

## **CIVIL CODE - Chapter four: Legal person**

### **Article 84. Legal person** (modified and supplemented)

An organization shall be recognized as a legal person when it meets all the following conditions:

1. Established legally;
2. Has a well-organized structure;
3. Possesses property independent from other individuals and/or organizations, and bears its own liability by such property;
4. Independently enters into legal relationships under its own name.

### **Article 85. Establishment of the legal person** (modified and supplemented)

A legal person may be established on the initiative of an individual, organization, or in accordance with a decision of the competent State authority.

The establishment of a legal person must comply with the procedures stipulated by law.

### **Article 86. Types of legal person** (modified and supplemented)

1. State agencies, units of the armed forces;
2. Political organization, socio-political organization, political socio-professional organization;
3. Social organization; socio-professional organization;
4. Economic organization;
5. Social fund, charitable fund;
6. Other organizations which meet all the conditions provided for under Article 84 of this Code.

### **Article 87. The civil legal capacity of a legal person** (modified and supplemented)

1. The civil legal capacity of a legal person is the capabilities of the legal person to have civil rights and obligations which are consistent with its purpose of operation.

2. The civil legal capacity of a legal person shall arise as from the point of time when the legal person is established legally, and shall be terminated at the point of time when the legal person ceases to exist.

3. The legal representative or the mandated representative of the legal person shall act in the name of the legal person in civil relations.

#### **Article 88. The name of a legal person**

1. A legal person must have its own name in the Vietnamese language, which shall clearly indicate the legal person's organizational form and distinguish it from other legal persons operating in the same domain.

2. A legal person must use its own name when engaging in civil intercourse.

3. The name of a legal person is recognized and protected by law.

#### **Article 89. The headquarters of a legal person**

The place where the managing office of a legal person is located shall be the headquarters of the legal person.

A legal person may choose other locations to serve as its liaison address.

#### **Article 90. The statute of a legal person** (modified and supplemented)

1. Where the law stipulates that a legal person must have a statute, the statute of the legal person must be approved by the founding members or a convention of the members; the statute of legal person shall be approved by the State agency that establishes the legal person.

2. The statute of a legal person shall have the following principal contents:

a/ Name of the legal person;

b/ Purpose and scope of operation;

c/ Headquarters;

d/ Statutory capital (if any);

e/ Organizational structure, the procedures for elections, appointments, assignments and dismissals; duties and powers of the titled positions in the management body and other bodies;

f/ Rights and obligations of the members;

g/ Procedures for amending and supplementing the statute;

h/ Conditions for consolidation, merger, separation and dissolution of the legal entity.

3. Amendments and supplements to the statute of the legal person must be approved by competent State authorities if stipulated by law.

**Article 91. Representative office(s) and branch(es) of a legal person** (modified and supplemented)

1. A legal person may establish representative office(s) and branch(es) at a place different from his/her headquarters.

2. The representative office shall be a dependent entity of the legal person and shall have the duty to represent under commission the interests of the legal person and to assure the protection of such interests.

3. A branch shall be a dependent entity of the legal person and shall have the duty to perform all or part of the functions of the legal person, including commissioned representation.

4. Representative office(s) and branch(es) are not legal persons. The head of the representative office(s) and/or branch(es) shall perform his/her duties in accordance with the mandate of the legal person.

5. Legal persons shall have the civil rights and obligations arising from civil intercourse established and performed by the representative office(s) and branch(es).

**Article 92. The managing body of a legal person**

1. A legal person shall have a managing body.

2. The organization, duties and powers of the managing body of the legal person shall be prescribed in the statute of the legal person or in the decision to establish the legal person.

**Article 93. The representative of a legal person** (modified and supplemented)

1. The representative of a legal person may be a legal representative or a mandated representative. The representative of a legal person shall respect articles on representative stipulated in Chapter VII, Part 1 of this Code.

2. The legal representative of a legal person shall be stipulated in the decision to establish the legal person or in the statute of the legal person.

3. The legal representative of a legal person may delegate other persons to perform the representative duties on his/her behalf.

**Article 94. Civil liabilities of a legal person**

1. A legal person shall bear civil liabilities for the exercise of its civil rights and performance of its civil obligations established and performed by the representative in the name of the legal person.
2. A legal person shall bear civil liabilities with its own property; shall not bear civil liability for a member of the legal person with respect to the civil obligations established and performed by such member not acting in the name of the legal person.
3. A member of the legal person shall not bear civil liabilities on behalf of the legal person with respect to civil obligations established and performed by the legal person.

**Article 95. Consolidation of legal persons** (modified and supplemented)

1. Legal persons of the same category may consolidate with one another to form a new legal person in accordance with the decision of the competent State authority or in accordance with the agreement of the legal persons.

The consolidation of legal persons must comply with the procedures as prescribed by law.

2. After the consolidation, the former legal persons shall terminate; the civil rights and obligations shall be transferred to the new legal person.

**Article 96. Merging of legal persons** (modified and supplemented)

1. A legal person may be merged (referred to as the merged legal person) into another legal person of the same category (referred to as the merging legal person) in accordance with the decision of the competent State authority or in accordance with the agreement of those legal persons.

2. After the merger, the merged legal person shall terminate; the civil rights and obligations of such legal person shall be transferred to the merging legal person.

**Article 97.- Division of a legal person** (modified and supplemented)

1. A legal person may be divided into more than one legal person in accordance with the decision of the competent State authority or the decision of the competent body of the legal person as stipulated in the statute of the legal person.

2. After the division<sup>7</sup>, the divided legal person shall terminate; the civil rights and obligations of such legal person shall be transferred to the new legal person.

**Article 98.- Separation of a legal person** (modified and supplemented)

1. A legal person may be separated into more than one legal person in accordance with the decision of the competent State authority or the decision of the competent authorities of the legal person as prescribed in the statute of the legal person.

2. After the separation, the separated legal person and the separating legal person shall perform their powers and responsibilities in accordance with the operation purposes of that legal person.

**Article 99. Dissolution of a legal person** (modified and supplemented)

1. A legal may be dissolved under the following circumstances:

a/ By decision of the competent State authority;

b/ By the statute of the legal person;

c/ Upon the expiry of the term of operation stated in the statute or in the decision of the competent State authority regarding the establishment of the legal person.

2. Before dissolving, a legal person must perform its property obligations and get the approval of a competent State authority.

**Article 100. Termination of a legal person** (modified and supplemented)

1. A legal person shall terminate under the following circumstances:

a/ The consolidation of legal persons, the merging of legal persons and the division of a legal person in accordance with the provisions of Article 95, Article 96 and Article 97 of this Code;

b/ Dissolution in accordance with Article 99 of this Code;

c/ Declaration of bankruptcy in accordance with the law on bankruptcy.

2. The legal person shall terminate from the time its name is removed from the legal person registry or from the time stated in the decision of the competent State authorities.

3. In the termination of the legal person, its property shall be settled in accordance with the stipulations of law.

**Section 2**

**TYPES OF LEGAL PERSON**

**Article 101. Types of Legal Person** (modified and supplemented)

1. State agencies, units of the armed forces;

2. Political organization, socio-political organization, professional socio-political organization;

3. Social organization; socio-professional organization;
4. Economic organization;
5. Social fund, charitable fund;
6. Other organizations which meet all the conditions provided for under Article 84 of this Code.

**Article 102.- A Legal person who is a state agency or unit of the armed forces** (modified and supplemented)

1. A State agency or unit of the armed forces which has been allocated property by the State in order to perform the functions of State management, and other functions which are not for business purpose, shall be legal persons when participating in civil relations.
2. A State agency or unit of the armed forces shall bear civil liabilities related to the performance of its functions and obligations with funds allocated by the State budget.
3. Where a State agency or unit of the armed forces performs activities generating income in accordance with the stipulations of law, it shall bear civil liabilities related to the generating-income activities with the property resulting from such activities.

**Article 103. A legal person who is a political organization, socio-political organization or professional socio-political organization** (modified and supplemented)

1. A political organization, socio-political organization or professional socio-political organization which manages, uses or disposes of property under its ownership for the purpose of fulfilling political or social objectives in accordance with its statute, shall be a legal person when participating in civil relations.
2. The property of a political organization, socio-political organization or professional socio-political organization cannot be divided up among its members.
3. A political organization, socio-political organization or professional socio-political organization shall bear civil liabilities with its own properties, except those which according to the stipulations of law cannot be used for bearing civil liabilities.

**Article 104. A legal person who is an economic organization** (modified and supplemented)

1. A State enterprise, co-operative, limited liability company, joint-stock company, enterprise with foreign invested capital and other economic organizations which meet all the conditions stipulated under Article 84 of this Code, shall be legal persons.
2. An economic organization shall have a statute.
3. An economic organization shall bear civil liabilities with its own property.

### **Article 105. A legal person who is a social organization or socio-professional organization**

1. A social organization or socio-professional organization which has been permitted to be established and has had its statute approved by the competent State authority, and has as members individuals or organizations that voluntarily contribute property or membership fees for the purpose of supporting the common needs of the members and purpose of the association, shall be legal persons when participating in civil relations.
2. A social organization or socio-professional organization shall bear civil liabilities with its own property.
3. Where the social organization or the socio-professional organization terminates its operation, the property of the organization shall not be divided up among its members but must be resolved in accordance with the stipulations of law.

### **Article 106. A legal person who is a social fund or charitable fund**

1. A social fund or charitable fund which has been permitted to be established and has had its statute approved by the competent State authority, operating for the purpose of promoting the development of culture, science, charity and other social and humanitarian purposes which are not for profit making, shall be a legal person when participating in civil relations.
2. The property of the social fund or charitable fund shall be managed, used and disposed of in accordance with the stipulations of law and in accordance with the purpose of operation of the fund as stipulated by its statute.
3. A social fund or charitable fund shall be permitted to carry out only the activities stipulated in the statute approved by the competent State authority and within the limit of its property, and must bear civil liabilities with such property.
4. The organization which establishes a social fund or charitable fund shall not bear civil liabilities with the property under its ownership with respect to the activities of the fund, and may not divide up the property of the fund in the course of the fund's operation.

When the social fund or charitable fund terminates its operations, the property of the fund shall not be divided up among its founding members but must be resolved in accordance with the stipulations of law.

## Note

### **a) General comments:**

\* There's no big changes except more general stipulations which is not clear and may need to be specified in other legal documents:

e.g.1 Concerning definition of "legal person" (Art. 84 (1)):

- Former Code: *Established, permitted to be established, registered or recognized by a competent State authority;*

+ Revised Code: *Established legally* (How???)

e.g.2 Concerning establishment of "legal person" (Art. 85)

+ Revised Code : *The establishment of a legal person must comply with the procedures stipulated by law.* (How???)

e.g.3 Concerning definition of "legal person" (Art. 90 (3)):

- Former Code: *Amendments and supplements to the statute of the legal person must be approved or registered.*

+ Revised Code: *Amendments and supplements to the statute of the legal person must be approved by competent State authorities, if stipulated by law.*

\* Some unnecessary or repeated parts are shorten

\* Repeated article 86 and 101 "types of legal person"

### **b) Concerning Civil organization area:**

\*There is almost no change except:

\*Types of legal person:

One new type of legal person is added which is "*professional socio-political organization*"  
(*To chuc xa hoi chinh tri nghe nghiep*)

\*And deleted the provision clarifying the responsibilities of members of social organizations ...

*"A member shall not bear civil liabilities with its own property regarding the performance of civil obligations of the social organization or socio-professional organization."* (Art. 105 (3))

**c) Only FYI:** Name of the legal person (unchanged)

*"Vietnamese language, clearly indicate the legal person's organizational form and distinguish it from other legal persons operating in the same domain"*