

## **THE GOVERNMENT**

### **Decree No. 05/2012/ND-CP of February 2, 2012, amending and supplementing a number of articles of the decrees on secured transaction registration, legal aid, lawyers and legal counseling**

THE GOVERNMENT

*Pursuant to the December 25, 2011 Law on Organization of the  
Government;*

*Pursuant to the June 3, 2008 Law on Promulgation of Legal Documents;*

*In furtherance of the Government's Resolution No. 52/NQ-CP of  
December 10, 2010, on simplification of administrative procedures under  
the Ministry of Justice's management;*

*At the proposal of the Minister of Justice,*

DECREES:

**Article 1.** To amend and supplement a number of articles of the Government's Decree No. 83/2010/ND-CP of July 23, 2010, on registration of secured transactions

**1.** To replace the phrase "provincial-level maritime bureaus or seaport authorities under the Vietnam National Maritime Bureau" in Clause 2, Article 24; Clause 2, Article 25; Clause 2, Article 26; Clause 2, Article 27; and Clause 2, Article 47, with the phrase "Vietnamese seagoing ship registry offices".

**2. To supplement Clause 2, Article 52 as follows:**

"2. To annul Point b, Clause 2, Article 31 of the Government's Decree No. 84/2007/ND-CP of May 25, 2007, additionally stipulating the grant of land use right certificates, land recovery, exercise of land use rights, order and procedures for compensation, support and resettlement upon land recovery by the State, and settlement of land-related complaints."

**3. To amend some phrases as follows:**

a/ To add the phrase "(1 set)" to the phrases indicating types of registration dossiers in Clauses 1 of Articles 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36 and 37.

b/ To replace the phrase "application for deregistration of a seagoing ship mortgage" in Clause 1, Article 27, with the phrase "request for deregistration of a seagoing ship mortgage".

c/ To remove the phrase “a certified copy of the paper evidencing the legal status of the registration requester” from Point c, Clause 1, Article 20; Point c, Clause 1, Article 21; Point c, Clause 1, Article 22; Point d, Clause 1, Article 23; Point c, Clause 1, Article 24; Point d, Clause 1, Article 25; Point c, Clause 1, Article 26; Point d, Clause 1, Article 27; Point d, Clause 1, Article 28; Point d, Clause 1, Article 29; Point c, Clause 1, Article 30; and Point d, Clause 1, Article 31.”

#### **4. To annul Clause 2, Article 53.**

**Article 2.** To amend and supplement Article 27 of the Government’s Decree No. 07/2007/ND-CP of January 12, 2007, detailing and guiding a number of articles of the Law on Legal Aid, as follows:

“1. Those who meet the criteria specified in Clause 1, Article 22 of the Law on Legal Aid, do not fall into one of the cases specified in Clause 3, Article 20 of the Law on Legal Aid and wish to act as collaborators shall send dossiers to legal aid centers in the localities where they reside or work.

A dossier of application for working as a collaborator comprises:

a/ An application for working as a collaborator, made according to a set form;

b/ A copy of the applicant’s bachelor degree in law or another major or an intermediate degree in law;

c/ A curriculum vitae certified by the People’s Committee of the commune, ward or township where the applicant resides or by the agency in which the applicant works, together with 2 portrait color photos of 2 cm x 3 cm.

For an applicant who resides in an exceptional socio-economic difficulty-hit, ethnic minority or mountainous area and has been working for 3 years or more in the law sector or has legal knowledge and prestige in the community, in addition to the papers specified at Points a and c above, the dossier of application for working as a collaborator must comprise a written certification of the period of working in the law sector, made by the agency or organization in which the applicant has been or is working, or a written certification of the applicant’s legal knowledge and prestige, made by the commune-level People’s Committee.

2. Within 4 working days after receiving a dossier, the center’s director shall check the completeness and validity of the dossier. If the dossier is valid, he/she shall submit it to the director of the provincial-level Justice Department for consideration, recognition and grant of a collaborator’s card. If the dossier is invalid, he/she shall return it to the applicant and notify in writing the reason.

3. Within 3 working days after receiving the dossier submitted by the center's director, the director of the provincial-level Justice Department shall consider and sign a recognition decision and grant a collaborator's card. In case of refusal, he/she shall notify in writing the reason to the applicant who may lodge a complaint about this refusal. Such complaint shall be settled under the law on complaints.”

**Article 3.** To amend and supplement a number of articles of the Government's Decree No. 28/2007/ND-CP of February 26, 2007, detailing and guiding a number of articles of the Law on Lawyers

**1. To amend and supplement Article 8 as follows:**

“1. A single-member limited liability law firm may be transformed into a limited liability law firm with two or more members and vice versa.

2. When a single-member limited liability law firm is transformed into a limited liability law firm with two or more members or vice versa, the director of the law firm shall send directly or by post 1 transformation dossier set to the provincial-level Justice Department with which the law firm has registered its operation. A transformation dossier comprises:

a/ An application for transformation, clearly stating the purpose of and reason for the transformation;

b/ The draft charter of the new law firm;

c/ The list of members or lawyers being owners of the new law firm;

d/ The granted operation registration certificate.

3. Within 5 working days after receiving a complete transformation dossier or papers as specified in Clause 2 of this Article, the provincial-level Justice Department shall grant an operation registration certificate to the limited liability law firm according to the Law on Lawyers. In case of refusal, it shall issue a written reply clearly stating the reason.”

**2. To amend and supplement Clause 1, Article 19 as follows:**

“1. Foreign law firms concerned shall send directly or by post to the Ministry of Justice 1 dossier set comprising the consolidation contract and a consolidation application. The consolidation contract must specify the procedures and conditions for consolidation; labor use plan; time limit, procedures and conditions for handover of assets; and time limit for the consolidation.

Within 10 days after receiving a valid dossier, the Ministry of Justice shall approve the consolidation by granting an establishment license to the new foreign law firm. In case of refusal, it shall notify the reason in writing.”

**3. To amend and supplement Clause 1, Article 20 as follows:**

“1. Foreign law firms concerned shall send directly or by post to the Ministry of Justice 1 dossier set comprising the merger contract and a merger application. The merger contract must specify the procedures and conditions for merger; labor use plan; time limit, procedures and conditions for handover of assets; and time limit for the merger.”

**4. To amend and supplement Clauses 2 and 5, Article 21 as follows:**

“2. When a foreign law-practicing organization in Vietnam suspends its operation under Point a, Clause 1 of this Article, it shall send directly or by post to the Ministry of Justice a notice thereof at least 30 days before the expected date of operation suspension.

Within 7 working days, the Ministry of Justice shall issue a decision to permit the foreign law-practicing organization in Vietnam to suspend its operation. In case of refusal, the Ministry of Justice shall notify the reason in writing.

A foreign law-practicing organization in Vietnam may suspend its operation after obtaining the Ministry of Justice’s written approval.

5. At least 30 days before the expected date of resumption of operation, a foreign law-practicing organization in Vietnam shall send directly or by post a report on resumption of operation to the Ministry of Justice, provincial-level Justice Department, bar association and tax agency of the locality where it is headquartered.”

**Article 4.** To amend and supplement a number of articles of the Government’s Decree No. 77/2008/ND-CP of July 16, 2008, on legal counseling

**1. To amend and supplement Article 13 as follows:**

“1. Legal counseling centers shall register their operation with provincial-level Justice Departments of the localities where they are headquartered. When registering its operation, a legal counseling center shall send directly or by post 1 dossier set to the provincial-level Justice Department.

An operation registration dossier comprises:

- a/ A written operation registration;
- b/ The managing agency’s decision to establish the legal counseling center and appoint its director;
- c/ The draft organization and operation regulation of the center to be issued by the managing agency;

d/ A list of applicants for legal counselor's cards and lawyers working under labor contracts for the center, enclosed with their dossiers.

Within 5 working days after receiving a complete and valid dossier, the provincial-level Justice Department shall grant an operation registration certificate to the legal counseling center. In case of refusal, it shall notify the reason in writing.

2. When granting an operation registration certificate to a legal counseling center, the provincial-level Justice Department shall concurrently grant legal counselor's cards to those who meet the criteria specified in Clause 1, Article 19 of this Decree.

The Ministry of Justice shall provide forms of operation registration certificate and legal counselor's card.

3. A legal counseling center may commence operation after obtaining an operation registration certificate.”

**2. To amend and supplement Clause 1, Article 20 as follows:**

“1. An applicant for a legal counselor's card shall send directly or by post 1 dossier set to the provincial-level Justice Department.

A dossier of application for a legal counselor's card comprises:

a/ An application for a legal counselor's card;

b/ A copy of the applicant's bachelor degree in law;

c/ Written certification of the applicant's period of working in the law sector.

Within 5 working days after receiving a complete and valid dossier, the provincial-level Justice Department with which the legal counseling center has registered its operation shall grant a legal counselor's card to the qualified applicant. In case of refusal, it shall notify in writing the reason.”

**Article 5.** To amend and supplement a number of articles of the Government's Decree No. 131/2008/ND-CP of December 31, 2008, on lawyers' socio-professional organizations

**1. To amend and supplement Clause 2, Article 8 as follows:**

“2. Founding members of a bar association shall make a dossier for establishment of the bar association and sent 1 set of this dossier directly or by post to the provincial-level Justice Department concerned. Within 15 days after receiving a complete dossier, the provincial-level Justice Department shall assume the prime responsibility for, and coordinate with the provincial-level Home Affairs Department in, appraising the dossier and proposing the People's Committee of the province or centrally run city

(below referred to as provincial-level People's Committee) to permit the establishment of the bar association.

Within 5 working days after receiving the provincial-level Justice Department's appraisal document, enclosed with the dossier, the provincial-level People's Committee shall send to the Ministry of Justice a document on the establishment of a bar association in the locality. Within 7 working days after receiving this document from the provincial-level People's Committee, the Ministry of Justice shall issue a document on the establishment of the bar association.

After obtaining the Minister of Justice's written consent, the chairperson of the provincial-level People's Committee shall permit the establishment of the bar association; in case of refusal, he/she shall notify the reason in writing. The refused applicant may lodge a complaint according to law."

**2. To amend and supplement Clauses 1 and 2, Article 10 as follows:**

"1. Within 7 working days after the charter of a bar association is adopted, the management board of the bar association shall send directly or by post to the provincial-level Justice Department 1 set of dossier of request for approval of the charter. Such dossier comprises:

- a/ A request for approval of the charter;
- b/ The charter and its adoption minutes;
- c/ The Congress's resolution;
- d/ The written consent of the Vietnam Bar Federation to the charter's contents.

2. Within 20 days after receiving a complete dossier, the provincial-level Justice Department shall assume the prime responsibility for, and coordinate with the provincial-level Home Affairs Department in, appraising the dossier and proposing the provincial-level People's Committee to approve the charter.

Within 7 working days after receiving the provincial-level Justice Department's appraisal document, enclosed with the dossier, the chairperson of the provincial-level People's Committee shall approve or disapprove the charter of the bar association; in case of refusal, he/she shall notify the reason in writing."

**3. To amend and supplement Clause 3, Article 11 as follows:**

"3. At least 30 days before the date scheduled for organization of a term congress, the bar association management board shall send directly or by post to the provincial-level People's Committee a report on its plan to organize the term congress and form the management board and the



commendation and discipline council of the new term. Within 15 days after receiving such report, the provincial-level People's Committee shall assign the provincial-level Justice Department to assume the prime responsibility for, and coordinate with the provincial-level Home Affairs Department in, appraising and commenting on such plan.

Within 7 working days after receiving the provincial-level Justice Department's report, the provincial-level People's Committee shall consider and give its opinions on the bar association's plan to organize the term congress and form the management board and the commendation and discipline council of the new term.”

**4. To amend and supplement Clause 2, Article 12 as follows:**

“2. Within 7 working days after a congress concludes, the bar association management board shall send directly or by post to the provincial-level Justice Department a report on congress results, enclosed with the election minutes, a list of members of the management board and the commendation and discipline council of the bar association and their resumes; and the congress's resolution.

Within 10 working days after receiving the report on congress results, the provincial-level Justice Department shall assume the prime responsibility for, and coordinate with the provincial-level Home Affairs Department in, considering and proposing the provincial-level People's Committee to approve the results of the bar association's congress.

Within 5 working days after receiving the provincial-level Justice Department's report, the provincial-level People's Committee shall approve or disapprove the congress results; in case of refusal, it shall notify the reason in writing.”

**5. To amend and supplement Clauses 2 and 3, Article 15 as follows;**

“2. If the management board of a bar association falls into one of the cases specified at Points a, b and c, Clause 1 of this Article, the Standing Committee of the Vietnam Bar Federation shall send directly or by post to the provincial-level People's Committee concerned a written proposal for issuance of a decision to suspend the operation of such management board and request the bar association concerned to organize an extraordinary congress to elect a new management board and chairman.

Within 7 working days after receiving the proposal of the Standing Committee of the Vietnam Bar Federation, the provincial-level People's Committee shall issue a decision to suspend the operation of the bar association management board and request the bar association to organize

an extraordinary congress to elect a new management board and chairman. In case of refusal, it shall notify the reason in writing.

The commendation and discipline council of the bar association shall temporarily discharge the tasks and powers of the management board, and the president of the commendation and discipline council shall temporarily discharge the tasks and powers of the chairman of the bar association until a new management board and chairman are elected.

Within 60 days after the issuance of a decision to suspend the operation of the bar association management board, the head of the commendation and discipline council shall convene an extraordinary lawyers' congress.

3. If the chairman of a bar association falls into one of the cases specified in Clause 1 of this Article, the Standing Committee of the Vietnam Bar Federation shall send directly or by post to the provincial-level People's Committee concerned a written proposal for issuance of a decision to suspend such person from his/her position and request the management board of such bar association to appoint a deputy chairman to work as the acting chairman of the bar association until a new chairman is elected.

Within 7 working days after receiving the proposal of the Standing Committee of the Vietnam Bar Federation, the provincial-level People's Committee shall issue a decision to relieve the chairman from office and request the bar association to appoint a deputy chairman of the bar association to work as its the acting chairman until a new chairman is elected. In case of refusal, it shall notify in writing the reason.

Within 30 days after being appointed, the acting chairman of the bar association shall convene an extraordinary congress to elect a new chairman of the bar association.”

**6. To amend and supplement Clause 1, Article 20 as follows:**

“1. Within 7 working days after the charter of the Vietnam Bar Federation is adopted, the National Council of Lawyers shall send directly or by post to the Ministry of Justice a dossier of request for approval of the charter, comprising:

- a/ A request for approval of the charter;
- b/ The charter and its adoption minutes;
- c/ The congress' resolution.”

**7. To amend and supplement Clause 3, Article 21 as follows:**

“3. At least 60 days before the date scheduled for organization of a term congress, the Standing Committee of the Vietnam Bar Federation shall send directly or by post to the Ministry of Justice a report on its plan to



organize the term congress and prepare personnel for leading titles of the new term. The Ministry of Justice shall assume the prime responsibility for, and coordinate with the Ministry of Home Affairs in, considering and giving comments on such plan.”

**8. To amend and supplement Clause 2, Article 22 as follows:**

“2. Within 10 working days after a congress concludes, the Standing Committee of the Vietnam Bar Federation shall send directly or by post to the Ministry of Justice a report on congress results, enclosed with the election minutes and a list and resumes of holders of the leading titles of the Vietnam Bar Federation and the congress’ resolution.

Within 15 days after receiving the report on congress results, the Ministry of Justice shall consider and approve or disapprove the election results and resolution of the congress of the Vietnam Bar Federation after obtaining opinions of the Ministry of Home Affairs.”

**9. To amend and supplement Clause 2, Article 25 as follows:**

“2. In case the National Council of Lawyers falls into one of the cases specified at Points a, b and c, Clause 1 of this Article or the president of the Vietnam Bar Federation falls into one of the cases specified in Clause 1 of this Article, the Minister of Justice shall assume the prime responsibility for, and coordinate with the Minister of Home Affairs in, proposing the Prime Minister to issue a decision to suspend the operation of the National Council of Lawyers or to relieve from office the president of the Vietnam Bar Federation and request the Vietnam Bar Federation to hold an extraordinary congress to elect new persons to the leading titles of the Federation.

Within 60 days after receiving the Minister of Justice’s proposal, the Prime Minister shall issue a decision to suspend the operation of the National Council of Lawyers or to relieve from office the president of the Vietnam Bar Federation and request the Vietnam Bar Federation to organize an extraordinary congress to elect new persons to the leading titles of the Federation.”

**10. To amend and supplement Clause 2, Article 27 as follows:**

“2. In case the Vietnam Bar Federation is dissolved under Clause 1 of this Article, the Prime Minister shall issue a decision to dissolve the Vietnam Bar Federation and a decision to re-establish the Vietnam Bar Federation. Within 60 days after receiving the Ministry of Justice’s proposal, the Prime Minister shall issue a decision to dissolve the Vietnam Bar Federation.”

**Article 6. Effect**

This Decree takes effect on April 1, 2012.

Ministers, heads of ministerial-level agencies, heads of government-attached agencies, chairpersons of provincial-level People's Committees and related organizations and individuals shall implement this Decree.-

On behalf of the Government

*Prime Minister*

*NGUYEN TAN DUNG*

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