

THE GOVERNMENT

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THE SOCIALIST REPUBLIC OF VIETNAM

Independence – Freedom – Happiness

Hanoi, 5 March 2019

DECREE

Amending and supplementing a number of articles in Decree No. 19/2011/ND-CP of the Government dated 21 March 2011 providing in detail for the implementation of a number of articles in the Law on Adoption

Pursuant to the Law on Organization of the Government dated 19 June 2015;

Pursuant to the Law on Adoption dated 17 June 2010;

At the proposal of the Minister of Justice;

The Government enacts the Decree amending and supplementing a number of articles in Decree No. 19/2011/ND-CP of the Government dated 21 March 2011, providing in detail for the implementation of a number of articles in the Law on Adoption.

Article 1. Amending and supplementing a number of articles in Decree No. 19/2011/ND-CP of the Government dated 21 March 2011, providing in detail for the implementation of a number of articles in the Law on Adoption

1. Paragraph 1 of Article 2 shall be amended as follows:

“1. For domestic adoption, in case a spouse adopts the other spouse’s own child of the previous marriage, or natural aunt(s) or uncle(s) adopt(s) their nephew(s) or niece(s), the commune-level People’s Committee in the area where the prospective adoptive parent(s) or the prospective adoptee(s) reside(s) shall register the adoption(s). In case an abandoned child who has not been sent to a nurturing center is adopted, the commune-level People’s Committee which confirmed in writing the child’s abandonment shall register the adoption; in case a child living in a nurturing center is adopted, the commune-level People’s Committee in the area where the nurturing center is located shall register the adoption.”

2. Paragraph 1 of Article 3 shall be amended and supplemented as follows:

“1. Children with disabilities or children with serious diseases who are adopted under subparagraph d, paragraph 2 of Article 28 of the Law on Adoption

are: children with cleft lip and cleft palate, children who are blind in one or two eyes; children who deaf and/or dumb; children with club hand(s) or leg(s), children with missing finger(s), hand(s), foot (feet) or toe(s); children infected with HIV; children with heart disease; children without an anus or sexual organ; children with blood disease; children with other disabilities or other serious diseases that need urgent or lifelong treatment.”

3. Article 4 shall be amended and supplemented as follows:

“Article 4. Provision, reception, management and use of humanitarian aids in nurturing centers

Provision, reception, management and use of humanitarian aids for the purposes of nurturing, caring and educating children and capacity building for staffs in nurturing centers are implemented in accordance with Article 7 of the Law on Adoption, laws and regulations on reception, management and use of aids and funds to state-run and private nurturing centers, and the following provisions:

1. Domestic or foreign individuals or organizations provide humanitarian aids via programs or projects or non-project humanitarian aids, or provide funds to Vietnamese children funds.

2. In providing humanitarian aids, the providers who are individuals or organizations are not allowed to request the nurturing centers to offer children for adoption; the nurturing centers are not allowed to undertake to offer children for adoption for the reason of their reception of the humanitarian aids.

In case the humanitarian aids are provided in cash, the provision shall be made via the accounts of the nurturing centers.

3. In providing or receiving humanitarian aids, foreign adoptive parents, foreign adoption agencies licensed to operate in Viet Nam and nurturing centers shall, in addition to their compliance with the provisions in paragraphs 1 and 2 of this Article, have the following responsibilities:

a) The foreign adoptive parents shall inform the relevant foreign adoption agencies licensed to operate in Vietnam of the humanitarian aids already provided in Viet Nam.

b) Biannually and annually, or upon request, the foreign adoption agencies licensed to operate in Vietnam shall report to the Department of Adoption under the Ministry of Justice (hereinafter called as the Department of Adoption) on the humanitarian aids provided by them and the foreign adoptive parents.

c) Biannually and annually, or upon request, the nurturing centers shall make reports of their reception, use and management of the humanitarian aids in accordance with law, and shall report their reception, use and management of the

humanitarian aids provided by the foreign adoptive parents and the foreign adoption agencies licensed to operate in Vietnam.”

4. Article 6 shall be amended and supplemented as follows:

“Article 6. Reviewing and seeking persons who wish to adopt

1. In cases where abandoned children, double orphans and children without care givers are being temporarily nurtured or cared for by individuals, families or organizations in accordance with law, the commune-level People's Committees shall conduct monthly review and assessment of the children’s need of being adopted. If Vietnamese citizen(s) permanently residing in the country wish(es) to adopt the child, the commune-level People's Committee shall consider and process, or guide the procedures for, the child adoption in accordance with law.

2. In case abandoned children, double orphans and children without care givers are sent to and received by a nurturing center, the nurturing center shall make assessment on the children's need of being adopted. If Vietnamese citizen(s) permanently residing in the country wish(es) to adopt the child, the nurturing center shall hand the child dossier over to them for registration of the child adoption.

If Vietnamese citizen(s) permanently residing in the country do(es) not wish to adopt the child, the nurturing center shall prepare the child dossier, including the documents and papers prescribed in subparagraphs a and b, paragraph 1, Article 32 of the Law on Adoption, to submit to the managing agency for opinions. Within 5 working days as of the date of receiving all the required dossiers, documents and papers, the managing agency shall send them to the Department of Justice for the purpose of seeking prospective adoptive parents.

3. The seeking of prospective adoptive parents shall be conducted as follows:

a) Upon receiving the child’s dossier as provided in paragraph 2 of this Article, if Vietnamese citizen(s) who permanently reside(s) in the country and has(ve) registered their needs for adoption in accordance with Article 16 of the Law on Adoption, the Department of Justice shall hand the child dossier over to the citizen(s) and refer them to the commune-level People's Committee in the area where the nurturing centre is located for consideration and processing in accordance with law.

b) In case there isn’t any application for registration of need for adoption filed by Vietnamese citizen(s) permanently residing in the country, the seeking of prospective adoptive parents for the child shall be notified by the Department of Justice if the child does not fall under the category of children set forth in paragraph 1, Article 3 of this Decree. Upon the expiry of the time limit on notification as defined in subparagraph c, paragraph 2, Article 15 of the Law on Adoption, if no Vietnamese citizen(s) permanently residing in the country wish(es)

to adopt, the Department of Justice shall send the child dossier, including the documents and papers prescribed in paragraph 1, Article 32 of the Law on Adoption, to the Department of Adoption for seeking prospective adoptive parents by notification as stipulated in subparagraph d, paragraph 2, Article 15 of the Law on Adoption.

If the child falls under the category of children defined in paragraph 1, Article 3 of this Decree, the Department of Justice shall certify that the child is eligible for adoption and shall send to the Department of Adoption 01 set of the child dossier, including the documents and papers prescribed in subparagraphs a and b, paragraph 1, Article 32 of the Law on Adoption and in paragraph 3, Article 16 of this Decree, to seek prospective adoptive parents who are suitable for taking care of the identified child.

5. Paragraphs 2 and 3 of Article 10 shall be amended and supplemented as follows:

“2. Based on the Adoption Certificate, at the request of the adoptive parent(s) and with the consent of the adopted child aged full 09 years old or above, the authority competent to register civil status shall make changes to the first name, middle name and last name of the adopted child in accordance with the civil law and the civil status law.

3. The change or supplementation of information on the adoptive father and/or the adoptive mother in the Birth Certificate of the adopted child shall be made in accordance with the civil status law.”

6. Paragraph 2 of Article 14 shall be amended and paragraph 3 of Article 14 shall be supplemented as follows:

“2. For a child who must go through the introduction procedure, his/her dossier must have the following documents:

a) The Departments of Justice’s official letter accompanied by papers and documents evidencing that notification of seeking a domestic substitute family for the child has been made in accordance with subparagraph c, paragraph 2, Article 15 of the Law on Adoption;

b) The Department of Adoption’s written confirmation that the time limit on notification in accordance with subparagraph d, paragraph 2, Article 15 of the Law on Adoption has expired but no domestic resident wishes to adopt the child.

3. At the adoption ceremony, the Department of Justice shall hand over to the adoptive parents a dossier of the child, including the papers prescribed in paragraph 1, Article 32 of the Law on Adoption and the written consent of the child aged full 09 years old or above and of his/her birth parent(s) or guardian with respect to the child adoption; and a written consent of the head of the nurturing center with respect to the child adoption in case the child is living in the center”.

7. Article 16 shall be amended and supplemented as follows:

“1. Before determining that the child is eligible for inter-country adoption under the paragraph 2, Article 33 of the Law on Adoption, the Department of Justice must check and examine the child dossier according to legally-prescribed criteria on the child and his/her age, and check whether it is an identified adoption or an adoption that requires the introduction procedure.

In case of an abandoned child waiting for inter-country adoption, there must be a clear written verification and conclusion made by the province-level Public Security Agency of the child’s origin and that the child’s birth parent(s) is(are) not identified.

In case of an abandoned child whose birth parent(s) is(are) identified by the province-level Public Security Agency and the Department of Justice can contact the parent(s), the Department of Justice shall obtain the consent of the parent(s) with respect to the child adoption before determining the child’s eligibility for adoption.

In case where the Department of Justice cannot contact the birth parent(s), the Department shall post a notice in its office within 60 days as of the date of receiving the verification results, and at the same time shall request in writing the commune-level People’s Committee in the area of last residence of the birth parent(s) to post a notice of the child waiting for the adoption in the Committee’s office. The posting shall take place within 60 days as of the date of receiving the written request of the Department of Justice.

2. The determination of a child’s eligibility for adoption must ensure that the child meets the age requirement, and whether it is an identified adoption or it is an adoption that must go through the introduction procedures; and the child dossier must have sufficient legally-required papers and documents.

In case where children are determined as eligible for adoption, the Departments of Justice must produce a written confirmation of eligibility for each child.

3. After determining that a child is eligible for inter-country adoption, the Department of Justice shall send to the Department of Adoption a written confirmation of the child's eligibility for inter-country adoption, the province-level Public Security Agency’s written verification of the child in case of an abandoned child, the written consent of the child aged full 09 year old or above and his/her birth parent(s) or guardian with respect to the child adoption; and the written consent of the head of the nurturing center in case the child is living in the center."

8. Paragraph 3 of Article 20 shall be amended and supplemented as follows:

“3. In examining the processing result of a child adoption in accordance with paragraph 2, Article 28 and paragraph 2, Article 36 of the Law on Adoption, the

Department of Adoption may collect opinions from experts of psychology, health service, family and social service. If the child is eligible for adoption, and the child adoption processing is conducted in accordance with legally-required protocols and procedures and in the best interest of the child, the Department of Adoption shall inform in writing the prospective adoptive parent(s) and the relevant foreign Central Authority on inter-country adoption of such, together with the child assessment report, the written consent of the child aged full 09 year old or above and his/her birth parent(s) or guardian with respect to the child adoption; and the written consent of the head of the nurturing center in case the child is living in the center. In case where the child is determined as ineligible for adoption or the child adoption processing is not conducted in accordance with legally-required protocols and procedures and in the best interest of the child, the Department of Adoption shall inform the Department of Justice of such.”

9. Article 30 shall be amended as follows:

“Article 30. Recording the child adoption already processed by the foreign competent authority in the adoption registration book

1. Adoptions between Vietnamese citizens or between Vietnamese citizens and foreigners, which have been already processed by competent authorities in foreign countries, shall be recorded in the adoption registration books, if the adoptions fall under one of the following circumstances:

a) The adoption has been processed in accordance with an international agreement of which Vietnam and the adoption-processing country are members.

b) The adoption has been processed in accordance with foreign law, unless the adoption processing constitutes a violation of fundamental principles of the law of the Socialist Republic of Vietnam.

2. The competence and procedures for recording the child adoption already processed by the foreign competent authority into the adoption registration book shall be in compliance with the civil status law.

In case where a child adoption is processed in accordance with subparagraph a, paragraph 1 of this Article, a certificate of conformity issued by the foreign competent authority stating that the adoption has been processed in accordance with the international agreement is required in the dossier, in addition to documents and papers prescribed in paragraph 1, Article 49 of the Law on Civil Status

3. The Department of Adoption shall publish to the web portal of the Ministry of Justice a list of countries having effected inter-country adoption co-operation with Viet Nam under the international agreements on adoption”

Article 2. Replacing and/or annulling a number of provisions in Decree No. 19/2011/ND-CP of the Government dated 21 March 2011 providing in detail for the implementation of a number of articles in the Law on Adoption

1. The phrase "recognition of the adoption already registered at a competent foreign authority" shall be replaced with "recording the child adoption already processed by the foreign competent authority in the adoption registration book" in paragraph 2 of Article 1 and Section 6 of Chapter II.

2. The phrase "of the head of the foreign adoption organisation under subparagraph e and" in paragraph 3 of Article 5 shall be deleted.

3. Paragraph 3 of Article 3, Article 11, and subparagraphs đ and e, paragraph 1 of Article 31 shall be annulled.

Article 3. Responsibility for implementation

Ministers, Heads of ministerial-level agencies, Heads of agencies under the Government, Presidents of province-level People's Committees, and concerned organizations and individuals shall be responsible for the implementation of this Decree.

Article 4. Implementation provisions

This Decree shall take effect as of 25 April 2019.

Recipients:

- Secretariat of the Communist Party of Vietnam;
- Prime Minister, Deputy Prime Ministers;
- Ministries, ministerial-level agencies, agencies under the Government;
- People's Council, People's Committee of centrally-governed provinces and municipalities;
- Central Communist Party Committee Office and Departments of the Party;
- Office of the General Secretary;
- Office of the President;
- Ethnic Minorities Council and Committees of the National Assembly;
- Office of the National Assembly;
- Supreme People's Court;
- Supreme People's Procuracy;
- Central agencies of the mass organizations;
- Government's Office: Minister, Chairman of the Office of the Government, Vice Chairpersons, Assistant to the Prime Minister, General Director of the e-Portal, Departments, agencies, units under the Government's Office, Government Gazette;
- For: Archives,...

FOR THE GOVERNMENT

PRIME MINISTER

Nguyen Xuan Phuc