

## Vietnam Family and Marriage Act 2014

The Vietnam Family and Marriage Act 2014 has officially been passed and will take effect from Jan 1st, 2015. The Vietnam law on Marriage and Family in 2014 has the following notable update:

Same-sex marriage is not banned but not yet officially recognized

The Law on Marriage and Family in 2014 abolishes the regulations that “prohibit marriage between people of the same sex,” but specifically “does not recognize marriages between people of the same sex as stipulated in clause 2 Article 8 “. Accordingly, people of the same sex can get married but their marriage will not be protected by law when disputes occur. This is however considered a development in the law taking consideration of the situation in Vietnam.

Raising the age of marriage

The new law defined marriage age for women from the age of 18 or more for women and men from all 20 years or older. The reason for this change is because if the minimum age of marriage for women is just about to turn 18, the rules are not consistent with the Vietnam Civil Code and the Civil Procedure Code.

According to the Vietnam Civil Code, person under 18 years old is a minor, as such requires the legal representative agreement in civil transactions. According to the Vietnam Civil Procedure Code, people of at least 18 years old will have full capacity for civil conduct proceedings.

Surrogacy arrangement is accepted

The Vietnam Marriage and Family Law 2014 officially allows surrogacy for humanitarian purposes. The surrogacy is applied only when the adequate conditions for both surrogate mothers and intended parents are met. In particular, the law only allows relatives from husband or wife to be surrogate mother. This will also be considered as a development in the Vietnam Marriage and Family Law 2014.

Assets division during marriage

Law in developed countries recognize the prenuptial agreement which is signed between people before getting married. Vietnam law does not consider marriage as a contract. In the meantime, the current regulations of Vietnam Marriage and Family law are unclear on ownership of common and private assets and properties. It mainly refers to land issues while other assets such as securities and share ownership in the enterprise are not mentioned, making it difficult to resolve the disputes arisen. The Law on Marriage and Family 2014 specifically regulates the agreement between people before getting married on the assets and properties. Such agreement must be in writing, notarized or authenticated before marriage. This agreement could be changed during the marriage.

## 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.