

## Vietnam Civil Proceedings Code

### Quick Read

On 29 March 2011, Law No. 65/2011/QH12 (“**Law No. 65**”) on the amendment of and supplement to a number of articles of the Civil Proceedings Code No. 24/2004/QH11 (“**CPC 2004**”) was promulgated by the National Assembly of Vietnam. Law No. 65, which came into full force and effect on 1 January 2012, has amended 50 articles, introduced 12 new articles and revoked 8 articles of the CPC 2004 in relation to the following fundamental issues:

- i. Legal time-limits for initiation of a legal action or lodgement of a petition;
- ii. Jurisdiction of the People’s courts;
- iii. Rights and obligations of the parties in civil cases;
- iv. Substantiation and obligation to provide evidence in civil proceedings; and
- v. Role of the People’s inspectorates in civil proceedings.

This legal update provides an overview of the key amendments of and supplements to the CPC 2004 in accordance with Law No. 65.<sup>1</sup>

### Legal time-limits for initiation of a legal action or lodgement of a petition<sup>2</sup>

Under the CPC 2004, the time-limit for initiating a legal action under civil procedures was two years from the date on which the lawful rights and interests of an individual, body or organization, or the public interest or interests of the State were infringed, unless provided otherwise by relevant laws.

However, pursuant to Article 159 of the CPC 2011, the time-limits for initiating a legal action will now be applied in accordance with relevant laws. For

example, the time-limit to initiate a legal action for a dispute related to an inheritance is 10 years from the date of the individual’s death, in accordance with Article 645 of the Civil Code 2005. If the relevant laws do not specify a legal time-limit, CPC 2011 provides the following guidelines:

- i. No legal time-limit will apply to initiate a legal action with regard to: (a) any dispute in relation to ownership of property; (b) any dispute to reclaim ownership of property in the possession of another person; and (c) land disputes under the laws on land.
- ii. For other types of disputes, the time-limits for initiating a legal action are two years from the date on which an individual, body or organization becomes aware that their lawful rights and interests were infringed.

The CPC 2011 maintains the one year legal time-limit to lodge a petition for the Court to settle a civil matter.

### Jurisdiction of the People’s courts

#### GENERAL JURISDICTION OF THE COURTS

Law No. 65 has enlarged the general jurisdiction of the People’s Courts.

Firstly, Articles 25 and 26 add new civil disputes and petitions which fall under the jurisdiction of the Court. These include: (a) petitions to invalidate a notarised document and any related dispute; (b) petitions to identify ownership of or rights to use property, or to separate a property under mutual or multiple ownership for enforcement of a judgement or decision under civil proceedings;<sup>3</sup> and (c) any dispute in relation to a property subject to a civil proceeding enforcement.

Secondly, the Courts now have jurisdiction to annul an “unlawful individually specific decision” made by an

agency or organization, provided that such “unlawful individually specific decision” infringed the legal rights and interests of a party in a civil matter being settled by the Court.<sup>4</sup> While the CPC 2011 does not define the term “individually specific decision”, it seems to include administrative decisions issued by State agencies or organizations, or by persons in charge of State agencies or organizations.

Finally, Law No. 65 increases the scope of civil matters relating to commercial arbitration which fall under the jurisdiction of the Courts under Article 340 of the CPC 2011. These new matters include petitions related to: (a) resolving a complaint in relation to the Arbitration Tribunal’s decision on an invalid or unenforceable arbitration agreement or in relation to the jurisdiction of the Arbitration Tribunal; (b) collecting evidence; (c) summoning witnesses; and (d) registering an arbitration award.

#### THE COURT’S JURISDICTION BY LEVEL OF AUTHORITY

In addition to the enhanced general jurisdictions of the Courts, Law No. 65 has broadened the jurisdiction of the People’s Courts at the District level. Article 33 has enlarged the scope of business or commercial disputes, as well as civil petitions, now allocated to the People’s District Courts, which were previously given to the provincial People’s Courts.

#### Rights and obligations of the parties in civil cases

Law No. 65 modified certain provisions of the CPC 2004 in order to grant additional rights to parties in civil proceedings.<sup>5</sup> For example, Article 58 and new Article 23a of the CPC 2011 provide that, during civil proceedings, the Courts will ensure and respect the rights of the parties in civil proceedings to confront each other during trial. Article 23a also gives this right to persons protecting the lawful rights and interests of the parties, such as lawyers or their legal counsel.

Supplementary rights now available to the parties in civil proceedings in accordance with Article 58 of the CPC 2011 include: (i) rights to question other people concerned, if permitted by the Court, and (ii) rights to petition the Court to allow or summon a person with related rights and obligations to participate in the proceedings, a right only available to the plaintiff under the CPC 2004. The parties in civil proceedings may also propose to the Court issues and questions to be raised to other persons during the civil

proceedings. They may confront and cross-examine other litigants or witnesses. Article 284 of the CPC 2011 allows the parties to request authorized persons or agencies to protest a Court’s judgement or decision in accordance with the judicial review procedure if it contains a breach of law. Article 284 of the CPC 2011 provides a one year legal time-limit from the date on which the Court’s judgement or decision becomes valid and enforceable within which a party may make such a request. In contrast, the CPC 2004 only permitted the party to provide written notification to a competent person or agency of a violation in a Court’s judgment or decision, but not to formally request their intervention.

#### Substantiation and obligation to provide evidence in civil proceedings

Although the parties are still responsible for providing evidence during civil proceedings,<sup>7</sup> Article 164 of the CPC 2011 has removed the obligations of the plaintiff to provide evidence to support its claims when lodging the application for initiation of a legal proceeding. In addition to currently accepted sources of evidence, pursuant to Article 82 of the CPC 2011 now considers the result of an asset appraisal as a permissible source of evidence.

The CPC 2011 does not alter the existing rules on the provision and supply of evidence per the request of the People’s Court or inspectorates. However, Article 94 of the CPC 2011 has imposed a potential legal liability on any individual, body or organization if they fail to provide or supply evidence per the request of the People’s Court or inspectorates.

#### Role of the People’s inspectorates

Pursuant to the CPC 2004, the People’s inspectorates were requested by law to participate in hearings and trials in any case in which evidence was collected by the Court, but a concerned party had lodged a complaint; or in civil matters under the jurisdiction of the Court in which the People’s inspectorate had protested the Court’s judgement or decision.

However, Article 21 of the CPC 2011 requests the participation of the People’s inspectorates in a broader scope of cases, including:

- i. Court hearings of first instance in civil matters under the Court’s jurisdiction;
- ii. Court hearings and trials in any case in which evidence is collected by the Court; or where objects in dispute are public properties or

public interests, land use rights, or houses; or any case in which a party is a minor or a person with a physical or mental disability; and

- iii. Court meetings, hearings and trials of appeals, judicial review procedures or re-trial procedures.

The CPC 2011 does not define “public property” and “public interest”. While the Civil Code 2005 does not provide a clear definition of those terms, it does provide for specific forms of ownership, including: (i) State ownership; (ii) collective ownership; (iii) private ownership; (iv) mutual or multiple ownership; (v) ownership by political organizations and socio-political organizations; and (vi) ownership by socio-political professional organizations, social organizations and socio-professional organizations. Several of these forms of ownership may have a public ownership aspect to them.

## Conclusion

The changes implemented by the CPC 2011 are expected to enforce basic principles of civil proceedings in Vietnam. In particular, the revisions enhance the rights of parties to petition the courts to protect their lawful rights and interests, rights to confront each other openly in a trial, and rights to provide evidence and proof in civil proceedings. However, some of the unclear terminology used in the CPC 2011 may undermine its interpretation and application.

## Endnote

1. Law No. 65 and the CPC 2004 will be collectively referred as “CPC 2011”.
2. The CPC 2011 does not define the terms “initiation of a legal action” and “lodgement of a petition”. However, it is generally understood that “initiation of a legal action” is an action to bring a civil dispute to the Courts for resolution, while “lodgement of a petition” is an action to request the Court to consider a civil matter. Civil disputes and civil matters which fall under the Court’s jurisdiction are clearly specified in the CPC 2011.
3. Article 172 and Part 4, Chapter XIII of the Civil Code 2005 provide a definition and description of mutual and multiple ownership of property.
4. Article 32a, CPC 2011.
5. Parties in civil proceeding, otherwise translated as “litigants”, include plaintiff, defendant and persons with related rights and obligations (Article 56 of the CPC 2011).
6. The CPC 2011 does not define “person” in this provision, but it seems to refer to “litigants” and “other parties to litigation”, such as persons protecting the lawful rights and interests of the litigants, the People’s inspectors, witnesses, experts, interpreters and representatives (Sections 1 & 2 of Chapter VI of the CPC 2011).
7. See Article 79 of the CPC 2004.

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