and 32 of this Law shall apply regardless of the property regime chosen by husband and wife.
3. The Government shall stipulate in detail the matrimonial property regime.

**Article 29. General principles of the matrimonial property regime**

1. Husband and wife have equal rights and obligations in the creation, possession, use and disposition of their common property without discrimination between housework labor and income-generating labor.

2. Husband and wife have the obligation to ensure conditions for meeting their family's essential needs.

3. When the performance of property rights and obligations of husband and wife infringes upon lawful rights and interests of the wife, husband, their family or other persons, compensation shall be paid.

**Article 30. Rights and obligations of husband and wife to meet their family's essential needs**

1. Husband and wife have the right and obligation to make transactions to meet their family's essential needs.

2. When husband and wife have no common property or their common property is not enough to meet their family's essential needs, they shall contribute their separate property according to their financial capacity.

**Article 31. Transactions related to the home being the sole domicile of husband and wife**

The establishment, making and termination of transactions related to the home being the sole domicile of husband and wife shall be agreed by both of them. In case the home is under the separate ownership of the husband or wife, the owner has the right to establish, make and terminate transactions related to that property but shall ensure domicile for the couple.

**Article 32. Transactions with third parties in good faith related to bank accounts, securities accounts and other movable assets not required by law to be registered for ownership and use**

1. In transactions with third parties in good faith, the spouse who is the holder of the bank or securities account shall be regarded as the person having the right to establish and make transactions related to that property.

2. In transactions with third parties in good faith, the spouse who is possessing a movable asset which is not required by law to be registered for ownership shall be regarded as the person having the right to establish and make transactions related to that asset in case the Civil Code prescribes protection of third parties in good faith.

**Article 33. Common property of husband and wife**

1. Common property of husband and wife includes property created by a spouse, incomes generated from labor, production and business activities, yields and profits arising from separate property and other lawful incomes in the marriage period;

except the case prescribed in Clause 1, Article 40 of this Law; property jointly inherited by or given to both, and other property agreed upon by husband and wife as common property.

The land use rights obtained by a spouse after marriage shall be common property of husband and wife, unless they are separately inherited by, or given to a spouse or are obtained through transactions made with separate property.

2. Common property of husband and wife shall be under integrated common ownership and used to meet family needs and perform common obligations of husband and wife.

3. When exists no ground to prove that a property in dispute between husband and wife is his/her separate property, such property shall be regarded as common property.

#### **Article 34. Registration of ownership and use rights for common property**

1. For a common property which is required by law to be registered for ownership or use, both spouses shall be named in the ownership or use right certificate, unless otherwise agreed by the couple.

2. In case only one spouse is named in the property ownership or use right certificate, transactions related to such property must comply with Article 26 of this Law. Any dispute related to that property shall be settled under Clause 3, Article 33 of this Law.

#### **Article 35. Possession, use and disposition of common property**

1. The possession, use and disposition of common property shall be agreed by husband and wife.

2. The disposition of the following common property shall be agreed in writing by husband and wife:

a/ Real estate;

b/ Movable assets which are required by law to be registered for ownership;

c/ Assets which are the major income-generating source for the family.

#### **Article 36. Common property used for business activities**

When husband and wife reach agreement on either spouse's use of common property for business activities, this spouse has the right to make transactions related to that common property on his/her own. This agreement shall be made in writing.

#### **Article 37. Common property obligations of husband and wife**

Husband and wife have the following common property obligations:

1. Obligations arising from transactions established under their agreement, obligations to pay damages under their joint liability as prescribed by law;
2. Obligations performed by a spouse in order to meet the family's essential needs;
3. Obligations arising from the possession, use and disposition of common property;
4. Obligations arising from the use of separate property for maintaining and developing common property or for generating major incomes for the family;
5. Obligations to pay damages caused by their children as prescribed by the Civil Code;
6. Other obligations as prescribed by relevant laws.

### **Article 38. Common property division during the marriage period**

1. During the marriage period, except the case prescribed in Article 42 of this Law, husband and wife have the right to reach agreement on division of part or whole of common property. If they fail to reach agreement, they have the right to request a court to settle it.
2. An agreement on common property division shall be made in writing. This agreement shall be notarized at the request of husband and wife or as prescribed by law.
3. At the request of a spouse, a court shall settle the common property division according to Article 59 of this Law.

### **Article 39. Effective time of common property division during the marriage period**

1. The effective time of a common property division shall be agreed by husband and wife and stated in the written agreement. If such time is not stated in the written agreement, it is the date of making the agreement.

For divided property whose transactions must be under a certain form as prescribed by law, the common property division takes effect on the time the division agreement complies with the form prescribed by law.

For common property divided by a court, the division takes effect on the legally effective date of the court's judgment or decision.

Property rights and obligations between husband and wife and a third party which arise before the effective time of common property division remain legally effective, unless otherwise agreed by involved parties.

**Article 40. Consequences of common property division during the marriage period**

When common property of husband and wife is divided, unless otherwise agreed by husband and wife, divided property and yields or profits arising from separate property of each spouse after common property division are separate property of each spouse. The undivided property portion remains common property of husband and wife.

The agreement between husband and wife prescribed in Clause 1 of this Article shall not change property rights and obligations previously established between them and a third party.

**Article 41. Termination of effect of common property division during the marriage period**

1. After common property is divided during the marriage period, husband and wife have the right to agree to terminate the effect of such division. The form of agreement must comply with Clause 2, Article 38 of this Law.
2. From the effective date of the agreement between husband and wife prescribed in Clause 1 of this Article, the determination of common property and separate property of husband and wife must comply with Articles 33 and 43 of this Law. Unless otherwise agreed by husband and wife, the property portion divided to the husband or wife remains his/her separate property.
3. Unless otherwise agreed by the parties, property rights and obligations arising before the termination of the effect of common property division remain effective.
4. In case common property is divided during the marriage period under an effective court judgment or decision, the agreement on termination of the effect of common property division shall be recognized by the court.

**Article 42. Invalidated common property division during the marriage period**

Common property division during the marriage period shall be invalidated when:

1. It seriously harms the family's interests; or lawful rights and interests of minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves;

2. It aims to shirk the following obligations:

a/ Raising and support obligations;

b/ Damages payment obligations;

c/ Payment obligations when declared bankrupt by a court;

d/ Debt payment obligations;

dd/ Tax payment obligations or other financial obligations toward the State;

e/ Other property obligations as prescribed by this Law, the Civil Code and other relevant laws.

### **Article 43. Separate property of husband and wife**

1. Separate property of a spouse includes property owned by this person before marriage; property inherited by or given separately to him/her during the marriage period; property divided to him/her under Articles 38,39 and 40 of this Law; property to meet his/her essential needs and other property under his/her ownership as prescribed by law.

2. Property created from separate property of a husband or wife is also property of his/ her own. Yields and profits arising from separate property during the marriage period must comply with Clause 1, Article 33, and Clause 1, Article 40, of this Law.

### **Article 44. Possession, use and disposition of separate property**

1. A spouse has the right to possess, use and dispose of his/her separate property, and to merge or refuse to merge separate property into common property.

2. When a spouse cannot manage his/her separate property himself/herself and does not authorize another person to manage it, the other spouse has the right to manage such property. The property management must ensure benefits for the property owner.

3. Each spouse's separate property obligations shall be performed with his/her separate property.

4. When yields or profits from separate property of a spouse constitute the family's sole livelihood, the disposition of such property is subject to the other spouse's consent.

### **Article 45. Separate property obligations of husband and wife**

A spouse has the following separate property obligations:



1. The obligations he/she has before marriage;
2. The obligations arising from the possession, use and disposition of his/her separate property, other than the obligations arising from the preservation, maintenance and repair of his/her separate property under Clause 4, Article 44 or Clause 4, Article 37 of this Law;
3. The obligations arising from transactions established and made by himself/herself not for meeting the family's needs;
4. The obligations arising from his/her illegal acts.

**Article 46. Merger of separate property into common property**

1. Separate property of a spouse shall be merged into common property according to the agreement between the husband and wife.
2. For property merged into common property whose transactions are required by law to be under a certain form, the merger agreement must ensure that form.
3. Unless otherwise agreed by husband and wife or prescribed by law, obligations related to separate property already merged into common property shall be performed with common property.

**Article 47. Agreement on establishment of the matrimonial property regime**

For a married couple that selects the agreed property regime, this agreement shall be made in writing before their marriage and be notarized or certified. The agreed matrimonial property regime shall be established on the date of marriage registration.

**Article 48. Basic contents of an agreement on the matrimonial property regime**

1. The basic contents of an agreement on the property regime include:
  - a/ Property determined as common property and separate property of the husband and wife;
  - b/ Rights and obligations of the husband and wife toward common property, separate property and related transactions; property to meet the family's essential needs;
  - c/ Conditions, procedures and principles of property division upon termination of the property regime;
  - d/ Other related contents.

2. For matters arising in the implementation of the agreed property regime which have not been agreed or unclearly agreed by husband and wife, Articles 29, 30, 31 and 32 of this Law and corresponding provisions of the statutory property regime shall apply.

**Article 49. Modification of the agreement on the matrimonial property regime**

1. Husband and wife have the right to modify their agreement on the property regime.
2. The form of modification of the agreement on the property regime must comply with Article 47 of this Law.

**Article 50. Invalidated agreement on the matrimonial property regime**

1. An agreement on the matrimonial property regime shall be declared to be invalid by a court when:

a/ It fails to meet the conditions on effect of transactions prescribed the Civil Code and other relevant laws;

b/ It violates Article 29, 30, 31 or 32 of this Law;

c/ Its contents seriously infringe upon the rights to be supported and inherit and other lawful rights and interests of parents, children and other family members.

2. The Supreme People's Court shall assume the prime responsibility for, and coordinate with the Supreme People's Procuracy and the Ministry of Justice in, guiding Clause 1 of this Article.

Chapter IV

TERMINATION OF MARRIAGE

**Section 1. DIVORCE**

**Article 51. The right to request settlement of divorce**

1. Husband or wife or both has or have the right to request a court to settle their divorce.

2. A parent or another next of kin of a spouse has the right to request a court to settle a divorce when the spouse is unable to perceive and control his/her acts due to a mental disease or another disease and is concurrently a victim of domestic violence caused by his/her spouse which seriously harms his/her life, health or spirit.

3. A husband has no right to request a divorce when his wife is pregnant, gives birth or is nursing an under-12-month child.

## **Article 52. Encouragement of grassroots-level conciliation**

The State and society shall encourage grassroots-level conciliation when a husband or wife requests a divorce. The conciliation must comply with the law on grassroots-level conciliation.

## **Article 53. Acceptance of divorce petitions**

1. A court shall accept divorce petitions in accordance with the civil procedure law.
2. For a couple who has not registered their marriage but requests a divorce, the court shall accept the case and declare non-recognition of their spousal relationship under Clause 1, Article 14 of this Law; and shall settle any children- or property-related requests according to Articles 15 and 16 of this Law.

## **Article 54. Conciliation at court**

After accepting a divorce petition, a court shall conduct conciliation in accordance with the civil procedure law.

## **Article 55. Divorce by mutual consent**

When both spouses request a divorce, a court shall recognize the divorce by mutual consent if seeing that the two are really willing to divorce and have agreed upon the property division, looking after, raising, care for and education of their children on the basis of ensuring the legitimate interests of the wife and children. If the spouses fail to reach agreement or have reached an agreement which -fails to ensure the legitimate interests of the wife and children, the court shall settle the divorce.

## **Article 56. Divorce at the request of one spouse**

1. When a spouse requests a divorce and the conciliation at a court fails, the court shall permit the divorce if it has grounds to believe that a spouse commits domestic violence or seriously infringes upon the rights and obligations of the husband or wife, which seriously deteriorates the marriage and makes their common life no longer impossible and the marriage purposes unachievable.
2. When the spouse of a person who is declared missing by a court requests a divorce, the court shall permit the divorce.
3. For request for a divorce under Clause 2, Article 51 of this Law, a court shall permit the divorce if it has grounds to believe that the domestic violence committed by one spouse seriously harms the life, health or spirit of the other.

### **Article 57. Time of termination of marriage and responsibility to send divorce judgments or decisions**

1. The marriage relation shall terminate on the date a court's divorce judgment or decision takes legally effective.
2. The court that has settled a divorce shall send the legally effective divorce judgment or decision to the agency registering such marriage for recording in the civil status register; the divorced partners; and other persons, agencies and organizations as prescribed by the Civil Procedure Code and other relevant laws.

### **Article 58. Rights and obligations of parents and children after divorce**

The looking after, care for, raising and education of children after divorce must comply with Articles 81, 82, 83 and 84 of this Law.

### **Article 59. Principles of settlement of property of husband and wife upon divorce**

1. The settlement of property shall be agreed upon by the concerned parties in case of applying the statutory matrimonial property regime. If they fail to reach agreement thereon, at the request of a spouse or both, a court shall settle it according to Clauses 2, 3, 4 and 5 of this Article and Articles 60, 61, 62, 63 and 64 of this Law.

In case of applying the agreed matrimonial property regime, the settlement of property upon divorce must comply with such agreement. In case the agreement is insufficient or unclear, the settlement must comply with corresponding provisions of Clauses 2, 3, 4 and 5 of this Article and Articles 60, 61, 62, 63 and 64 of this Law.

2. Common property shall be divided into two, taking into account the following factors:

a/ Circumstances of the family, husband and wife;

b/ Each spouse's contributions to the creation, maintenance and development of common property. The housework done in the family by a spouse shall be regarded as income-generating labor;

c/ Protecting the legitimate interests of each spouse in their production, business and career activities to create conditions for them to continue working to generate incomes;

d/ Each spouse's faults in the infringement of spousal rights and obligations.

3. Common property of husband and wife shall be divided in kind, if impossible to be divided in kind, common property shall be divided based on its value. The partner

who receives the property in kind with a value bigger than the portion he/she is entitled to receive shall pay the value difference to the other.

4. Separate property of a spouse shall be under his/her ownership, except for separate property already merged into common property in accordance with this Law.

A spouse who requests division of separate property which has been merged into or mixed with common property shall be paid for the value of his/her property contributed to common property, unless otherwise agreed by husband and wife.

5. The lawful rights and interests of the wife, minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves shall be protected.

6. The Supreme People's Court shall assume the prime responsibility for, and coordinate with the Supreme People's Procuracy and the Ministry of Justice in, guiding this Article.

#### **Article 60. Settlement of property rights and obligations of husband and wife toward a third party upon divorce**

1. Property rights and obligations of husband and wife toward a third party remain effective after divorce, unless otherwise agreed by husband and wife and that party.

2. When a dispute arises over property rights and obligations, the settlement of such dispute must comply with Articles 27, 37 and 45 of this Law and the Civil Code.

#### **Article 61. Division of property for a couple living with their family**

1. When a couple living with their family get a divorce, if their property cannot be determined separately from the common property of the family, the husband or wife is entitled to division of part of the family's common property based on the couple's contributions to the creation, maintenance and development of the family's common property as well as to the common life of the family. The couple shall reach agreement with their family on their portion divided from the family's common property. If they fail to reach agreement thereon, they may request settlement by a court.

2. For a couple living with their family whose property can be determined separately from the family's common property, upon divorce, such property portion of the couple shall be deducted from the family's common property for division under Article 59 of this Law.

#### **Article 62. Division of land use rights of husband and wife upon divorce**

1. Land use rights being separate property of a spouse remain under his/her ownership upon divorce.

2. The division of land use rights being common property of husband and wife upon divorce shall be divided as follows:

a/ For agricultural land under annual crops or aquaculture, if both partners have the need and conditions to directly use the land, the land use rights shall be divided under their agreement. If they fail to reach agreement thereon, they may request a court to settle it according to Article 59 of this Law.

When only one partner has the need and conditions to directly use the land, that partner may continue to use the land but shall pay to the other the portion of the land use right value the latter is entitled to;

b/ When husband and wife share the right to use agricultural land under annual crops or aquaculture with their household, upon divorce, the couple's portion of the land use right shall be separated and divided under Point a of this Clause;

c/ For agricultural land under perennial trees, forestry land for forestation or residential land, the land use rights shall be divided according to Article 59 of this Law;

d/ The division of the rights to use land of other categories must comply with the land law.

3. For husband and wife living with their family and sharing no land use rights with the latter, upon divorce, the interests of the partner who has no land use rights and does not continue to live with the family shall be settled according to Article 61 of this Law.

### **Article 63. The right to stay of a spouse upon divorce**

A house which is separate property of a spouse and has been put to common use remains under his/her ownership upon divorce. In case the other partner has accommodation difficulties, unless otherwise agreed by the partners, he/she has the right to stay at the house for 6 months at most from the date of termination of the marriage relation.

### **Article 64. Division of common property used for business activities**

A spouse who is carrying out business activities related to common property has the right to receive that property and shall pay the other the property value that the latter is entitled to, unless otherwise prescribed by the business law.

## **Section 2. MARRIAGE TERMINATED AS A SPOUSE IS DEAD OR DECLARED TO BE DEAD BY COURT**

### **Article 65. Time of termination of marriage**

A marriage is terminated from the time of death of a spouse.

In case a court declares a spouse to be dead, the time of termination of the marriage is the date of death stated in the court's judgment or decision.

Article 66. Settlement of property of husband and wife in case a spouse is dead or declared to be dead by a court

1. When a spouse is dead or declared to be dead by a court, the other shall manage common property, unless another person is designated to manage the estate under his/her testament or the heirs agree to designate another person to manage the estate.
2. When there is a request for division of the estate, unless the couple has reached agreement on the property regime, common property of husband and wife shall be divided into two. The property portion of the spouse who is dead or declared to be dead by a court shall be divided in accordance with the inheritance law.
3. In case the division of the estate would seriously affect the life of the living spouse and the family, this spouse has the right to request a court to restrict the division of the estate in accordance with the Civil Code.
4. Unless otherwise prescribed by the business law, property of husband and wife used for business activities shall be settled according to Clauses 1, 2 and 3 of this Article.

### **Article 67. Personal and property relations upon return of a spouse who is declared to be dead**

1. When a court issues a decision to cancel the declaration of death of a person and that person's spouse has not got married to another person, their marriage relation shall be restored from the time of their marriage. In case there is a court's decision permitting a divorce under Clause 2, Article 56 of this Law, this decision remains legally valid. In case the spouse of that person has got married to another person, the marriage relation established later is legally effective.
2. The property relation between the person declared to be dead who returns and his spouse shall be settled as follows:
  - a/ If their marriage is restored, the property relation shall be restored on the effective date of the court's decision canceling the declaration of death of the person who is the

husband or wife. The property acquired by his/her spouse from the effective date of the court's decision declaring death of the husband or wife to the effective date of the court's decision canceling such declaration is separate property of that spouse;

b / If their marriage is not restored, property created before the effective date of the court's decision declaring death of the husband or wife which has not been divided shall be settled as for property division upon divorce.

## Chapter V

### RELATIONSHIP BETWEEN PARENTS AND CHILDREN

#### **Section 1. RIGHTS AND OBLIGATIONS BETWEEN PARENTS AND CHILDREN**

##### **Article 68. Protection of rights and obligations of parents and children**

1. The rights and obligations of parents and children under this Law, the Civil Code and other relevant laws shall be respected and protected.
2. Children who are born regardless of their parents' marital status all have the same rights and obligations toward their parents prescribed in this Law, the Civil Code and other relevant laws.
3. Adopted children and adoptive parents shall have rights and obligations of parents and children prescribed in this Law, the Adoption Law, the Civil Code and other relevant laws.
4. All agreements between parents and children related to personal and property relations must not harm the lawful rights and interests of minor children, adult children who have lost their civil act capacity or have no working capacity and no property to support themselves and parents who have lost their civil act capacity or have no working capacity and no property to support themselves.

##### **Article 69. Obligations and rights of parents**

1. To love, and respect opinions of, their children; to attend to the study and education of their children to ensure their healthy physical, intellectual and moral development in order to become dutiful children of the family and useful citizens of the society.
2. To look after, raise, care for, and protect the lawful rights and interests of their minor children and adult children who have lost their civil act capacity or have no working capacity and no property to support themselves.



3. To act as the guardian of or represent in accordance with the Civil Code their minor children or adult children who have lost their civil act capacity.
4. Not to discriminatorily treat their children due to their gender or the marital status of the parents; not to abuse the labor of their minor children or adult children who have lost their civil act capacity or have no working capacity; not to incite or force their children to act against law or social ethics.

#### **Article 70. Rights and obligations of children**

1. To be loved and respected by their parents and perform and enjoy their lawful personal and property rights and interests in accordance with law; to study and be educated; to be entitled to healthy physical, intellectual and moral development.
2. To love, respect, show gratitude and dutifulness to and support their parents, to preserve the honor and good traditions of their family.
3. For minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves, to live with their parents, to be looked after, nursed and cared for by their parents.

For minor children, to do housework suitable to their age and not in contravention of the law on protection, care for and education of children.

4. For adult children, to select at their free will professions and places of residence, to study and raise their educational level and professional qualifications and skills; to participate in political, economic, cultural and social activities according to their aspirations and abilities. When living with their parents, to do housework and participate in working, production and income-generating activities to ensure the common life of the family; to contribute their incomes to meeting the family's needs suitable to their capacity.
5. To enjoy property rights corresponding to their contributions to the family's property.

#### **Article 71. Obligation and right to care for and raise**

1. Father and mother have equal obligation and right to jointly care for and raise their minor children or adult children who have lost their civil act capacity or have-no working capacity and no property to support themselves.
2. Children have the obligation and right to care for and support their parents, especially when their parents lose their civil act capacity, are sick, become old and

weak or have disabilities. For a family with several children, these children shall together care for and support their parents.

### **Article 72. Obligation and right to educate children**

1. Parents have the obligation and right to educate their children, attend to and create conditions for their study.

Parents shall create conditions for their children to live in a happy and harmonious family environment; set good examples for their children in every aspect; and closely collaborate with schools, agencies and organizations in educating their children.

2. Parents shall guide their children in selecting professions; respect their children's rights to select professions and participate in political, economic, cultural and social activities.

3. When facing difficulties which cannot be solved by themselves, parents may request concerned agencies and organizations to assist them in educating their children.

### **Article 73. Representation for children**

1. Parents are representatives at law of their minor children or adult children who have lost their civil act capacity, except when the children have other persons to be their guardians or representatives at law.

2. A parent has the right to make transactions on his/her own to meet essential needs of their minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves.

3. Transactions related to real estate or movable assets with registered ownership or use rights or property used for business activities of minor children or adult children who have lost their civil act capacity must obtain their parents' consent.

4. Parents shall take joint responsibility for making transactions related to their children's property prescribed in Clauses 2 and 3, this Article and as prescribed by the Civil Code.

### **Article 74. Compensation for damage caused by children**

Parents shall pay compensation for damage caused by their minor children or adult children who have lost their civil act capacity in accordance with the Civil Code.

### **Article 75. Children's right to have their own property**

1. Children have the right to have their own property which includes property separately inherited by or given to them, incomes from their work, yields and profits arising from their own property and other lawful incomes. Property created from children's own property is also their own property.
2. If they have incomes, children who are full 15 years or older and live with their parents have the obligation to attend to the family's common life and make contributions to meeting the family's essential needs.
3. Adult children have the obligation to contribute their incomes to meeting the family's essential needs according to Clause 4, Article 70 of this Law.

#### **Article 76. Management of children's own property**

1. Children aged full 15 or older may themselves manage or ask their parents to manage their own property.
2. Property of children who are under 15 or children who have lost their civil act capacity shall be managed by their parents. Parents may authorize other persons to manage their children's own property. Unless otherwise agreed by parents and children, children's own property managed by their parents or other persons shall be given to them when they are full 15 years or older or have fully restored their civil act capacity.
3. Parents shall not manage their children's own property when their children are under the guardianship of other persons as prescribed by the Civil Code; or when the persons giving or bequeathing under testament property to their children have designated other persons to manage such property, or in other cases as prescribed by law.
4. In case parents are managing property of their minor children or adult children who have lost their civil act capacity and their children are assigned to other guardians, the children's property shall be delivered to the guardians for management under the Civil Code.

#### **Article 77. Disposition of property of minor children or adult children who have lost their civil act capacity**

1. Parents or guardians who manage under-15 children's own property have the right to dispose of such property in the interests of the children and shall take into account the children's desire if they are full 9 years or older.

2. Children aged between full 15 and under 18 have the right to dispose of their own property other than real estate, movable assets with registered ownership and use rights or property used for business activities the disposal of which is subject to written consent of their parents or guardians.

3. Guardians of adult children who have lost their civil act capacity may dispose of the latter's own property.

#### **Article 78. Rights and obligations of adoptive parents and adopted children**

1. An adoptive parent and his/her adopted child have the rights and obligations of parents and children prescribed in this Law from the time the adoption relationship is established under the Adoption Law.

In case of termination of an adoption under a court's decision, the rights and obligations of an adoptive parent toward his/her adopted child shall terminate from the legally effective date of the court's decision.

2. The rights and obligations of natural parents and their children who have been adopted by other persons must comply with the Adoption Law.

3. The rights and obligations of natural parents and their children shall be restored from the time the adoption relationship terminates. When they no longer have natural parents or their natural parents cannot afford to raise minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves, a court shall settle the adoption termination and designate guardians for the children in accordance with the Civil Code.

#### **Article 79. Obligations and rights of stepparents and stepchildren**

1. A step parent has the rights and obligations to look after, raise, care for and educate stepchildren who live with him or her according to Articles 69, 71 and 72 of this Law.

2. A stepchild has the rights and obligations to care for and support his/her step parent who lives with him or her according to Articles 70 and 71 of this Law.

#### **Article 80. Rights and obligations of daughters-in-law, sons-in-law and parents-in-law**

In case a daughter- or son-in-law lives with her/his parents-in-law, all parties have the rights and obligations to respect, attend to, care for, and assist one another according to Articles 69, 70, 71 and 72 of this Law.

#### **Article 81. Looking after, care for, raising and education of children after divorce**

1. After a divorce, parents still have rights and obligations to look after, care for, raise and educate minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves in accordance with this Law, the Civil Code and other relevant laws.

2. Husband and wife shall reach agreement on the person who directly raises their children and on his and her obligations and rights toward their children after divorce. If they fail to reach agreement, the court shall appoint either of them to directly raise the children, taking into account the children's benefits in all aspects. If a child is full 7 years or older, his/ her desire shall be considered.

3. A child under 36 months of age shall be directly raised by the mother, unless the mother cannot afford to directly look after, care for, raise and educate the child or otherwise agreed by the parents in the interests of the child.

### **Article 82. Obligations and rights of the parent who does not directly raise children after divorce**

1. The parent who does not directly raise a child shall respect the child's right to live with the person who directly raises him/her.

2. The parent who does not directly raise a child shall support this child.

3. After divorce, the person who does not directly raise a child has the right and obligation to visit and care for this child without being obstructed by any person.

The parent who directly raises a child has the right to request a court to restrict the right of the other parent who does not directly raise this child if the latter takes advantage of his/her visit to and care for the child to obstruct or adversely affect the looking after, care for, raising and education of this child.

### **Article 83. Obligations and rights of the parent directly raising children toward the person not directly raise children after divorce**

1. The parent directly raising a child has the right to request the person not directly raising this child to fulfill the obligations prescribed in Article 82 of this Law and request this person and family members to respect his/her right to raise the child.

2. The parent directly raising a child and family members may not obstruct the person not directly raising the child from visiting, caring for, raising and educating this child.

### **Article 84. Change of the person directly raising children after divorce**

1. At the request of a parent or a person or an organization prescribed in Clause 5 of this Article, a court may decide to change the person directly raising a child.

2. Change of the person directly raising a child shall be settled when there is one of the following grounds:

a/ The parents agrees on change of the person directly raising a child in the interests of this child;

b/ The person directly raising the child no longer has sufficient conditions to directly look after, care for, raise and educate the child.

3. Upon change of the person directly raising a child aged full 7 or older, this child's desire shall be taken into account.

4. When seeing that both parents fail to have sufficient conditions to directly raise a child, a court shall decide to assign this child to a guardian in accordance with the Civil Code.

5. When there is the ground prescribed at Point b, Clause 2 of this Article, in the interests of a child, the following persons, agencies or organizations have the right to request change of the person directly raising this child:

a/ Next of kin;

b/ The state management agency in charge of families;

c/ The state management agency in charge of children;

d/ The women's union.

#### **Article 85. Restrictions on parents' rights toward their minor children**

1. A parent shall have his/her rights toward a minor child restricted when:

a/ He/she is convicted of one of the crimes of intentionally infringing upon the life, health, dignity or honor of this child or commits acts of seriously breaching the obligations to look after, care for, raise and educate children;

b/ He/she disperses property of the child;

c/ He/she leads a depraved life;

d/ He/she incites or forces the child to act against law or social ethics.

2. On a case-by-case basis, a court shall itself, or at the request of the persons, agencies or organizations prescribed in Article 86 of this Law, issue a decision disallowing a parent to look after, care for and educate a child or manage the child's own property or act as the child's representative at law for between 1 and 5 years. The court may consider shortening this period of time.

## **Article 86. Persons entitled to request a court to restrict a parent's rights toward a minor child**

1. A parent or guardian of a minor child has, as prescribed by the civil procedure law, the right to request a court to restrict a parent's rights toward this child.
2. The following persons, agencies and organizations have, as prescribed by the civil procedure law, the right to request a court to restrict a parent's rights toward a minor child:
  - a/ Next of kin;
  - b/ The state management agency in charge of families;
  - c/ The state management agency in charge of children;
  - d/ The women's union.
3. When detecting a parent committing violations of Clause 1, Article 85 of this Law, other persons, agencies and organizations have the right to request the agencies and organizations prescribed at Points b, c and d, Clause 2 of this Article to propose a court to restrict this parent's rights toward the minor child.

## **Article 87. Legal consequences of restriction on parents' rights toward their minor children**

1. When a parent has his/her rights toward a minor child restricted by a court, the other parent shall exercise the rights to look after, raise, care for and educate this child, manage the child's own property and acts as the child's representative at law.
2. A guardian shall be assigned to look after, care for and educate a minor child and manage the child's own property in accordance with the Civil Code and this Law in the following cases:
  - a/ Both parents have their rights toward the minor child restricted by a court;
  - b/ The parent who does not have his/her rights toward the minor child restricted does not have sufficient conditions to perform the rights and obligations toward the child;
  - c/ A parent has the rights toward the minor child restricted and the other parent of the child has not been identified yet.
3. A parent who has the rights toward a minor child restricted by a court shall still perform the obligation to support this child.

## **Section 2. IDENTIFICATION OF PARENTS AND CHILDREN**

### **Article 88. Identification of parents**

1. A child who is born or conceived by the wife during the marriage period is the common child of the husband and wife.

A child who is born within 300 days from the time of termination of a marriage shall be regarded as a child conceived by the wife during the marriage period.

A child who is born before the date of marriage registration and recognized by his/her parents is the common child of the husband and wife.

2. When a parent does not recognize a child, he/she must have evidence and such non-recognition shall be determined by a court.

### **Article 89. Identification of children**

1. A person who is not recognized as the parent of a person may request a court to identify that the latter is his/her child.

2. A person who is recognized as the parent of a person may request a court to identify that the latter is not his/her child.

### **Article 90. Right to recognize parents**

1. A person has the right to recognize his/her parent even in case the parent has died.

2. An adult may recognize his/her parent without consent of the other parent.

### **Article 91. Right to recognize children**

1. A parent has the right to recognize his/her child even in case this child has died.

2. A married person may recognize his/her child without consent of his/her spouse.

### **Article 92. Identification of parents and children in case requesting persons have died**

When a person who requests identification of his/her parent or child dies, his/her next of kin has the right to request a court to identify the parent or child for him/her.

### **Article 93. Identification of parents in case of giving birth with assisted reproductive technology**

1. When a wife gives birth to a child with assisted reproductive technology, the identification of parents must comply with Article 88 of this Law.

2. A single woman who gives birth to a child with assisted reproductive technology is the mother of that child.



3. No parent-child relationship shall arise between a person who donates sperm, egg or embryo and the child born with assisted reproductive technology.

4. The identification of parents in case of altruistic gestational surrogacy must comply with Article 94 of this Law.

#### **Article 94. Identification of parents in case of altruistic gestational surrogacy**

A child born in case of altruistic gestational surrogacy is the common child of the husband and wife who ask for such gestational surrogacy from the time this child is born.

#### **Article 95. Conditions for altruistic gestational surrogacy**

1. Altruistic gestational surrogacy shall be based on the voluntariness of involved parties and established in writing.

2. Husband and wife have the right to ask for a person's gestational surrogacy when they fully meet the following conditions:

a/ The wife is certified by a competent health organization as unable to carry a pregnancy and give birth even with assisted reproductive technology;

b/ The couple has no common child;

c/ The couple has received health, legal and psychological counseling.

3. A gestational carrier must fully satisfy the following conditions:

a/ She is a next of kin of the same line of the wife or husband who asks for gestational surrogacy;

b/ She has given birth and is permitted for gestational surrogacy only once;

c/ She is at a suitable age and is certified by a competent health organization as eligible for gestational surrogacy;

d/ In case she is married, she obtains her husband's written consent;

dd/ She has received health, legal and psychological counseling.

4. Altruistic gestational surrogacy must not contravene the law on giving birth with assisted reproductive technology.

5. The Government shall detail this Article.

#### **Article 96. Agreement on altruistic gestational surrogacy**

1. An agreement on altruistic gestational surrogacy between husband and wife who ask for gestational surrogacy (below referred to as gestational surrogacy requesting party) and husband and wife who give gestational surrogacy (below referred to as gestational carrier party) must contain the following basic contents:

a/ Full information on the gestational surrogacy requesting party and the gestational carrier party according to the related conditions prescribed in Article 95 of this Law;

b/ Commitment to fulfill the rights and obligations prescribed in Articles 97 and 98 of this Law;

c/ Settlement of consequences in case of occurrence of obstetrical incidents; support for ensuring reproductive health for the gestational carrier during the period of pregnancy and delivery, child recognition by the gestational surrogacy requesting party, rights and obligations of both parties in case the child has not been delivered to the gestational surrogacy requesting party and other related rights and obligations;

d/ Civil liabilities in case one or both parties breach commitments under the agreement.

2. An agreement on gestational surrogacy shall be made in writing and notarized. In case the couple requesting gestational surrogacy or the couple giving gestational surrogacy authorizes the other to make the agreement, such authorization shall be made in writing and notarized. Authorization to a third party is legally invalid.

In case an agreement on gestational surrogacy between the gestational carrier party and the gestational surrogacy requesting party is made concurrently with the agreement between them and the health establishment conducting the birth giving with assisted reproductive technology, this agreement must be certified by a competent person of this health establishment.

#### **Article 97. Rights and obligations of the altruistic gestational carrier party**

1. A gestational carrier and her husband have the rights and obligations as parents in reproductive health care and care for and nursing of the child until this child is delivered to the gestational surrogacy requesting party; and shall deliver the child to the gestational surrogacy requesting party.

2. A gestational carrier shall comply with the Ministry of Health's regulations on examination and screening for detecting and treating fetal abnormalities and defects.

3. A gestational carrier is entitled to the maternity regime as prescribed by the labor and social insurance laws until the child is delivered to the gestational surrogacy requesting party.

When the duration from the date of giving birth to a child to the date of delivering that child is less than 60 days, a gestational carrier is still entitled to the maternity regime for full 60 days. The child born from gestational surrogacy shall not be counted into the number of children under the policy on population and family planning.

4. The gestational carrier party has the right to request the gestational surrogacy requesting party's support and care for reproductive health.

In the interest of her life or health or for fetal development, a gestational carrier has the right to on the number of embryos and continuation or discontinuation of the pregnancy in accordance with the laws on reproductive health care and giving birth with assisted reproductive technology.

5. When the gestational surrogacy requesting party refuses to receive the child, the gestational carrier party has the right to request a court to oblige the former to receive that child.

#### **Article 98. Rights and obligations of altruistic gestational surrogacy requesting party**

1. The gestational surrogacy requesting party shall pay actual expenses for ensuring reproductive health according to the Ministry of Health's regulations.

2. Rights and obligations of the altruistic gestational surrogacy requesting party toward their child shall arise from the time the child is born. The mother requesting gestational surrogacy is entitled to the maternity regime in accordance with the labor and social insurance laws from the time of receiving her child to the time the child is full 6 months.

3. The gestational surrogacy requesting party may not refuse to receive their child. A gestational surrogacy requesting party that delays receipt of his/her child or breaches the child nursing and caring obligations shall support this child in accordance with this Law and be handled in accordance with relevant laws. If causing damage to the gestational carrier party, he/she shall pay damages. In case the gestational surrogacy requesting party dies, the child is entitled to inheritance of the former's estate in accordance with law.

4. A child born from gestational surrogacy and other members of the family of the gestational surrogacy requesting party have the rights and obligations prescribed in this Law, the Civil Code and other relevant laws.

5. When the gestational carrier party refuses to deliver the child, the gestational surrogacy requesting party has the right to request a court to oblige the former to deliver the child.

**Article 99. Settlement of disputes related to giving birth with assisted reproductive technology and altruistic gestational surrogacy**

1. The court is competent to settle disputes over giving birth with assisted reproductive technology and gestational surrogacy.

2. When both husband and wife being the gestational surrogacy requesting party die or lose their civil act capacity before the child is delivered to them, the gestational carrier party has the right to raise this child. If the gestational carrier party refuses to raise the child, the guardianship and support for the child must comply with this Law and the Civil Code.

**Article 100. Handling of violations related to giving birth with assisted reproductive technology and gestational surrogacy**

Parties involving in giving birth with assisted reproductive technology and gestational surrogacy that violate conditions, rights and obligations prescribed in this Law shall be handled for civil, administrative or penal liabilities depending on the nature and severity of their violations.

**Article 101. Competence to settle identification of parents and children**

1. The civil status registry is competent to identify parents and children in accordance with the civil status law in case there is no dispute.

2. The court is competent to identify parents and children in case there is a dispute or the person requested for being identified as parent or child has died and in the case prescribed in Article 92 of this Law.

A court's decision identifying a parent or child shall be sent to the civil status registry for recording in accordance with the civil status law; to parties involved in the parent and child identification; and to related persons, agencies and organizations as prescribed by the civil procedure law.

**Article 102. Persons having the right to request identification of parents and children**

1. An adult parent or child with civil act capacity has the right to request the civil status registry to identify his/her child or parent in the case prescribed in Clause 1, Article 101 of this Law.
2. A parent or child, as prescribed by the civil procedure law, has the right to request a court to identify his/her child or parent in the case prescribed in Clause 2, Article 101 of this Law.
3. The following persons, agencies and organizations, as prescribed by the civil procedure law, have the right to request a court to identify the parent(s) of a minor child or an adult child who has lost his/her civil act capacity; or identify the child for a minor parent or a parent who has lost his/her civil act capacity in the case prescribed in Clause 2, Article 101 of this Law:
  - a/ Parent, child, guardian;
  - b/ The state management agency in charge of families;
  - c/ The state management agency in charge of children;
  - d/ The women's union.

## Chapter VI

### RELATIONS AMONG OTHER FAMILY MEMBERS

#### **Article 103. Rights and obligations among other family members**

1. Family members have the right and obligation to care for, look after, assist and respect one another. Lawful personal and property rights and interests of family members prescribed in this Law, the Civil Code and other relevant laws shall be protected by law.
2. Family members that live together have the obligations to participate in housework and income-generating activities; contribute their efforts, money or other properties to maintaining family life suitable to their actual capabilities.
3. The State shall adopt policies to create conditions for familial generations to, care for look after, and assist one another for the purpose of preserving and upholding the fine traditions of Vietnamese families; shall encourage individuals and organizations in the society to jointly participate in preserving and upholding the fine traditions of Vietnamese families.

#### **Article 104. Rights and obligations of paternal grandparents, maternal grandparents and grandchildren**

1. Paternal grandparents and maternal grandparents have the right and obligation to look after, care for and educate their grandchildren, lead exemplary lives and set good examples for their children and grandchildren; for minor grandchildren, adult grandchildren who have lost their civil act capacity or have no working capacity and no property to support themselves and no raising people as prescribed in Article 105 of this Law, paternal grandparents and maternal grandparents have the obligation to raise these grandchildren.

2. Grandchildren have the obligation to respect, care for and support their paternal grandparents and maternal grandparents; for paternal grandparents or maternal grandparents who have no children to raise them, their adult grandchildren have the obligation to raise them.

#### **Article 105. Rights and obligations of siblings**

Siblings have the right and obligation to love, care for and assist one another; in case they no longer have parents or their parents have no conditions to look after, raise, care for and educate their children, they have the right and obligation to raise one another.

#### **Article 106. Rights and obligations of aunts, uncles, nieces and nephews**

Aunts, uncles, nieces and nephews have the right and obligation to love, care for and assist one another; have the right and obligation to raise one another in case those who need to be raised no longer have parents, children and people prescribed in Articles 104 and 105 of this Law or still have these people but these people have no conditions to perform their raising obligation.

### Chapter VII

#### SUPPORT

#### **Article 107. Support obligation**

1. The support obligation shall be performed between parents and children; among siblings; between paternal grandparents, maternal grandparents and grandchildren; between aunts, uncles and nieces, nephews; and between husband and wife in accordance with this Law.

The support obligation can be neither replaced by another obligation nor transferred to other people.

2. In case persons having the support obligation shirk this obligation, at the request of the persons, agencies or organizations prescribed in Article 119 of this Law, courts

shall compel these persons to perform the support obligation in accordance with this Law.

#### **Article 108. One person supporting many persons**

In case a person has the obligation to support many persons, the supporting person and supported persons shall reach agreement on methods and levels of support suitable to the actual income and ability of the supporting person and essential needs of supported persons; if failing to reach agreement, they may request a court to settle it.

#### **Article 109. Many persons jointly supporting one person or many persons**

In case many persons have the obligation to support one person or many persons, they shall agree mutually upon methods and levels of contribution suitable to the actual income and ability of each supporting person and the essential needs of the supported person(s); if they fail to reach agreement, they may request a court to settle it.

#### **Article 110. Support obligation of parents toward children**

Parents who do not live with their children or live with their children but violate the support obligation have the obligation to support minor children and adult children who have no working capacity and no property to support themselves.

#### **Article 111. Support obligation of children toward parents**

Adult children who do not live with their parents have the obligation to support their parents who have no working capacity and no property to support themselves.

#### **Article 112. The support obligation among siblings**

In case they no longer have parents or their parents have no working capacity and no property to support their children, adult elder siblings who do not live together with their younger siblings have the obligation to support their minor siblings who have no property to support themselves or adult younger siblings who have no working capacity and no property to support themselves; adult younger siblings who do not live together with their elder siblings have the obligation to support their elder siblings who have no working capacity and no property to support themselves.

#### **Article 113. Support obligation between paternal grandparents, maternal grandparents and grandchildren**

1. Paternal grandparents and maternal grandparents who do not live with their grandchildren have the obligation to support their minor grandchildren or their adult

grandchildren who have no working capacity, no property to support themselves and have no one to support them as prescribed in Article 112 of this Law.

2. Adult grandchildren who do not live together with their paternal grandparents and maternal grandparents have the obligation to support their paternal grandparents and maternal grandparents who have no working capacity, no property to support themselves and have no one else to support them as prescribed by this Law.

#### **Article 114. Support obligation among aunts, uncles and nieces, nephews**

1. Aunts, uncles who do not live with their nieces, nephews have the obligation to support their minor nieces, nephews or their adult nieces, nephews who have no working capacity, no property to support themselves and have no one else to support them as prescribed by this Law.

2. Adult nieces, nephews who do not live with their aunts, uncles have the obligation to support their aunts, uncles who have no working capacity, no property to support themselves and have no one else to support them as prescribed by this Law.

#### **Article 115. Maintenance obligation between husband and wife after divorce**

When divorced, if the party facing financial difficulties requests maintenance for plausible reasons, the other party has the obligation to provide maintenance according to his/her ability.

#### **Article 116. Support level**

1. The support level shall be agreed upon by the person with the support obligation and the supported person or the latter's guardian on the basis of the actual income and ability of the person with the support obligation and the essential needs of the supported person; if they fail to reach agreement, they may request a court to settle it.

2. When there is a plausible reason, the support level may change. The change of the support level shall be agreed upon by the parties; if they fail to reach agreement, they may request a court to settle it.

#### **Article 117. Support method**

Support may be provided on a monthly, quarterly, biannual, annual or one-off basis.

In case the person with the support obligation falls into a difficult financial circumstance, thus being unable to perform his/her support obligation, the parties may reach agreement to change the method of support or temporarily cease the support; if they fail to reach agreement, they may request a court to settle it.



## **Article 118. Termination of support obligation**

The support obligation shall terminate in the following cases:

1. The supported person has become adult and has working capacity or property to raise himself or herself;
2. The supported person is adopted;
3. The supporting person directly raises the supported person;
4. The supporting or supported person dies;
5. The supported person re-marries after divorce;
6. Other cases prescribed by law.

## **Article 119. Persons having the right to request performance of the support obligation**

1. The supported person, his/her parent or guardian has the right in accordance with the civil procedure law to request a court to force the person who fails to voluntarily perform the support obligation to perform such obligation.

2. The following individuals, agencies or organizations have the right in accordance with the civil procedure law to request a court to force the person who fails to voluntarily perform the support obligation to perform such obligation:

a/ Next of kin;

b/ State management agencies in charge of families;

c/ State management agencies in charge of children;

d/ Women's unions.

3. Other individuals, agencies and organizations have the right, when detecting acts of shirking the performance of the support obligation, to request the agencies or organizations prescribed at Points b, c and d, Clause 2 of this Article to request a court to force the people who fail to voluntarily perform the support obligation to perform such obligation.

## **Article 120. Encouragement of assistance from organizations and individuals**

The State and society shall encourage organizations and individuals to provide assistance in cash or kind to families and individuals in extremely difficult and needy circumstances.

## Chapter VIII

### MARRIAGE AND FAMILY RELATIONS INVOLVING FOREIGN ELEMENTS

#### **Article 121. Protection of lawful rights and interests of parties to marriage and family relations involving foreign elements**

1. In the Socialist Republic of Vietnam, marriage and family relations involving foreign elements shall be respected and protected in accordance with Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party.
2. In their marriage and family relations with Vietnamese citizens, unless otherwise provided by Vietnamese law, foreigners in Vietnam have the same rights and obligations like Vietnamese citizens.
3. The Socialist Republic of Vietnam State shall protect lawful rights and interests of Vietnamese citizens abroad in their marriage and family relations in accordance with Vietnamese law, the host country's law and international laws and practices.
4. The Government shall detail the settlement of marriage and family relations involving foreign elements in order to protect lawful rights and interests of the parties and guarantee the implementation of Clause 2, Article 5 of this Law.

#### **Article 122. Application of laws to marriage and family relations involving foreign elements**

1. Unless otherwise provided by this Law, the legal provisions of the Socialist Republic of Vietnam concerning marriage and family are applicable to marriage and family relations involving foreign elements.

In case a treaty to which the Socialist Republic of Vietnam is a contracting party contains provisions different from those of this Law, the provisions of such treaty prevail.

2. In case this Law and other legal documents of Vietnam refer to the application of a foreign law, such foreign law shall apply, provided such application does not contravene the fundamental principles laid down in Article 2 of this Law.

In case a foreign law refers back to the Vietnamese law, Vietnam's marriage and family law shall apply.

3. In case a treaty to which the Socialist Republic of Vietnam is a contracting party refers to the application of a foreign law, such foreign law shall apply.

### **Article 123. Competence to settle cases and matters of marriage and family involving foreign elements**

1. The competence to register civil status related to marriage and family relations involving foreign elements must comply with the law on civil status.
2. The competence to settle cases and matters of marriage and family involving foreign elements at court must comply with the Civil Procedure Code.
3. District-level People's Courts of localities where Vietnamese citizens reside are competent to cancel illegal marriages, settle divorce cases, disputes over the rights and obligations of husband and wife, parents and children, recognition of parents, children, child adoption and guardianship between Vietnamese citizens residing in border areas and citizens of neighboring countries living in areas bordering on Vietnam in accordance with this Law and other Vietnamese laws.

### **Article 124. Consular legalization of papers and documents on marriage and family**

Papers established, granted or certified by competent foreign agencies for use in the settlement of cases and matters of marriage and family shall be consularly legalized, except cases eligible for exemption from consular legalization under treaties to which the Socialist Republic of Vietnam is a contracting party or on the principle of reciprocity.

### **Article 125. Recognition and writing of judgments and decisions of foreign courts and competent foreign agencies on marriage and family**

1. The recognition of judgments and decisions on marriage and family of foreign courts with request for enforcement in Vietnam must comply with the Civil Procedure Code.
2. The Government shall prescribe the writing in civil status registers of matters of marriage and family according to judgments and decisions of foreign courts without request for enforcement in Vietnam or without request for non-recognition in Vietnam; and decisions on marriage and family of other competent foreign agencies.

### **Article 126. Marriage involving foreign elements**

1. For marriages between Vietnamese citizens and foreigners, each party shall comply with his/her country's law on marriage conditions; if their marriage is conducted at a competent Vietnamese state agency, the foreigner shall also comply with this Law's provisions on marriage conditions.

2. Marriages between foreigners permanently residing in Vietnam at competent Vietnamese agencies must comply with this Law's provisions on marriage conditions.

### **Article 127. Divorce involving foreign elements**

1. Divorce between a Vietnamese citizen and a foreigner or between two foreigners permanently residing in Vietnam shall be settled at a competent Vietnamese agency in accordance with this Law.

2. In case a partner being a Vietnamese citizen does not permanently reside in Vietnam at the time of request for divorce, the divorce shall be settled in accordance with the law of the country where the husband and wife permanently co-reside; if they do not have a place of permanent co-residence, the Vietnamese law shall apply.

3. The settlement of a divorced couple's immovables in a foreign country must comply with the law of the country where such immovables are located.

### **Article 128. Identification of parents and children involving foreign elements**

1. Vietnamese civil status registration agencies are competent to settle the identification of parents and children without any disputes between Vietnamese citizens and foreigners or between Vietnamese citizens at least one of whom settles abroad, or between foreigners at least one of whom permanently resides in Vietnam in accordance with the law on civil status.

2. Competent Vietnamese courts shall settle the identification of parents and children involving foreign elements in the cases prescribed in Clause 2 of Article 88, Articles 89, Article 90, Clauses 1 and 5 of Article 97, Clauses 3 and 5 of Article 98, and Article 99 of this Law; and other cases involving disputes.

### **Article 129. Support obligation involving foreign elements**

1. The support obligation must comply with the law of the country where the requester for support resides. In case the requester for support has no place of residence in Vietnam, the law of the country of his/her citizenship shall apply.

2. Agencies competent to settle written requests for support of the persons prescribed in Clause 1 of this Article are agencies of the country of residence of the requester. '

### **Article 130. Application of the agreed matrimonial property regime; settlement of consequences of the co-living of men and women as husband and wife without marriage registration involving foreign elements**

In case of receiving requests for settlement of the application of the agreed matrimonial property regime; or relations of men and women co-living as husband

and wife without marriage registration involving foreign elements, competent Vietnamese agencies shall apply the provisions of this Law and other relevant Vietnamese laws to settle these requests.

## Chapter IX

### IMPLEMENTATION PROVISIONS

#### **Article 131. Transitional provisions**

1. Marriage and family relations established before this Law takes effect shall be settled in accordance with the law on marriage and family applicable at the time of establishment.
2. For cases and matters of marriage and family received by courts before this Law takes effect but not yet settled by the courts, the procedures prescribed in this Law shall apply.
3. This Law shall not be applied to lodging protests according to cassation or review trial procedures with regard to cases and matters which courts have settled in accordance with the law on marriage and family effective before the effective date of this Law.

#### **Article 132. Effect**

This Law takes effect on January 1, 2015.

Marriage and Family Law No. 22/2000/QH10 ceases to be effective on the date this Law takes effect.

#### **Article 133. Detailing and implementation guidance**

The Government shall detail articles and clauses as assigned in this Law.

The Supreme People's Court shall assume the prime responsibility for, and coordinate with the Supreme People's Procuracy and the Ministry of Justice in, guiding articles and clauses as assigned in this Law.

This Law was passed on June 19, 2014, by the VIIIth National Assembly of the Socialist Republic of Vietnam at its 7th session.

CHAIRMAN OF THE NATIONAL  
ASSEMBLY

Nguyen Sinh Hung