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| **JUDGES’ COUNCIL  SUPREME PEOPLE’S COURT** | **SOCIALIST REPUBLIC OF VIETNAM  Independence - Freedom - Happiness  ---------------** |
| No. 04/2012/NQ-HĐTP | *Hanoi, December 03, 2012* |

**RESOLUTION**

**GUIDING ON SOME REGULATIONS ON CORROBORATION AND EVIDENCE OF THE CIVIL PROCEDURE CODE AMENDED IN THE LAW ON AMENDMENTS TO THE CIVIL PROCEDURE CODE**

**JUDGES’ COUNCIL OF THE SUPREME PEOPLE’S COURT**

*Pursuant to the Law on Organization of People’s Court;*

*For the proper and uniform implementation of the regulations on*corroboration and evidence *of the Civil procedure code amended in the Law on Amendments to the Civil procedure code dated March 29, 2011;*

*After obtaining the consensus of the Chief Procurator of the Supreme People’s Procuracy and the Minister of Justice,*

**RESOVES:**

**Article 1. Scope of regulation**

This Resolution provides guidance on the implementation of some regulations on corroboration and evidence of the Civil procedure code in order to ensure proper and uniform implementation of the Civil Procedure Code during hearings of civil cases in court.

**Article 2. Provision of evidence**

1. According to Clause 1 Article 6 of the Civil Procedure Code, the provision of evidence and the corroboration for the ground and legitimacy of one’s requests are both rights and obligations of litigants, individuals, and organizations that file lawsuits or make requests for the protection of the lawful rights and interests of other people. However, according to Article 79 the Civil Procedure Code, when a request for the protection of one’s the lawful rights and interests is made, or an objection to others’ demand is raised, or a request for the protection of public interests, state interests, or the lawful rights and interests of other people is made, the litigant, individual, or organization that files the lawsuit or makes the request is responsible for providing evidence for the grounds and legitimacy of their request.

2. The provision of evidence and corroboration for the grounds and legitimacy of one’s request guided in Clause 1 of this Article may be done during court hearing of civil cases.

3. During hearing of civil cases, the court shall inform litigants that if they fail to provide evidence or the evidence provided is insufficient, the court will hear the case according to general procedures. The court shall use the documents and evidence collected in the civil case dossier. When a civil case is tried in court or in a meeting, the court shall make decisions based on the documents and evidence that are examined at the court or the meeting, the result of questioning at the court or the meeting, and opinions of participants in the proceeding and the procurer.  Litigants are responsible for insufficient evidence or failure to provide evidence.

4. During the hearing of a civil case, if the evidence provided by litigants is considered insufficient, the court shall request them to provide additional evidence according to Clause 1 Article 85 of the Civil Procedure Code. When litigants provide additional evidence, the court shall specify the evidence needed.

Example 1: In divorce proceedings, the court has to decide the custody of an underage child. The judge shall the litigant to submit the birth certificate (or its copy) of the underage child if it has not been submitted as the basis for deciding whether the custody is given to the mother or the father, and for deciding the level of child maintenance.

Example 2: in a lawsuit over a delivery contract that has an appendix, the plaintiff has submitted only the contract to the court. The judge shall request the plaintiff to submit the appendix as the basis for settling the lawsuit.

5. During the hearing of a civil case, the court needs to inform litigants of Article 7 of the Civil Procedure Code on the responsibility to provide evidence of individuals, organizations, and competent authorities.  If the evidence in known to be held by an individual or organization, litigants are entitled to request the individual or organization to provide evidence according to this Article. When an individual or organization fails to provide evidence for the litigants, they must send litigants written notifications specifying the failure to provide information for them to prove their failure to collect evidence to the court and request the court to collect evidence.

**Article 3. Identification of evidence defined in Article 83 of the Civil Procedure Code**

1.According to Article 81 of the Civil Procedure Code, one of the conditions of evidence is that it must be submitted to the court by another individual or organization, or collected by the court according to the procedures defined by the Civil Procedure Code. Therefore, the provision of evidence and collection of evidence must comply with corresponding regulations of the Civil Procedure Code and guidance in this Resolution.

2. The evidence is considered conformable with Article 81 of the Civil Procedure Code when it is collected from one of the following sources:

a) Readable documents must be original copies or notarized copies or certified true copies provided by competent organizations. An original copy is a copy that is used to make copies.

b) Auditory and visual documents must be provided together with documents proving their origins or relation to the audio or video recording. Those documents may be audio tapes, audio discs, video tapes, video discs, pictures, etc. If the litigant fails to provide the documents mentioned above, the auditory and visual documents provided shall not be considered evidence.

Example 1: In a road accident, the victim or the legal representative of the victim is provided with a video recording of the accident scene by another person. In this case, together with the video recording, the victim or the legal representative of the victim shall submit the written certification of the origin of the video recording made by the provider.

Example 2: Mr. A gives Mr. B a loan of 5 million VND for 12 months. The loan is not recorded in writing, but Mr. A recorded the spoken agreement between Mr. A and Mr. B on the loan, the receipt of money, and the due date as the evidence for the loan given to Mr. B. When the Mr. B fails to repay the loan on the due date. Mr. B files a lawsuit. In this case, together with the audio tape, Mr. A shall submit a written description of the audio recording.

c) Exhibits must be original items related to the civil case. If the exhibits are not original items or not related to the case, they are not considered evidence in that case.

d) Statements of litigants and witnesses shall be recorded in writing, audio tapes, audio discs, video tapes, video discs, and presented in accordance with the procedure on Clause 2 Article 83 of the Civil Procedure Code and guidance in Clause 2 of this Article, or shall be made verbally in court.

dd) Conclude the verification if that expertise is conformable with the procedures of the Law on Judicial expertise, relevant legislative documents, and guidance in Article 10 of this Decree.

b) The record on the on-site examination if the examination is conformable with Article 89 of the Civil Procedure Code and guidance in Article 9 of this Resolution.

g) Customs that are recognized by local communities.

A community is a group of people that live in the same area, have similar characteristics, and are connected with social activities in the area.

A custom is a habit that has become a lifestyle, is recognized and followed by the local community as a local convention.

A commercial custom is a commercial habit that is widely recognized all over an area, a region, or a commercial sector, recognized by parties to define their rights and obligations in commercial activities.

International commercial customs are habits of international commerce that are repeated in international trading and recognized by relevant international organizations;

Only customs that are not against the law or social ethics are acceptable. When a litigant cites a custom to support his opinion on an issue, which has been regulated by legislative documents, the court shall apply such legislative documents without considering the custom.

Example: Some ethnic groups have a custom that then the mother dies, only her daughters are entitled to her inheritance, not her sons. In a dispute over an inheritance left by a mother, if the daughters cite that custom to repudiate the sons’ right, that custom shall not be accepted. It is considered an obsolete custom that needs eliminating according the Appendix B to the “List of obsolete traditions and customs of ethnic groups that are banned or need eliminating” promulgated together with the Government's Decree No. [32/2002/NĐ-CP](http://thuvienphapluat.vn/phap-luat/tim-van-ban.aspx?keyword=32/2002/N%C4%90-CP&area=2&type=0&match=False&vc=True&lan=0) dated March 27, 2002 on the application of the Law on Marriage and families to ethnic minorities.

h) The result of property valuation of the valuation is conformable with the procedure in Article 92 of the Civil Procedure Code.

3.The evidence in ethnic languages submitted to the court must be enclosed with Vietnamese translations that are notarized or authenticated. The evidence that is not translated and the Vietnamese translations that are not notarized or authenticated shall be rejected. The court shall instruct litigant to have the evidence translated into Vietnamese and follow the notarization procedure in accordance with the laws on notarization and authentication.

**Article 4. Delivery and receipt of evidence**

1.According to Article 166 and Article 312 of the Civil Procedure Code, the plaintiff or the person that requests the court to settle a civil case shall send the petition, request, enclosed documents and evidence to a court competent to settle civil cases directly or by post.

a) Where the plaintiff or requestor directly submit the petition or request and provide evidence at the court, officials of the court shall receive such petition and evidence. Officials of the court shall record the receipt of the petition and evidence in the logbook and make a written record on the receipt of evidence according to Clause 2 Article 84 of the Civil Procedure Code.

c) Where the plaintiff or the requester sends the petition or request together with evidence by post, the court officer shall record it in the logbook, compare the evidence with the evidence list enclosed with or written in the petition to record it in the logbook. Inform the plaintiff of insufficient or omitted evidence.

2.Where the litigant provide evidence for the court after the case is initiated, a judge assigned to settle civil cases or the court clerk or official shall receive evidence provided by the litigant as guided in Clause 1 of this Article.

3.Where evidence is provided at the court hearing, the court clerk shall receive the evidence. If the evidence is provided before the court hearing or the meeting, the court clerk shall make a record on the receipt of evidence and make a written record on the receipt of evidence according to Clause 2 Article 84 of the Civil Procedure Code. If the evidence is received during the court hearing or the meeting, is shall be recorded to the minutes of the hearing or the meeting.

4. The record on the receipt of evidence shall bear the signature of a competent person of the court and bear the court’s seal in accordance with the laws on civil procedure or guidance of this Resolution.

**Article 5. Collection of evidence defined in Clause 2 Article 85 of the Civil Procedure Code**

The court shall take one or some measures in Points a, b, c, d, dd, e, and g Clause 2 Article 85 of the Civil Procedure Code to collect documents and evidence when they are necessary. The collection of documents and evidence must comply with the Civil Procedure Code and guidance of this Resolution.

Example 1: The judge may only take statements from litigants that have not make statements or the statements of whom are not sufficient or evident, or the litigants that cannot write according to Article 96 of the Civil Procedure Code and guidance in Article 6 of this Resolution.

Example 2: A judge shall bring a confrontation among litigants, between litigants and witnesses or among witnesses at the request of litigant or when the statements made by litigants and witnesses are inconsistent according to Article 88 of the Civil Procedure Code and Article 8 of this Resolution.

**Article 6. Taking statement litigants according to Article 86 of the Civil Procedure Code**

1. When a litigant has not written a statement or the statement is not sufficient, the judge shall request the litigant to write a statement or supplement the statement and sign it. If the litigant cannot write, the judge or the court clerk shall write the litigant’s statement on the record. This record must comply with Clause 2 Article 86 of the Civil Procedure Code.

2. The judge shall take statements from litigants. The court clerk shall assist the judge in writing the litigant’s statement on the record. For objection obstructions, the judge may delegate the court clerk to take statements with the agreement of litigants. The statement record must be certified by the judge. Statements of litigants shall be taken at the court.  If the litigant cannot go to the court for objective or legitimate reasons (in custody, serving the sentence, sick, etc.), the statement can be taken outside the court.

The taking of statement outside of the court must comply with the laws applicable to court officials and ensure objectivity (e.g. statements of litigants in custody must be taken at the detention camp, statements of sick litigants shall be taken at the place where they are treated and invite a witness if necessary, etc.)

3. The protection of the lawful rights and interests of the litigants defined in Clause 4 and Clause 5 of Article 57 of the Civil Procedure Code shall be provided by their legal representatives. When their statements are taken, their legal representatives must be present and sign or append fingerprints on the statement record.

**Article 7. Taking statements from witnesses according to Article 87 of the Civil Procedure Code**

1. When a litigant makes a written request for statements of witnesses, the court shall take statements from such witnesses. The judge may take statements from witnesses without the request of litigants where necessary. The statements of witnesses are considered “necessary” if they ensure the comprehensive, accuracy, fairness, and legitimacy of the civil case settlement.

2. The judge shall take statements from witnesses at the court or outside the court similarly to taking statements from litigants according to Article 96 of the Civil Procedure Code and guidance in Article 6 of this Resolution.

**Article 8. Confrontation defined in Article 85 of the Civil Procedure Code**

1. At the request of the litigants, or when statements from litigants and witnesses are inconsistent, the judge shall initiate a confrontation among litigants, between litigants and witnesses or among witnesses in an appropriate order (each issue shall be raised or each person shall clarify the issue in order).

2. The judgment or the court clerk shall make the confrontation record. The record must bear the signatures of the participants in the confrontation, the judge, and the court clerk, and the court’s seal.

**Article 9. On-site examination defined in Article 89 of the Civil Procedure Code**

1. At the request of litigants or where the on-site examination is considered necessary for the settlement of the case, the judge shall decide the on-site examination.

2. The decision on on-site examination shall specify:

a) The date of the decision and the court that makes the decision;

b) The subjects and issues that need examining on-site;

c) The time and location of on-site examination.

3. The decision on on-site examination shall be sent to the People’s Committee of the commune or the organization that has the subjects that need examining, together with a letter that requests the People’s Committee or the organization to send representatives to participate in the on-site examination. At the time set in the decision, if the representatives of the People’s Committee or organization are not present, the judge shall request contact the People’s Committee or organization and request their presence. If the representatives of the People’s Committee or organization are absent, the judge shall delay the on-site examination.

4. The decision on on-site examination shall be sent or given to the litigants for them to be aware and witness the on-site examination. The on-site examination shall still be carried out without the presence of litigants.

5. The judgment or the court clerk shall make the on-site examination record. This record must comply with Clause 2 Article 89 of the Civil Procedure Code.

6. If the on-site examination of the court is obstructed, the judge shall request the representative of the People’s Committee or organization to intervene and provide assistance in the on-site examination. Where necessary, the judge shall request the marshals to make intervention and provide assistance according to the Circular No. [15/2003/TT-BCA](http://thuvienphapluat.vn/phap-luat/tim-van-ban.aspx?keyword=15/2003/TT-BCA&area=2&type=0&match=False&vc=True&lan=0) (V19) dated September 10, 2003 of the Ministry of Public Security providing on guidance on judicial assistance provided by the marshals.

7. If all measures in Clause 6 of this Article are taken and the examination is not carried out, the judge shall make a record on litigants’ obstructing the on-site examination and keep it with the case dossier. This record shall be sent to a competent authority for it to consider imposing penalties for obstructing law enforcement officers.

**Article 10. Requesting verification according to Article 90 of the Civil Procedure Code**

1. The request for verification must be made in writing (in a separate document, in the declaration, confrontation record).

2. The judge shall issue the decision to request verification according to Article 90 of the Civil Procedure Code, the Law on Judicial verification, and relevant legislative documents. The decision to request verification shall specify:

a) The date of the decision and the court that makes the decision;

b) Name and address of the verifying organization or person;

c) The origin and characteristics of the verification subjects;

d) Names of relevant documents or models enclosed;

dd) The issues that need verifying;

e) Specific requirements;

g) Deadline for verification result.

3. The decision to request verification shall be send to litigants, the verifying organization, and the verifiers.

**Article 11. Entrusting evidence collection defined in Article 93 of the Civil Procedure Code**

1. During the hearing of a civil cause, if evidence collection must be entrusted, the court shall make a dossier of evidence collection entrustment and send it to the court or the organization entrusted to collect evidence. The entrusted organization or court shall consider collecting the evidence based on the dossier.

2. The dossier of evidence collection entrustment consists of:

a) The decision to entrust evidence collection with the information defined in Clause 2 Article 93 of the Civil Procedure Code and Form 05 enclosed with this Resolution;

c) The copies of documents and evidence related to the evidence collection entrustment (if any). The copies of documents and evidence must bear the signatures of the judge and the seal of the court.

3. The procedure for evidence collection entrustment:

Within 3 working days from the day on which the dossier of evidence collection entrustment is received, the court or the organization entrusted to collect evidence shall record the entrustment and collect evidence in accordance with the Criminal Procedure Code and guidance of this Resolution.

If request for collecting evidence is vague, the entrusted court or organization shall send a written request to the entrusting court for supplementation or clarification. Within 05 working days from the day on which the request of the entrusted court or organization is received, the entrusting court shall clarify the request in writing.

If the entrusting court fails to respond and the evidence collection cannot be carried out without clarification, the entrusted court or organization shall return the dossier of evidence collection entrustment to the entrusting court and provide explanation for the impossibility of the evidence collection.

4. Within 3 working days from the day on which the entrusted evidence collection is finished or after the deadline in Clause 3 Article 93 of the Civil Procedure Code, the entrusted court or organization shall send the result to the entrusting court.

5. If the evidence collection must be carried out outside Vietnam’s territory, the entrusting court shall make the entrustment in accordance with the Law on Legal Assistance and the Joint Circular No.[15/2011/TTLT-BTP-BNG-TANDTC](http://thuvienphapluat.vn/phap-luat/tim-van-ban.aspx?keyword=15/2011/TTLT-BTP-BNG-TANDTC&area=2&type=0&match=False&vc=True&lan=0) dated September 15, 2011 of the Ministry of Justice, the Ministry of Foreign Affairs, the Supreme People’s Court providing guidance on some regulations on civil legal assistance of the Law on Legal Assistance and relevant laws.

**Article 12. Requesting organizations and individuals to provide evidence according to Article 94 of the Civil Procedure Code**

1. Where evidence is not provided by the organizations and individuals that hold the evidence after the litigant has taken all measures possible for collecting evidence, the court shall collect evidence.

2. The written request for evidence collection carried out by the court must specify:

a) Date of request;

b) Name of the court requested to collect evidence;

c) Name of the requester;

d) The issue that need proving;

dd) The evidence that need collecting;

e) The reasons for failure to collect evidence;

g) Name and address of the organization or individual that hold the necessary evidence.

3*.*If the request for evidence collection carried out by the court is deem well-founded, the judge shall issue a decision to request evidence provision. The decision to request evidence provision must specify:

a) The date of the decision and the court that makes the decision;

b) Name of the requester;

c) Reasons for the request for evidence collection;

d) Reasons for the request for evidence collection;

dd) Specific evidence to be provided for the court;

e) The deadline for evidence provision. A notification must be sent to the court if the evidence cannot be provided at the request of the court and provide explanation;

g) The legal consequences for insufficient and unresponsive evidence provision at the request of the court according to Clause 2 Article 94 of the Civil Procedure Code.

4. The court clerk or court officials assigned by the court president may directly request the evidence holder to provide evidence. The person that makes the direct request must have a letter of introduction of the court and the decision to request evidence provision. The person that makes the direct request must present the judge’ certificate or official’s card or other ID papers at the request of the evidence holder.

If the evidence holder is able to provide evidence immediately, a record on the receipt of evidence shall be made according to Clause 2 Article 84 of the Civil Procedure Code. The court’s seal shall be appended later. If the organization that provides the evidence has a seal, the competent representative of the organization must sign and append the seal on the record. If the evidence holder refuses to provide evidence, a record on such refusal shall be made and the reasons for such refusal shall be specified.

If the evidence holder is not able to provide evidence immediately, a record shall be made and the evidence holder shall be requested to sufficiently and responsively provide evidence at the request of the court by the deadline in the decision (within 15 days from the day on which the decision is received).

Where the evidence holder fails to provide evidence or evidence is not sufficiently and responsively provided at the request of the court, they shall incur penalties depending on the seriousness of the violations (Article 395 of the Civil Procedure Code on penalties for obstruction of verification and evidence collection Article 389 of the Civil Procedure Code on penalties of organizations and individuals that refuse to comply with the court’s decision on the provision of evidence for the court, etc.).

5. Where the court does not directly request the evidence holder to provide evidence, the court shall send a decision to request evidence collection to the evidence holder.

6. Where the procuracy collects evidence by requesting the litigants, organizations and individuals to provide evidence, this request shall only be accepted by the court if the evidence collection is conformable with the Civil Procedure Code and guidance of the Supreme People’s Procuracy in order to ensure the authority to appeal by appellate trial, cassation trial, and retrial procedure.

**Article 13. Delivery and collection of evidence during appellate trials for civil cases**

1. When a litigant files an appeal and provides additional evidence for the trial court according to Clause 2 and Clause 3 Article 244 and corresponding regulations on appellate trials for civil cases in the Civil Procedure Code, the trial court shall receive petition and additional evidence. The receipt of additional evidence shall comply with Clause 1 and Clause 4 Article 4 of this Resolution. The record on the receipt of additional evidence shall be sent together with the case dossier to the appellate court according to Article 255 and corresponding regulations on appellate civil courts in the Civil Procedure Code.

2. When the appealer files an appeal and provide additional evidence for the appellate court, the appellate court shall receive such evidence in accordance with Clause 1 and Clause 4 Article 4 of this Resolution. The appellate court shall send the petition, the record on additional evidence provision, and the additional evidence to the trial court for going through necessary formalities. The trial court shall send the case dossier and additional evidence to the appellate court according to Article 255 and corresponding regulations on appellate civil courts in the Civil Procedure Code.

3. Where the litigant provides evidence for the appellate court after the civil case dossier is received, the receipt of evidence shall comply with Clause 2 and Clause 4 Article 4 of this Resolution.

Where the litigant provides evidence at the appellate trial, the receipt of evidence shall comply with Clause 3 Article 4 of this Resolution.

4. The evidence collection carried out by the appellate court (if any) shall comply with Article 5 of this Resolution.

**Article 14. Receipt of evidence during the reconsideration of effective judgments or decisions according to cassation and retrial procedure**

1. Where a litigant requests a competent person to reconsider a court’s judgment or decision that has taken effect and provide additional evidence, such evidence shall be received as follows:

a) If the case is under the authority to appeal of a provincial court, an investigator of the Cassation Department of the provincial court shall receive the evidence.

The investigator shall make a record on the receipt of evidence, the manager of the Cassation Department shall certify, sign, and append the court’s seal on the record.

b) If the case is under the authority to appeal of the Supreme People’s Court and the additional evidence is submitted at the Reception Department of the Supreme People’s Court, an official of the Reception Department shall make a record on the receipt of evidence. The manager of the Reception Department shall certify, sign, and append the court’s seal on the record. If the additional evidence is submitted to the investigator of a civil court, economic court, or labor court, the investigator shall make a record on evidence receipt and the court president or the deputy court president shall certify, sign, and append the court’s seal on the record.

2.After a judgment or decision made bay a court takes effect, the submission or evidence at the People’s Procuracy shall comply with the laws on proceedings and instructions of the Supreme People’s Procuracy. The seal of the procuracy shall be appended.

**Article 15. The forms related to corroboration and evidence**

The forms below are issued together with this Resolution:

1. The record on evidence receipt (Form 01);

2. The Decision on on-site examination (Form 02);

3. The Request for verification - (Form 03);

4. The Decision to request evidence provision - (Form 04);

5. The Decision to entrust evidence collection - (Form 05);

6. The Decision on confrontation - (Form 06).

**Article 16. Effect**

1. This Resolution is passed by the Judges’ Council of the Supreme People’s Court on December 03, 2012 and takes effect on July 01, 2013.

The Resolution No. [04/2005/NQ-HĐTP](http://thuvienphapluat.vn/phap-luat/tim-van-ban.aspx?keyword=04/2005/NQ-H%C4%90TP&area=2&type=0&match=False&vc=True&lan=0) dated September 17, 2005 of the Judges’ Council of the Supreme People’s Court providing guidance on some regulations of the Civil Procedure Code on corroboration and evidence, and guidance on the issues, which are guided in this Resolution, provided before this Resolution takes effect are annulled from September 01, 2013.

2. The civil cases that have been received but have not been tried shall be settled in accordance with this Resolution.

This Resolution shall not apply to the cassation or retrial of the judgments and court’s decisions that takes effect before the effective date of this Resolution, unless other foundations for appeal are provided.

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|  | **FOR THE JUDGES’ COUNCIL THE PRESIDENT**     **Truong Hoa Binh** |