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SOCIALIST REPUBLIC OF VIETNAM

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Independence – Freedom – Happiness

Law No. ....58

(Draft 7)

Hanoi, June ....., 29 November 2005

**THE LAW AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE  
LAW ON COMPLAINTS AND DENUNCIATIONS**

*Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam (the Amendment under the Resolution No. 51/2001/QH10 promulgated on December 25, 2001 by The XI<sup>th</sup> National Assembly);*

*This law amends and supplements a number of articles of the Law on Complaints and Denunciations which was promulgated by the National Assembly of the Socialist Republic of Vietnam on June 15, 2004.*

**Article 1**

To amend and supplement a number of articles of the Law on Complaints and Denunciations:

***1- Article 2, 16 shall be amended and supplemented as follows:***

***“16. Legally effective complaint settling decisions shall include first-time complaint settling decisions, second-time complaint settling decisions that during the period specified by the law, the complainant shall not be allowed to continue his/her complaint nor initiate an administrative case at the court.”*** ***Article 2***

***In this Law, the following terms shall be construed as follows:***

***1. Complaint means that citizens, State agencies, organisations or public servants according to the procedures prescribed by the Law on Complaints and Denunciations, the Law amending and supplementing a number of articles of the Law on Complaints and Denunciations and this Law (hereinafter called the Law on Complaints and Denunciations) propose competent agencies, organisations and individuals to review administrative decisions or administrative acts or disciplinary decisions against cadres, public servants when it is reasonable to consider that such decisions or acts are illegal and infringe upon their legitimate rights and interests.***

***2. Denunciation means that citizens according to the procedures prescribed by the Law on Complaints and Denunciations report to competent State agencies, organisations or individuals on illegal acts committed by any State agencies, organisations and individuals, which cause damages or threaten to cause damages to the interests of the State, the legitimate rights and interests of citizens, State agencies and organisations.***

***3. Complainants are citizens, State agencies, organisations or public servants who exercise their right to complain.***

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~~4. Eligible complaining agencies, organisations include State agencies, political organisations, socio-political societies, social organisations, socio-professional organisations, economic organisations, people's armed force units.~~

~~5. Denouncers are citizens who exercise their right to denunciate.~~

~~6. The complained shall include State agencies, organisations and individuals whose administrative decisions, administrative acts, disciplinary decisions are complained about.~~

~~7. The denounced shall include State agencies, organisations and individuals whose acts are denounced.~~

~~8. The complaint settler is a State agency, organisation or an individual whose competence is to settle complaints.~~

~~9. The denunciation settler is a State agency, organisation, or an individual whose competence is to settle denunciations.~~

~~10. Administrative decision is a written decision issued by a State administrative agency or a competent person therein applied once to one or several particular objects for a specific matter in administrative management activities.~~

~~11. Administrative act is an act of a State administrative agency or a competent person therein during the performance of task, public duties as provided by law.~~

~~12. Disciplinary decision is a written decision issued by the head of a State agency or organisation to apply one of such disciplinary forms as censuring, warning, lowering salary grade, demotion, sack or dismissal from office against cadres, public servants under his/her purview as stipulated by laws on cadres and public servants.~~

~~13. Complaint settlement is making verifications, conclusions and issuance of settlement decision by the complaint settler.~~

~~14. Denunciation settlement is making verifications, conclusions on denunciation contents and denunciation disposition by the denunciation settler.~~

~~15. Legally effective decision on complaint settlement is the complaint settlement decision in case where the complainant neither further complains nor initiates an administrative case in the court as stipulated by the administrative procedures laws within the defined time limit.~~

***2- Article 17 shall be amended and supplemented as follows:***

**“Article 17**

1. Complainant shall have the following rights:

a) to make complaints by himself (herself) or through his (her) legal representative as stipulated by law if being a junior or affected with mental disorder or other diseases that preventing him/her from perceiving or controlling his/her actions; or through an authorized person who may be parents, spouse, sisters, brothers, or mature children or others, in cases where s/he is ill, elderly, physically disabled or has other objective reasons;

b) to hire lawyers for legal assistance during the complaint process;

c) to know proof of settlement of his (her) complaint, to provide evidence and express his (her) own idea on that evidence;

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~~ed~~ to receive written replies on the acceptance of his (her) complaint for settlement; to have access to information and documentations on order of procedure the complaint settlement; to be sent a decision on settlement of his (her) complaint;

~~edd~~ to be restored with his (her) legitimate rights and interests which have been infringed upon; to be compensated for damages as stipulated by law;

~~de~~ to continue his (her) complaint or initiate an administrative case in court ~~when his (her) complaint settled at administrative agencies~~ as provided by the Law on Complaints and Denunciation and the administrative procedures law;

~~eg~~ to withdraw his (her) complaints at any time during the settlement proceeding.

2. Complainant shall have the following obligations:

a) to make complaint to the right person who is competent to settle;

b) to honestly present the matters, provide information and documents to the complaint settlers; to take responsibility before the law for the presented contents and the provision ~~thereof of such information and documents~~;

c) to strictly execute the legally effective decision on complaint settlement.”

***3- Article 18 shall be amended and supplemented as follows:***

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**“Article 18**

1. The complained shall have the following rights:

a) to know evidences provided by the complainer; to provide evidences proving the legality of the complained administrative decision or complained administrative act ~~and express his (her) own idea on that evidence with the following complaint settler~~;

b) to receive a complaint settlement decision issued by the ~~following~~ complaint settlers for the second time or the award or decision of the court, regarding the complaints he/she which has been settled, but the complainants have furthered continued lodging a complaint or initiated an administrative suit at a court.

2. The complained shall have the following obligations:

a) to receive ~~and and settle complaints about administrative decisions or administrative acts~~; send written ~~replies notices on~~ the acceptance of complaints for settlement with respect to the administrative decision or the administrative act as complained; amending or abolishing the administrative decision or administrative act as complained; and send the settlement decision thereof to the complainants and take responsibility before laws for the settlement; in case where the complaints are forwarded by ~~competent~~ agencies, organizations or individuals, the settlement or the result thereof must be informed to such agencies, organizations or individuals as provided by the Law on Complaints and Denunciations;

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b) to present on the legitimacy and accuracy of ~~on~~ the administrative decisions or administrative acts which ~~is are~~ complained about, to provide related information and documents upon request by competent agencies, organisations or individuals those settling the complaints for the second time.

c) to strictly abide by the legally-effective decision of complaint settlement;

d) to compensate for damages, overcome the consequences caused by his (her) illegal administrative decisions or administrative acts as provided by this Law.”

***4- Article 23 is amended and supplemented as follows:***

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**“Article 23**

Chairperson of People’s Committee of province and city directly under the central authority (generally referred to as provincial level) shall have the competence:

1. to settle complaints about his (her) administrative decisions, administrative acts;
2. to settle the complaint which has been settled by Chairman of People’s Committee at district level but continue to be complained.
3. to settle the complaints which have been settled by Directors of functional provincial Departments or of equivalents under provincial People’s Committee for the first time but continue to be complained, the contents of which fall under the scope of management of the provincial People’s Committees.”

***5- Article 25 shall be amended and supplemented as follows:***

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**“Article 25**

~~1-~~ Ministers, Heads of ministerial level agencies and Heads of agencies under the Government shall have the competence:

- ~~1a)~~ to settle complaints about the administrative decisions, administrative acts of their own, or of officers and public servants under their direct management;
- ~~b)2~~ to settle complaints which have been settled by the persons as stipulated in Article 24 of the Law on Complaints and denunciations but continued to be complained;
- ~~3e)~~ to settle the complaints the contents of which fall under the scope of management power of their respective ministries or branches, and which have been settled by the chairman of Provincial People’s Committee or by directors of provincial Departments or the equivalents for the first time but continued to be complained;
- ~~2- Ministers, Heads of ministerial level agencies preside or take part in settling complaints related to various localities and fields of State management as guidance of the Prime Minister.~~”

***6- Article 26 shall be amended and supplemented as follows:***

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**“Article 26**

The Inspector General shall have the competence:

1. to settle the complaints which have been settled by Heads of agencies under the Government but continued to be complained;
2. to assist the Prime Minister in monitoring, inspecting, and speeding up the receipt of people, settlement of complaints and enforcement of legally effective decisions on settlement of complaints related to various localities and fields of State management by Ministries and ministerial level agencies, Governmental agencies and People’s Committees of all levels.

And the Inspector General shall have the right to make a proposal to the Prime Minister or to the competent authorities for application of necessary measures to stop the breach, identify the responsible persons and decide settlement methods where any act of violation of the laws causing damage to the interest of the State, or the legitimate rights and benefits of citizens, organizations or agencies.”

***7- Article 28 shall be amended and supplemented as follows:***

**“Article 28**

The Prime Minister shall ~~be have the responsible for~~ competence of:

1. leading the settlement by Ministries, ministerial level agencies, agencies under the Government, the People’s Committees at all levels;
2. ~~guiding Ministers, Heads of ministerial level agencies to settle complaints related to various localities and fields of State management and entrusting the dealing with the proposals made by the~~ Inspector General ~~with monitoring and speeding up that settlements~~ stipulated in Article 26.2 of the Law on Complaints and Denouncements.”

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***8- Article 32 shall be amended and supplemented as follows:***

**“Article 32.**

Complaints which fall under one of the following cases shall not be received for settlement:

1. The complained administrative decision or administrative act does not directly relate to the legitimate rights and interests of the complainant;
2. The complainant does not have full capacity for civil acts and does not have his (her) lawful representative;
3. The representative status of the representative person is not legal;
4. ~~The prescription for making complaint and the time limit statute of limitations~~ for continuing the complaint has expired;
5. There has been a second decision on settlement on the complaint.
6. The complaint has been received for settlement by the court or the ~~judgement~~ judgment or decision on the complaint has been rendered by the court.”

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***9- Article 36 shall be amended and supplemented as follows:***

“1. The time limit for settling a complaint for the first time shall not exceed 30 days as of the date of receipt and acceptance of the complaint for settlement; in complicated cases, it may be extended provided that it will not exceed 45 days as of the date of receipt and acceptance of the complaint for settlement;

In remote and out-of-the-way areas with difficulties in traveling, the time limit for settling a complaint for the first time shall not exceed 45 days as of the date of receipt and acceptance of the complaint for settlement; in complicated cases, it may be extended provided that it will not exceed 60 days as of the date of receipt and acceptance of the complaint for settlement.

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2. If a complaint fails to be settled within the time limit set out in clause 1 of this Article by the competent person, then such competent person shall be considered for disciplines. The complainant shall have the right to claim to the direct superior body of the person who so fails to settle his/her claim for consideration of disciplines on such persons.”

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**10. Article 37 shall be amended and supplemented as follows:**

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“ **Article 37.**

During the settlement of a complaint for the first time, the first-time complaint settler shall meet and hold direct dialogues with the complainant and the complained to clarify about the contents of complaint, requirements of the complainant and the way for settlement of the complaint. Where the complainant hires lawyers for legal services then the lawyers shall have the right to participate in the complaint settling process. The second-time complaint settler, when necessary or in case there is requirement of the complainant and the complained, shall meet and hold direct dialogues with the complainant and the complained.

The first-time complaint settler must issue the decision of complaint settlement in written form and send it to the complainant, the complained, and the persons who have related rights and interests; ~~he (she), where necessary, shall publicize the~~ And such settlement decision of complaint settlement to the complainant and the complained must be made public.”

**11- Article 38 shall be amended and supplemented as follows:**

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“**Article 38.**

The first-time decision of complaint settlement shall contain the following contents:

1. Day, month and year of issuance of the decision;
2. Names and addresses of complainant and the complained;
3. Contents of complaint;
4. Results of examination of complaint contents; legal grounds for the settlement;
5. Conclusion of complaint contents are fully correct, partly correct or completely wrong;
6. Whether the administrative decision complained shall be ~~remained~~kept unchanged, amended, or abolished partly or fully; or the administrative acts complained shall be put to an end; and the settlement of specific matters in the contents of the complaint;
7. Whether compensation if any for the adversely impacted persons will be made or not;
8. The right for further complaint or to initiate an administrative case in the court ~~under provisions of the administrative procedures law.~~”

**12- Article 39 shall be amended and supplemented as follows:**

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“**Article 39.**

Within 30 days counted from the expiry date of settlement as stipulated in Article 36 of this Law, if the complaint is not yet settled, or within 30 days counted from the date complainant receives the decision of the first-time settlement, ~~if~~ about which he (she) does not agree, the complainant shall be entitled to make complaint

to the ~~subsequent~~ second-time complaint settlers or initiate an administrative case in the court, ~~as provided by law on administrative procedures. If the complainant initiates an administrative case in the court, he (she) shall not be entitled to make complaint to the subsequent complaint settlers;~~ ~~f~~For the distant and remote areas with difficulty of ~~travelling~~ traveling, the above-said time limit may be extended but shall not exceed 45 days.

In case of that the complainant does not agree with the first-time settlement decision of Ministers, Heads of ministerial level agencies, or chairmen of provincial People's Committees, he (she) shall be entitled to initiate an administrative case in the people's court at the provincial level, ~~except the unless~~ other wise regulations provided by law.”

**13 - Article 40 shall be amended and supplemented as follows:**

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**“Article 40**

Where a complaint is continued, the complainant must attach to the application a copy of the first-time settlement decision and other relevant documents if any to the competent second-time settler.”

**14- Article 41 shall be amended and supplemented as follows:**

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**“Article 41**

Within 10 days as of receipt of complaints falling under one’s scope of authority but out of cases set out in Article 32 of the Law on Complaints and Denouncements, the second-time settler must receive for settlement and send a written notice to the complainant and the first-time settler for information; in case of refusal of settlement, then a written notice clearly stating the reasons for such refusal shall be sent to the complainant.”

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**15 - Article 42 shall be amended and supplemented as follows:**

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**“Article 42**

During the second-time complaint settling process, if there is ground to believe that the enforcement of the complained administrative decision or the decision on first-time complaint settlement will cause irrecoverable consequences, then the person settling the second-time complaint shall issue a decision or a proposal to the competent authority to issue a decision on temporarily postponement the enforcement of the same.

The period of such temporarily postponement shall not exceed the remaining of the settlement period. Such decision on temporary postponement must be sent to the complainant, the first-time complaint settler, and to the people with related rights and benefits. When there is ground to believe that the temporary postponement is no longer needed, then it must be abolished immediately.”

***16 - Article 43 shall be amended and supplemented as follows:***

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***“Article 43***

1. The period for second-time complaint settlement shall not exceed 45 days as of the date of receipt for settlement; in complicated cases, such period may be extended provided that it will not exceed 60 as of the date of receipt for settlement.

In remote and out-of-the-way areas with difficulties in traveling, the time limit for settling a complaint for the second time shall not exceed 60 days as of the date of receipt and acceptance of the complaint for settlement; in complicated cases, it may be extended provided that it will not exceed 70 days as of the date of receipt and acceptance of the complaint for settlement.

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2. If a complaint fails to be settled within the time limit set out in clause 1 of this Article by the competent person, then such competent person shall be considered for disciplines. The complainant shall have the right to claim to the direct superior body of the person who so fails to settle his/her claim for consideration of disciplines on such persons

***17- Article 44 shall be amended and supplemented as follows:***

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***“Article 44.***

1. In the complaint settlement proceeding for the ~~following second~~ times, the ~~subsequent~~ complaint settler shall be entitled to:

- a. request the complainant to provide information, documents and other evidence related to the complained contents;
- b. request the complained to present in written form on the complained contents;
- c. request the ~~previous first-time~~ complaint settlers and relevant individuals and agencies or organizations to provide information, documents and other evidences related to the complained contents;
- d. ~~where necessary,~~ request the presence of the complained and the complainant for ~~holding dialogues or when there is requirement of the complained or the complainant;~~
- ~~d~~e. make on-spot verification;
- ~~e~~f. request for examination and take other measures as provided by law;

2. Upon receiving the requests as stipulated in paragraph 1 of this Article, relevant individuals, agencies and organizations must observe those requests.”

***138- Article 45 shall be amended and supplemented as follows:***

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***“Article 45.***

1. During second-time settlement of complaints, the settler may meet with and directly talk with the complainant and the complained to make clear the complained contents, the requests of the complainant and the way to solve the complaint. Where the complainant hires lawyers for legal services then the lawyers shall have the right to participate in the complaint settling process.

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~~2. Subsequent~~ The second-time complaint settlers must issue the decision of settlement in written form. Contents of this decision shall be composed of:

- a. day, month, year of issuance of decision;
- b. names, addresses of complainant and the complained;
- c. complained contents;
- d. conclusion on the first-time settlement;
- ~~dd.~~ results of verification;
- e. legal grounds for settlement,
- ~~gf.~~ conclusion on whether the complained contents are correct, partially correct or totally wrong. If the complaint is correct or partially correct, then there must be provisions on requesting the issuer of such complained administrative decision or administrative act to amend, abolish partially or wholly such administrative decision or administrative act and on the settlement by the previous complaint settlers;
- ~~g.~~ whether the administrative decision shall be remained, amended or requested to revise or abolish partly or fully; the administrative acts shall be brought to an end or not; and the settlement of specific matters in the contents of the complaint;
- h. whether the compensations for the victim shall be made or not (if any);
- i. The right ~~for further making complaint or~~ to initiate an administrative case in the court ~~of the complainant as stipulated by the law on administrative procedures; for those complaint settlement decisions stipulated in provisions 2 and 3 of Article 23; items b, c of provision 1 Article 26 of the Law on Complaints and Denunciations, it is compulsory to clarify the right to initiate an administrative case in the court as stipulated by the law of administrative procedures.~~

~~23.~~ The complaint settlement decisions of the following second times shall be sent to the complainant, the complained, the previous first time complaint settlers, the persons who have related rights and interests, and the person who forwarded the complaint within 7 days counted from the issuance date of the settlement decision.

~~Where necessary, the subsequent complaint settlers shall publicize t~~The second-time complaint settlement decision ~~to the complainant, the complained and persons who have related rights and interests (if any)~~must be made public."

***149- Article 46 shall be amended and supplemented as follows:***

**“Article 46.**

Within the period of 30 days as of the expiry of the time limit of settlement as provided in Article 43 hereof, if the complaint is not yet settled, or within 30 days as of the date of receipt of the decision on settlement of his (her) complaint to which he (she) does not agree, the complainant shall be entitled to initiate an administrative case in the court ~~as stipulated by the law on administrative procedures; if the complainant initiates an administrative case in the court, he or she shall not be entitled to make complaint to the subsequent complaint settlers; for the complaint settlement decision stipulated in provisions 2 and 3 of Article 23; item b, c of provision 1 Article 25 and provision 1 of Article 26 of the Law on Complaints and Denunciations, if in the above-~~

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~~said period of time, the complained issue is not yet settled or the complainant does not agree with the complaint settlement decision, he or she shall be entitled to initiate an administrative case in the court as provided by the law on administrative procedures~~; for the distant and remote areas with difficulty for ~~travelling~~traveling, the time limit may be extended but shall not exceed 45 days.”

***1520- Article 47 shall be amended and supplemented as follows:***

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**Article 47.**

1. There must be a file for each case of settlement of complaint. This dossier shall be composed of:

- a. The form of complaint or a transcript of the oral complaint;
- b. Written replies by the complained;
- c. The minutes of Inspection, verification and conclusion, results of examination, minutes of meetings and dialogues;
- d. Complaint settlement decisions; and
- e. related documents.

2. The complaint ~~settlement~~settlement file must be paginated in accordance with the order of documents and achieved in accordance with the law. In case where the complainant ~~continues his (her) complaint or~~ initiates an administrative case in the court, the file must be transferred, upon request, to the ~~competent agencies or court of settlement~~.

**Article 2.**

1. To remove Article 2.15 of the Law on Complaints and Denouncements.

2. To replace the phrase “this decision is the final decision on complaint settlement” in Article 54.2 of the Law on Complaints and Denouncements with “this decision is enforceable”.

**Article 3.**

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This Law shall enter in force from ~~---~~ 1 June 2006.

For the complaints those have been being ~~considered received and settled for settlement~~ before the date that this Law enters in force shall continue to be implemented under the provisions of the Law on Complaints and Denunciations ~~ratified by the National Assembly of the Socialist Republic of Vietnam dated November 23<sup>rd</sup> of 1998~~ and the Law Amending and Supplementing a Number of Articles of Law on Complaints and Denunciations ~~ratified by the National Assembly of the Socialist Republic of Vietnam dated June 15<sup>th</sup> of 2004~~.

The Government shall guide in detail the implementation of this Law./.

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