

Last Will and Testament in Vietnam – An Overview

Drawing up a will in Vietnam is particularly useful if you live and/or work in Vietnam long-term and also have significant assets or property in Vietnam. If you are also married to a Vietnamese spouse, a will in Vietnam is particularly important to protect your family outside of Vietnam, especially children from a previous marriage or partnership. Here is an overview about inheritance law in Vietnam and specifically last wills / testaments in Vietnam:

1. **Priority of last will / testament over inheritance at law in Vietnam:**

According to Art. 649 of the Vietnamese Civil Code (VCC), Inheritance at law means inheritance in accordance with the order of priority of inheritance and the conditions and procedures of inheritance provided by law. Art. 650 VCC provides that last wills / testaments generally prevail over inheritance at law. Inheritance at law therefore only occurs if the testator a) did not make a last will /testament), or b) the testator's will is unlawful, or c) all heirs died after the will or at the same time as the testator died (which should probably only be theoretically conceivable). If inheritance at law occurs, heirs are divided into three levels in the following order of priority:

a) The first level of heirs comprises: spouses, biological parents, adoptive parents, offspring and adopted children of the deceased.

b) The second level of heirs comprises: grandparents and siblings of the deceased; and biological grandchildren of the deceased.

c) The third level of heirs comprises: biological great-grandparents of the deceased, biological uncles and aunts of the deceased and biological nephews and nieces of the deceased.

Heirs at the same level shall be entitled to equal shares of the estate. Heirs at a lower level shall be entitled to inherit where there are no heirs at a higher level because such heirs have died, or because they are not entitled to inherit, have been deprived of the right to inherit or have disclaimed the right to inherit.

According to Art. 620 VCC, heirs may disclaim an inheritance, unless such disclaimer is for the purpose of avoiding the performance of its property obligations to other persons. A disclaimer of an inheritance must be made in writing. A person disclaiming must notify the other heirs and the person authorized to distribute the estate. The disclaimer of an estate must be expressed before the time of inherit distribution.

2. **The rights of testators, disclaimer and disinheritance of last wills and testaments:**

According to Art. 626 VCC, a testator (testator) in Vietnam has the right to:

a. Appoint heirs or to deprive an heir of the right to inherit the estate.

b. Determine those parts of the estate which each heir is entitled to.

c. Reserve part of the estate as a gift or for worship purposes.

d. Designate heirs to perform certain obligations.

e. Appoint a custodian of the will, an administrator of the estate, and a distributor of the estate.

In addition, in accordance with Art. 646 VCC, a testator may designate part of his or her estate as a testamentary gift to another person. The testamentary gift must be expressly

stated in the will. However, if a testamentary gift constitutes a major part of the overall inheritance, such testamentary gift - in relation to the other heirs - will be interpreted as an inheritance rather than a testamentary gift. Conversely, a testamentary gift to a heir (and not to a third person not being a heir) shall be interpreted as a disinheritance of such heir if the value of the testamentary gift is less than 2/3 of the original, statutory entitlement of the heir.

In this context, note that Vietnamese inheritance law already assumes a disinheritance of certain first-level legal heirs if the last will/testament provides them less than two-thirds of the economic share that they would have received if inheritance at law had occurred. In such case, the following disinherited legal heirs of the first level have a claim against the remaining heirs for payment of 2/3 of the claim they would have had without disinheritance: The testator's minor children, parents and spouse and adult children, if they are unable to work.

3. Form, content and revocation of last wills and testaments in Vietnam:

Art. 627 VCC distinguishes among other things handwritten testaments, testaments in front of witnesses and notarized testaments. Notarization is strongly recommended for reasons of evidence and administration/distribution of the testament. In addition, the certifying notary can keep the testament in "electronic custody" and inform the distributor of the testament in the event of an inheritance. Art. 630 VCC provides that a last will must satisfy the following requirements in order to be lawful:

- a) The testator was of sound mind when he or she made the will; and he or she was not deceived, threatened or coerced into making the will.
- b) The contents of the will are not contrary to law or social morals and the will complies with all legal formalities.

According to Art. 631 VCC, the minimum content of the testator's last will is:

- a) The date on which the will is made.
- b) The full name and place of residence of the testator.
- c) The full names of the persons and the bodies or organizations entitled to inherit the estate.
- d) The estate to be bequeathed and its location.

Note that at least for practical reasons, a last will should be notarized in Vietnamese to be enforceable in Vietnam. Once you have decided to have your last will notarized in Vietnam or to draw up a partial testament for your assets located in Vietnam (especially real estate), it is important that you detail your last will by specifying in an annex to the testament precisely your assets in Vietnam, such as e.g. movable and immovable assets (real estate) with exact locations (and your share), securities, bank accounts, works of art, vehicles and other (valuable) personal assets.

According to Art. 640 VCC, a testator may amend, add to, replace or revoke his/her will at any time. If a testator adds to his or her will, the original will and the amendment shall have equal validity. If (part of) the original last will and the amendment conflict with each other, the amendment shall prevail. Practically, any amendments should be notarized the same way that the original testament was. Where a testator replaces a will with a new will, the previous will shall be deemed to have been revoked.

4. Custody and distribution of last wills and testaments in Vietnam:

According to Art. 641 VCC, a testator may request a notary office or another person (including the testator's lawyers) to keep custody of the will of the testator. Where a will is kept in custody by a notary office, it must be taken care of and looked after in accordance with the law on notaries. An individual keeping custody of a will has the following obligations:

- a) Keep the contents of the will confidential.

b) Take care of and look after the will. If the will is lost or damaged, the person must notify immediately the testator.

c) Upon the death of the testator, to deliver the will to his or her heirs or to the person authorized to announce the will. The delivery of the will must be recorded in writing and signed by the person delivering the will, and by the person receiving it, in the presence of two witnesses.

According to Art. 657 VCC, the testator can and should designate in his/her last will not only a custodian but also a distributor his will, who represents the heirs, legally acts on their behalf and thus ensures in the event of inheritance that the provisions of your last will are executed or implemented precisely and properly. According to Art. 659 VCC, the distributor ensures that the estate is distributed in accordance with the will of the testator and that pending or due payments continue to be made. Notaries and law firms can fulfill this function.

5. The coordination of separate last wills and testaments in Vietnam and abroad:

Some testators prefer to draw up a separate testaments for assets located inside Vietnam (particularly real estate). If that is the case, it is important not to have any ambivalent or even contradictory testaments for Vietnam and abroad: Accordingly, it is crucial that you coordinate the distribution of your total assets in your testaments in such a way that the value distribution among the heirs is appropriate and corresponds largely to their respective inheritance at law quotas or are based on them. The time of both testaments should be identical, so that no amendment is interpreted into the later will. In this respect, ensure a clear, consistent and consistent distribution of your assets in Vietnam and abroad in terms of time and territory! It is also important that you seek legal advice outside of Vietnam if assets are located abroad and/or are to be inherited under foreign law. In particular, it must be clarified which law should apply to which parts of your estate and whether your choice of law is at all legally possible and enforceable. This applies, for example, with regard to real estate in Vietnam, for which the choice of foreign law would is not permitted.

6. The importance of early succession planning:

Good succession planning means that you start distributing your assets while you are still alive. This applies in particular if large estates, significant assets, real estate and companies/businesses exist. Early succession planning enables you to distribute your estate fairly, to retain control over the distribution and to optimize your succession from a taxation point of view, e.g. by making full use of statutory allowances.

About the Author:

Dr. Matthias Dühn, LL.M. (Georgetown) was admitted as a lawyer to the German Bar Association in 2001 and has been registered as a "Foreign Registered Lawyer" in Vietnam since 2007. He has been focusing his law firm Viet Diligence Legal law firm, founded in 2014, on market entry of foreign investors and entrepreneurs in Vietnam, and is therefore familiar with all legal questions relating to Vietnamese investment-, corporate-, commercial- and tax laws. He also advises on all matters questions relating to international contract drafting and complex contract negotiations, particularly in the area of commercial contracts, mergers and acquisitions (M&A) and joint ventures. Dr. Dühn is also experienced in all Vietnamese labor law issues, such as drafting employment contracts, termination of employees and complex settlement negotiations.

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