

**HEALTH POLICY INITIATIVE VIETNAM
JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS**

**ESTABLISHMENT
AND REGISTRATION OF LEGAL ENTITIES**

(Second Edition)

JUDICIAL PUBLISHING HOUSE

INTRODUCTION

The Viet Nam Communist Party and the Government of Viet Nam consider HIV prevention and control the responsibility of every person, family, and community. The different branches and levels of Government and non-governmental organizations have taken part actively in the socialization of HIV prevention and control. People living with HIV and their families have also played an important role in HIV prevention in their communities.

According to the 2010 UNGASS report, Viet Nam's strong civil society participation in the response to HIV from 2008-2010 included participation in: HIV prevention, treatment, care and support activities, behaviour change communication, HIV counseling and testing, and activities to reduce stigma and discrimination, promote harm-reduction, provide economic support and improve the quality of life of people living with HIV.

Current trends show that self-help groups, support groups, and clubs for people living with HIV, as well as other grass-roots civil society organizations (CSOs) in Viet Nam have increased in number, improved in quality and widened in operational scope. Many of these groups are interested in obtaining more information regarding the regulations for the establishment and registration as a legal entity. In the context of declining international donor support for HIV/AIDS in Vietnam over the coming years, it will be particularly important for civil society organizations to take on increased roles in delivering HIV/AIDS related services and other aspects of the HIV/AIDS response. In order to play such expanded roles most effectively and efficiently, CSOs must obtain legal registration so that they may receive funds and implement activities using those funds.

In order to better serve the people living with HIV and CSOs, Health Policy Initiative Viet Nam (USAID/HPI), in collaboration with UNAIDS Viet Nam and the Judicial Publishing House, has developed this handbook to make necessary information and guidance available to groups desiring to achieve legal establishment and registration.

This handbook was completed with the cooperation of and contribution from domestic state management agencies, international experts, non-governmental organizations, self-help groups, support groups, and people living with HIV. USAID/HPI and UNAIDS Viet Nam would like to respectfully express their sincere thanks to all valued contributors.

Hanoi, August 2011

**USAID's Health Policy Initiative Vietnam
Joint United Nations Programme on HIV/AIDS**

DIRECTIONS FOR USE

1. What is the purpose of this handbook?

This handbook is intended to provide groups of people living with HIV with information on the process of registering a legal entity. The information given should contribute to strengthening the participation of these groups in HIV prevention and control activities.

2. Who should use this handbook?

This document is targeted toward all groups of people living with HIV (self-help groups, support groups, etc.) who are engaged in HIV prevention and control activities. In addition, this handbook may also be used by other groups looking for information related to the legal entity registration process.

3. How should this handbook be used?

This handbook is a reference that provides information on how to legally establish and register an organization. It includes detailed information tailored to different types of organizations.

This handbook is presented in order from general to more detailed information and is organized according to organization type. There are many ways to use it. Users may read from the beginning to the end, or may turn directly to reference just the information they need for their type of organization.

The book makes use of the below symbols to highlight key issues:



Case study



Key information

4. What does this handbook include?

This handbook includes the following content:

Part A. General information - This part contains basic information relating to legal entities, such as the requirements for recognition as a legal entity and the rights and obligations of a legal entity.

Part B. Requirements and procedures for legal registration - This part provides detailed information on the requirements and procedures for establishing different types of legal entities. This information will help groups select which organization type is most appropriate for them. Practical examples of groups who were successful in selecting their organization type and establishing and legally registering themselves are introduced as references.

Part C. Annex - This part contains the legal framework that regulates the establishment, organization and operation of the organization types introduced in Part B. It lists websites for

additional information as well as the addresses of Provincial Associations of HIV Prevention and Control.



The information in this handbook is based on the existing legal framework for organizing, managing and operating some types of organizations in Viet Nam. This is the second edition of the handbook (July 2011), which has been revised to reflect the modifications that took place in the legislative framework since the first edition (April 2010). The information may have changed since then so readers are recommended to check if the normative legal texts have been supplemented, revised and replaced.

PART A

GENERAL INFORMATION

1. Legal entity

As stipulated in Article 84 of the 2005 Civil Code, an organization shall be recognized as a legal entity when it meets all the following conditions:

- Being established lawfully
- Having a well - organized structure
- Possessing property independent from that of individuals and other organizations, and bearing its own liability with such property
- Independently entering into legal relations in its own name

2. Establishment of a legal entity

As stipulated in Article 85 of the 2005 Civil Code, a legal entity may be established on the initiative of an individual or an organization, or by the decision of a competent state agency.

3. Rights and obligations of a legal entity

Once an organization is recognized as a legal entity, it has the following rights and obligations:

- Right to have a legal representative or an authorized representative in civil transactions
- A legal entity shall bear civil liability for the exercise of its civil rights and performance of civil obligations established and performed by a representative in the name of the legal entity
- The representative of the legal entity has the right to sign economic contracts, tender for projects, carry out scientific research, provide public services and shall bear civil responsibility with his/her own property

Once an organization is recognized as a legal entity, it has civil legal capacity and can establish civil transactions independently. The civil capacity of a legal entity refers to its civil rights and obligations consistent with the purpose of its operation.

4. Available types of legal entities for groups of people living with HIV (PLHIV)

There are several different types of legal entities specified in Vietnamese law. PLHIV self-help groups, support groups and networks (hereafter referred to as PLHIV groups) have different options for registering their status:

- Association
- Social Fund / Charity Fund
- Science and Technology Organization
- Cooperative Group
- Cooperative
- Household business
- Enterprise

Specific provisions and requirements for each of the types mentioned above will be described in Part B.

PART B

REQUIREMENTS AND PROCEDURES FOR LEGAL ESTABLISHMENT/REGISTRATION

Before turning to the full description of each of the different types of legal entities, the following table provides an overview of the main characteristics of each - i.e. its requirements, advantages and challenges - so that readers can get a sense of which registration option might be most suitable for their organization.

Overview of organization types

No.	Type of Organization	Purpose	General Requirements for Establishment/Registration	Key Requirements for Establishment/Registration	Advantages
1	Association	<ul style="list-style-type: none"> • Protect members' legitimate rights and interests • Coordinate efforts for greater efficiency • Contribute to the country's socio-economic development 	<ul style="list-style-type: none"> • Mission/goal that does not violate the law • Name and main activities are not identical to those of existing registered associations • Charter • Headquarters • Adequate number of registered members 	<ul style="list-style-type: none"> • An Establishment Mobilization Board (EMB) recognized by relevant government agencies • Sufficient number of signatures to demonstrate adequate membership 	<ul style="list-style-type: none"> • No registration fee • Issued a stamp • May have a bank account
2	Social Fund and Charity Fund	<ul style="list-style-type: none"> • Encourage donation of funds for the development of culture, education, sport, science, charity and other fields of non-profit community development 	<ul style="list-style-type: none"> • Mission/goal to encourage the development of culture, education, sport, science, charity and other fields of non-profit community development • Proof of members' commitment to donate their assets • Terms of reference and suitable organization structure • Headquarters 	<ul style="list-style-type: none"> • Sufficient initial operating capital 	<ul style="list-style-type: none"> • No registration fee • Issued a stamp • May have a bank account
3	Science and Technology Organization	<ul style="list-style-type: none"> • Carry out science and technology-related activities • Conduct activities in the service of scientific research and technology development • Conduct activities related to intellectual property and technology transfer • Educate, train, consult on, foster and popularise the applications of science and technology 	<ul style="list-style-type: none"> • Goal and strategies in line with current legal regulations • Charter and organizational/management plan • Minimum of 5 university graduates, of whom 20% have professional qualifications in the organization's field • Minimum of 40% of human resources are employed full time in the organization's work • Registered capital in cash or assets with a total value of at least 200 million VND 	<ul style="list-style-type: none"> • Science and technology personnel • Sufficient initial operating capital 	<ul style="list-style-type: none"> • Issued a stamp • May have a bank account
4	Cooperative Group	<ul style="list-style-type: none"> • Production or business • Create income and jobs for members 	<ul style="list-style-type: none"> • Minimum of 3 members • Cooperation contract certified by the commune People's Committee 	<ul style="list-style-type: none"> • Activities related to production or business • Adequate capital 	<ul style="list-style-type: none"> • No educational requirement for founding members
		<ul style="list-style-type: none"> • Develop and implement programs, plans and projects for collective economic development, socio-economic development, poverty-alleviation and vocational training for local people 			<ul style="list-style-type: none"> • Certification free of charge • May have a bank account • Enjoying a number of supportive policies and systems by the state on communication, consultancy and training

5	Cooperative	<ul style="list-style-type: none"> • Conduct production/business activities to improve members' material and spiritual lives, thus contributing to national socio-economic development 	<ul style="list-style-type: none"> • Valid enterprise registration • Be engaged in production and/or business field not banned by the law • Name and logo (if any) • Charter capital. This capital is not lower than the legal capital in some fields regulated by the Government • Payment of required business registration fees 	<ul style="list-style-type: none"> • Activities must be related to production or business • Adequate capital 	<ul style="list-style-type: none"> • Issued a stamp • May have a bank account • Entitled to be notified of policies regarding training, land, finance, credit, trade promotion, applied technology, infrastructure investments serving for the cooperative's production and the lives of its members and their participation in socio-economic development programs
6	Household business	<ul style="list-style-type: none"> • Conduct business • Create income and jobs for members 	<ul style="list-style-type: none"> • Be engaged in a legal production and/or business field • Proposed business name must be according to Article 56 of Decree No. 43/2010/ND-CP on enterprise registration • Payment of required business registration fees 	<ul style="list-style-type: none"> • Activities must be related to production or business • Adequate capital 	<ul style="list-style-type: none"> • May have a bank account
7	Enterprise	<ul style="list-style-type: none"> • Production or business • Create income and jobs for members 	<ul style="list-style-type: none"> • Enterprise registration application deemed valid according to the provisions of the law • Legally stipulated business registration fee paid in full 	<ul style="list-style-type: none"> • Head of enterprise must have high qualifications in economics and management. • Adequate capital 	<ul style="list-style-type: none"> • Issued a stamp • May have a bank account

I. ASSOCIATIONS

1. Definition of an association

According to Article 2 of Decree No.45/2010/NĐ-CP dated April, 21, 2010 of the Government stipulating the organization, operation and management of associations (hereafter called Decree No. 45), an association is understood to be:

- The voluntary organization of Vietnamese citizens of the same profession, the same hobbies or the same sex, who gather together for regular activities. It aims to protect members' and communities' legitimate rights and interests, carry out activities more efficiently and contribute to the country's socio-economic development.

- An association may bear different names, such as 'union of associations', 'confederation', 'federation', 'society' and 'club', yet still retain its status as a legal entity according to the provisions of the law.

2. Rights and obligations of an association

The following are among the rights of an association, as stipulated in Article 23 of Decree No. 45:

- Organize and operate according to the provisions of the association's approved charter
- Publicize itself and its mission/goal
- Represent its members in the internal and external relations
- Protect the legitimate rights and interests of the association and its members in accordance with its principles and objectives
- Organise and coordinate the activities among its members for common objectives, resolve the internal disputes
- Disseminate necessary information and provide training to members according to the provisions of the law
- Participate in programs, projects and scientific studies; consult and comment on matters within their scope of operation at the request of government agencies; provide public service in the association's field; and organize vocational training in accordance with current legal regulations
- Apply for and obtain legal status in accordance with current legal regulations
- Give opinions on legal documents relating to the operation of associations, according to the provisions of the law. Make suggestions to State agencies on matters related to the development of associations and to domains where the association has operated in. Associations may organize training activities and other services in accordance with current legal regulations and may grant professional certificates to those trainees who meet all necessary requirements, as stipulated by the law

- Coordinate with relevant agencies and/or organizations in the performance of the association's tasks

- Raise funds through membership fees and profits from business and/or service activities within the provisions of the law in order to cover operational costs

- Receive lawful financial support from domestic and foreign organizations and/or individuals within the provisions of the law. Activities related to State assigned duties are eligible for State funding

- Central Authority of associations which have the operating scope nationwide have the right to join the relevant international organizations and conclude the international agreements in accordance with the law and report these activities to authorized state agencies and the agency by which the association is established Article 24 of Decree No. 45 stipulates the following obligations:

- Carry out all current legal provisions related to the operation and organization of the association and its charter. Associations are forbidden to act in any way detrimental to national security, social order, ethics, traditional customs, national traditions, legal rights and benefits of other individuals and organizations

- An association operating within a certain domain must be subject to the State management agency in that domain

- An association must report annually on its status and activities to relevant State agencies, and to those agencies that manage, on behalf of the State, the branches and domains that pertain to the association no later than December 1st of the year

- An association must obey the guidance, examination and inspection of the competent State bodies according to the provisions of the law

- An association must maintain list of membership, branches and representative offices, financial records and meeting minutes at its headquarters and representative offices

- An association's use of funding must comply with the provisions of the law and it must submit an annual financial record to the finance bodies of the same levels and state jurisdiction agencies for receiving and using aid from individuals and foreign organizations

3. Requirements for the establishment of an association

According to Article 5 of Decree No.45, the requirements for the establishment of an association are defined as follows:

- It has a legal mission/goal

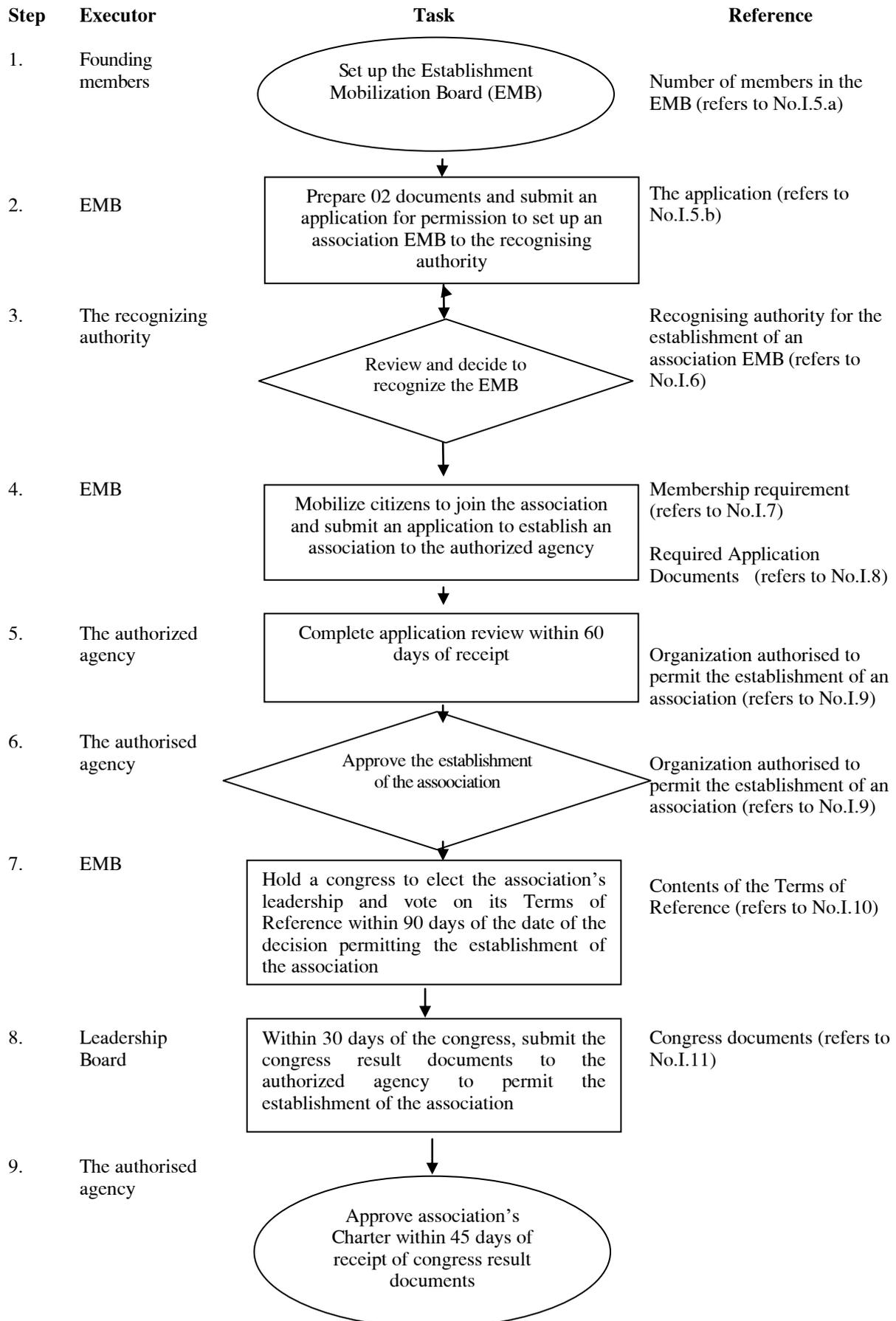
- Its name and main activities are not identical to those of legally registered associations in the same geographic area

- It has a charter

- It has a headquarters

- It is established by Vietnamese citizens or registered Vietnamese organizations

4. Steps to establish an association



5. Setting up the Establishment Mobilization Board (EMB)

a) The number of members in the EMB:

According to Article 6 (3), Decree No. 45, the number of members in the EMB is defined as follows:

- At least 10 members are required for the EMB if the association operates at the national or inter-provincial level
- At least 5 members are required for the EMB if the association operates within provinces only
- At least 3 members are required for the EMB if the association operates within districts or communes only
- At least 5 members are required for EMB if the association of economic organisation operates at the national level; at least 3 members for EMB if the association of economic organization operates at provincial level

b) Documents for approval of the EMB

According to Article 6, Decree No. 45, the following documents are required for the establishment of an association's Establishment Mobilization Board:

- The application for recognition of an EMB must clearly state the association's name, its guiding principles and mission/goal, the domain where the association expects to operate, the scope of the association's activities, the expected timeframe for the establishment of the association, and the EMB's provisional meeting venue
- The list and curriculum vitae of the EMB's proposed membership should include each person's full name, date of birth, place of residence and educational and professional qualifications

6. Organization authorised to recognize the EMB

According to Article 6, Decree No. 45, the recognition of EMB is stipulated as follows:

- An EMB operating at the national or inter-provincial level shall be recognized by ministries or ministerial level agencies of the main fields/ sectors
- An EMB operating within provinces shall be recognized by provincial state departments or agencies
- An EMB operating within districts, towns or cities belonging to the province (generally called "District People's Committee") shall be recognized by the District People's Committees

The Chairman of the District People's Committee is authorized by the Chairman of the Provincial/City People's Committee, directly under the

central government (hereafter called the Provincial People's Committee), to set up, divide, separate, merge, unify, dissolve, rename and approve charters for associations that operate at the commune level. The specialized division of the District People's Committee acknowledges the association's Establishment Mobilization Board that operates at the commune level.

7. Membership requirements

According to Article 5 (4), Decree No. 45, the number of Vietnamese citizens and organizations registered to establish an association is defined as follows:

- At least 100 citizens (applications for participation) for associations operating at the national or inter-provincial level
- At least 50 citizens (applications for participation) for associations operating within provinces
- At least 20 citizens (applications for participation) for associations operating within districts
- At least 10 citizens (applications for participation) for associations operating within communes

In case of the association of economic organizations which have representatives of legal entities; the number of representatives is at least 11 for associations with scope of activities nationwide and at least 5 for associations with scope of activities in the same province

For professional associations: the number of citizens and organizations who must voluntarily register to establish the association is decided by the State jurisdiction agencies, stipulated in Article 14 in Decree No. 45, who consider each specific case in turn.

8. Required application documents for establishing an association

According to Article 7, Decree No. 45, the required application documents for establishing an association include:

- An application for establishment
- Draft charter
- Work plan
- The list of EMB members recognized by the competent State agency
- Judicial curriculum vitae of the head of the association's EMB
- Documents identifying the location of the association's headquarters
- List of assets voluntarily contributed by the founder (if any)

9. Organization authorised to permit the establishment of an association

According to Article 14, Decree No.45:

- The Minister of Home Affairs shall permit the establishment of associations operating at the national or inter-provincial level.
- Chairmen of the Provincial People's Committee (through the Department of Home Affairs) shall permit the establishment of associations operating within their respective provinces.

10. The main contents of the association's charter

According to Article 8, Decree No.45 an association's Charter must include:

- Name of association
- Guiding principles, mission/goal, domain and scope of activities
- Tasks and powers
- Organization and operating principles
- Procedure for joining and leaving the association, authority to enlist and exclude members
- Membership criteria
- Members' rights and obligations
- Description of the association's structure, organization, procedures for election and dismissal, tasks and powers, governing board and other leadership posts, principles, voting method
- Financial and other assets and the system for managing them
- Requirements for closing on financial assets and liquidating non-financial assets
- Rewarding, disciplining and handling and solving complaints within the association
- Procedures for amending/supplementing the charter
- Date the charter goes into effect

11. Congress documents submitted to state authority

According to Article 12, Decree No.45, the following Congress documents are required:

- Record showing members' approval of the association's charter
- Record showing members' election of the association's leadership, the governing board list of the members attached and the curriculum vitae of the association's head
- The association's work plan
- Congress resolution

12. State management of associations

The State management tasks of the ministries and ministerial-level agencies charged with supervising the associations and their operations include the following:

- Recognize the EMB
- Give comments to relevant State agencies on the establishment of associations
- Guide and create conditions for associations to operate in strict accordance with the law
- Consult with associations in order to finalize the provisions of the State management of associations

- Monitor associations' compliance with relevant legislation and the implementation of their charter



If an organization's objectives and activities relate to HIV prevention and control then it will be managed by a State agency responsible for HIV prevention (e.g. the Ministry of Health for associations operating at the national level and the relevant provincial Department of Health for associations operating at the provincial level). The State management agency will recognize the association's EMB and coordinate with other relevant agencies to permit its establishment. After an association is established, the State management agency is responsible for guiding and supporting its operation in accordance with the Law on HIV/AIDS Prevention and Control and the National Strategy on HIV/AIDS Prevention and Control. The State management agency will also provide official information related to HIV issues as well as monitor the association's compliance with relevant legislation and the implementation of its charter.

13. Relevant legal documents

- Decree No. 45/2010/NĐ-CP dated April 21, 2010 of the Government stipulating the organization, operation and management of associations.

- Circular No. 11/2010/TT-BNV dated November 26, 2010 of Ministry of Home Affairs on organization, operation and management of associations.



PLHIV groups may apply for their organization to be an associate member/branch under the umbrella of an existing association. At present, several HIV associations have been established under existing associations, such as the Viet Nam HIV/AIDS Preventive Association and other local associations (i.e. Ha Noi, Ho Chi Minh City, Hai Phong, An Giang, and Khanh Hoa AIDS Associations). These associations work to support PLHIV and have PLHIV participating in their Management Boards.



Registration Case Study

The Belief Group is an example of a PLHIV group that successfully registered under the umbrella of an existing association. After two months of following the necessary procedures, and with the support of the Ho Chi Minh City HIV/AIDS Association, the Belief Group was recognised and established as the 'Belief Branch' of the Ho Chi Minh City HIV/AIDS Association on May 9, 2009. The Branch currently has 35 members and carries out the following activities: (1) mobilize PLHIV to receive medical care, treatment and psychological support; (2) provide support and care for members' children to improve their access to education and medical care.

As a second example, in Ha Noi 41 PLHIV self-help groups successfully registered as a branch of the Hanoi HIV/AIDS Association.

In these cases, the branches belong to an existing HIV association. They do not have a separate legal status and they use the stamp and bank account of the Ho Chi Minh and Hanoi City HIV/AIDS Associations, respectively.

II. SOCIAL FUNDS AND CHARITY FUNDS

1. Definition of a fund

According to Article 3 of Decree No.148/2007/NĐ-CP dated September 25, 2007 on the organization and operation of social funds and charity funds (hereafter called Decree No.148):

Social funds and charity funds (hereafter called funds) are authorized non-profit entities that are established on and work within the principles of volunteerism and self-funding. Funds use their own assets to cover their expenditures and liabilities. Funds seek donations to carry out cultural, educational, sport, science, charity and other non-profit community activities.

2. Rights and obligations of a fund

Rights:

- Organize and operate in compliance with their recognized charter and in line with relevant laws
- Mobilize funds from domestic and international sources in accordance with the legally-defined principles and purposes of a fund
- Establish personal and organizational relationships for the purpose of resource mobilisation and project implementation, in accordance with the law
- Collaborate with communities, organizations, and individuals in need of support to develop projects in compliance with the principles and purposes of the fund
- Organize services and other activities as regulated by the law to preserve and increase the fund's assets

Obligations:

- Use all mobilized money and property appropriately and in the service of target groups
- Maintain and make available, in accordance with the law, financial and management records such as receipts, evidence of property and financial status, and meeting minutes and decisions in accordance with the law
- Use property and finances in strict accordance with the fund's operating principles and purposes
- Pay taxes, bills and fees and follow proper accounting, auditing and statistics procedures in accordance with the law
- Subject to inspection and supervision by State agencies, as well as to individual and institutional donors and the community, in accordance with the law
- Submit financial statements and annual reports on the organization's status and operation to the agency that permitted the fund's establishment and recognized its charter, as well as to the finance agency of the same level, and make public the fund's contributions before March 31st of the following year

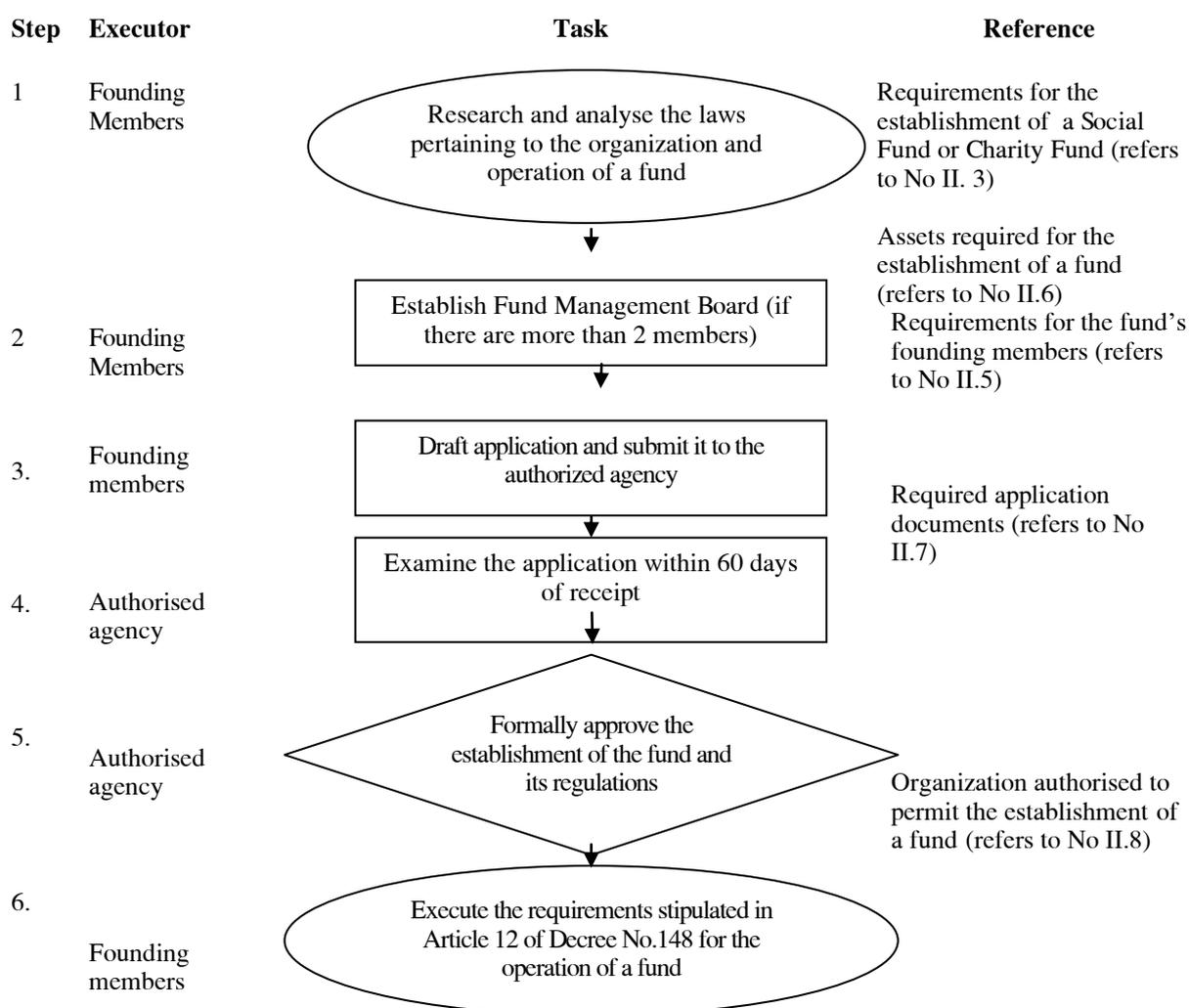
- Changes occurring in the fund's leadership, officers and personnel, and amendments to its charter must be reported to the State agency that permitted the fund's establishment

3. Requirements for the establishment of a social fund or charity fund

According to Article 9 of Decree No.148, a Social Fund or Charity Fund may be established when it meets the following requirements:

- The fund is organised for the purpose of encouraging cultural, educational, sport, science, charity and other non-profit community development
- Members are committed to donating their assets
- Charter and suitable organization structure are in place
- The fund has a headquarters

4. Steps to establish a social fund or charity fund



5. Requirements for the fund's founding members

According to Article 8 of Decree No.148, the founding members of a fund must meet the following requirements:

- Vietnamese citizen aged 18 years or older and has civil capacity
- Vietnamese organizations, joint enterprises or enterprises with 100% foreign capital established lawfully in VietNam. They must contribute their own assets and nominate a representative to carry out the procedure for establishing a fund
- The individuals or organizations who are legally responsible for establishing the fund must satisfy the requirements of a donor, as stipulated in the establishment contract.
- Foreign individuals and organizations may only establish a fund in Viet Nam if they are in partnership with a Vietnamese individual and organization

6. Assets required for the establishment of a fund

The initial assets required for Vietnamese individuals and organizations to establish a fund are stipulated below:

- Commune level: 50,000,000.00 VND
- District level: 100,000,000.00 VND
- Provincial level: 500,000,000.00 VND
- National level: 2,000,000,000.00 VND

The initial assets required for joint stock enterprises, foreign invested enterprises and foreign individuals and organizations to establish a fund in partnership with Vietnamese individuals and organizations are stipulated below:

- Commune level: 1,000,000,000.00 VND
- District level: 2,000,000,000.00 VND
- Provincial level: 5,000,000,000.00 VND
- National level: 10,000,000,000.00 VND



Concerning the establishment of social funds and charity funds, please note it is required to have proof of the founding members' commitment to contribute assets to the fund. The fund can operate only when it has (1) a certificate of establishment and the State's recognition of the fund's terms of reference; (2) a bank account with sufficient capital; (3) a headquarters, and (4) notices declaring the fund's establishment in three electronic and/or print newspapers.

7. Required application documents

According to Article 10 of Decree No.148, when applying for establishment, a fund must submit:

- An application for establishment of the fund
- Charter
- Work plan
- Funding commitment of the fund's members
- Proof that the fund has a headquarters
- List of founding members:

+ For Vietnamese citizens: judicial curriculum vitae, commitment of assets for the establishment of the fund

+ For foreigners: curriculum vitae authenticated in the country of citizenship and proof of commitment to contribute assets and obey the Vietnamese laws and regulations that govern the operation of a fund

+ For Vietnamese organizations: valid organization name and address, proof of commitment to establish a fund and contribute assets, copy of the organization's charter, copy of the decision of the relevant authority to become a founding member of the fund

+ For foreign organizations: valid name and headquarters address, copy of the organization's regulations, proof of commitment to contribute assets and obey the Vietnamese laws and regulations that govern the operation of a fund, authenticated curriculum vitae of the organization's representative

- For fund established by testament or authorized contract of organizations and individuals: copy of testament, notarized contract

8. Organization authorised to permit the establishment of a fund

- The Minister of Home Affairs is authorized to permit the establishment of interprovincial, national and international funds

- The president of the provincial People's Committee is authorized to permit the establishment of interdistrict and provincial funds. Depending on each specific case, the presidents of city/provincial People's Committees may authorize the Chairman of district People's Committees to permit the establishment of commune funds

9. Relevant legal documents

- Decree No. 148/2007/NĐ-CP dated September 25, 2007 of the Government on the organization and operation of social funds and charity funds

- Decision No. 10/2008/QĐ-BTC dated February 12, 2008 of the Ministry of Finance prescribing the system of financial management of social funds and charity funds

- Circular No. 09/2008/TT-BNV dated December 31, 2008 of the Ministry of Home Affairs guiding the implementation of a number of articles of Decree No. 148/2007/NĐ-CP dated September 25, 2007 on the organization and operation of social funds and charity funds

III. SCIENCE AND TECHNOLOGY ORGANIZATIONS

1. Types of science and technology organizations

According to Article 9 of the Law on Science and Technology, science and technology organizations are defined as follows:

- Scientific research institutions and scientific research and technological development institutions (hereafter referred collectively to as research and development institutions)
- Universities, institutes and colleges, (hereafter referred collectively to as universities)
- Science and technology service organizations

2. Rights and obligations of a science and technology organization

Rights:

- Carry out science and technology-related activities
- Conduct scientific research and technological development activities related to intellectual property and technology transfer
- Educate, train, consult on, foster and popularise the applications of science and technology
- Enter into cooperation or joint ventures with organizations and/or individuals and contribute capital in cash, assets or intellectual property rights in order to conduct science and technology activities and carry out production and business activities according to the law
- Receive aid from organizations and/or individuals for the purpose of implementing science and technology-related activities

Obligations:

- Fulfill science and technology contracts and other science and technology tasks as assigned by relevant agencies and/or organizations
- Use State funding efficiently for the development of science and technology and report research results
- Contribute to realising the country's science and technology potential
- Protect the legitimate rights and interests of individuals involved in science and technology-related activities within their respective organizations and keep science and technology know-how as prescribed by law
- Exercise democracy, equality and transparency in the assignment and performance of science and technology tasks

3. Requirements for the establishment of a science and technology organization

According to Article 4 in Decree No. 81/2002/NĐ-CP dated October 17, 2002 of the Government stipulating in detail the implementation of some articles of the Law on Science and Technology (hereafter called Decree No. 81), Research and Development Organizations and

Science and Technology Organizations may be established when they meet the following conditions:

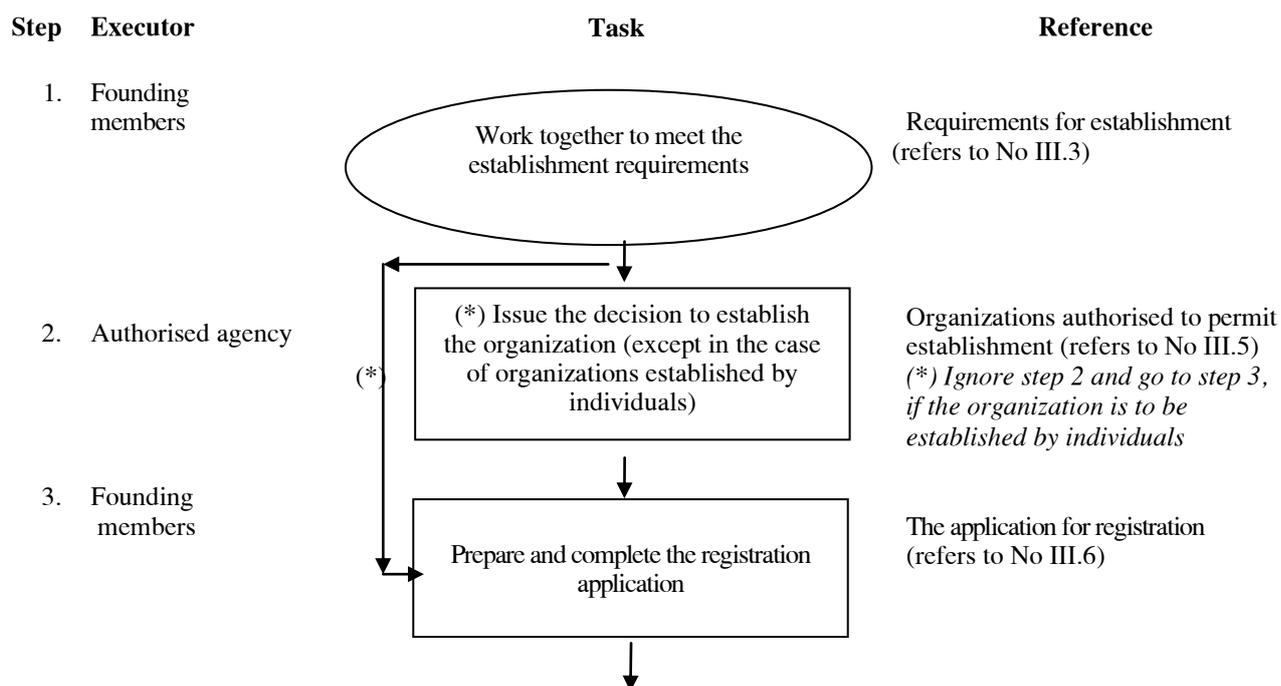
- The organization's mission/goal and objectives conform to the provisions of the law
- The organization has a charter
- The organization has a sufficient number of staff, including part-time staff and an adequate level of professional expertise to carry out science and technology activities
- The organization has a headquarters and the facilities needed to fulfill the charter

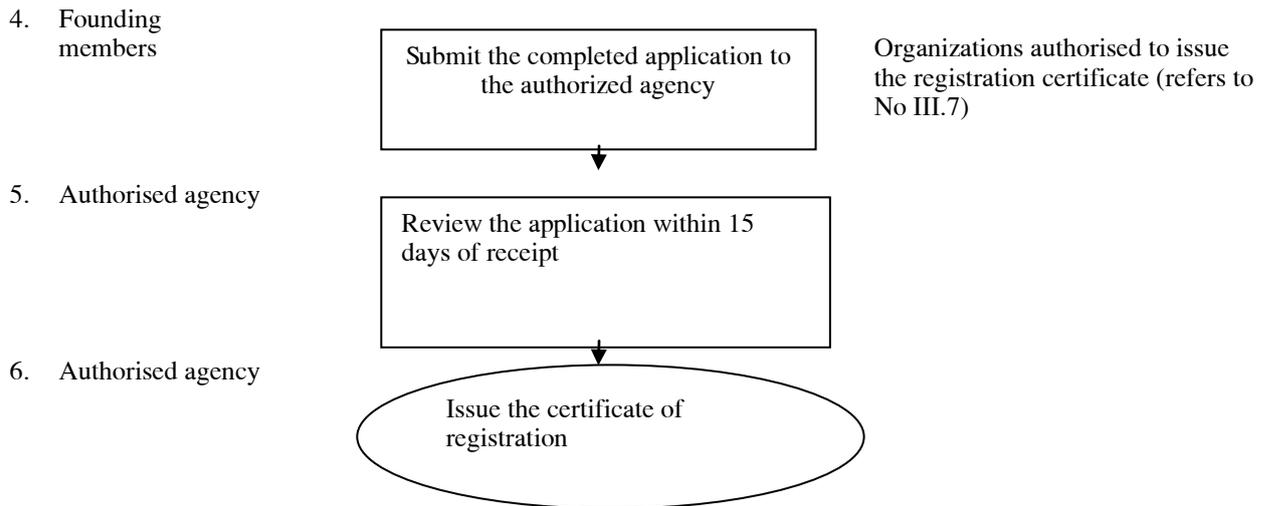
 According to Circular No.02/2010/TT-BKHCV dated March 18, 2010 of the Ministry of Science and Technology guiding the establishment, registration and operation of a science and technology organization

(hereafter called Circular No. 02), the number of staff and capital needed by a science and technology organization is as follows:

- At least 05 university graduates, of whom at least 20% have professional qualifications in one of the main registered fields
- At least 40% of staff must work full time
- Registered capital in cash or other assets with a total value of at least of 200 million VND

4. Steps to establish a science and technology organization





1. According to Circular No. 02/2010/TT-BKHHCN dated March 18, 2010 of the Ministry of Science and Technology, regarding science and technology organizations founded by 1 individual: application for operation replaces decision for establishment. For science and technology organizations established by 2 or more individuals: meeting minutes with founders's signatures replaces decision for establishment, provided minutes show agreement on the organizational charter, activities, registered capital, leader and manager titles and other content.

2. Individuals have the right to conduct science and technology-related activities on their own as long as such activities are in line with relevant laws and regulations, and strictly within the scope of Decision No. 97/2009/QĐ-TTg. Individuals have the right to express to the relevant authorities their opinion on the implementation of the State's policies, laws, and socio-economic development plans. However, Decision No.97 stipulates that if individuals want to express their comments on guidelines and policies to State agencies, they must submit such opinions directly to the relevant Party or State agency and not make their views public in name of the science and technology organization.

5. Organizations authorised to permit the establishment of a science and technology organization

- According to Article 5, Decree No. 81 and Article 4, Circular No. 02, the authority granted the power to permit the establishment of a science and technology organization is as follows: Political and socio-political organizations at the central level decide whether to establish research and development organizations in line with their charters.

- Ministers, leaders of agencies equivalent to Ministries and the Chairmen of Provincial/City People's Committees directly under the central government decide whether to establish research and development organizations in their localities.

- Leaders of research and development organizations at the ministerial and provincial levels, leaders of research and development organizations and political and socio-political organizations at the central level, and leaders of enterprises, universities and state hospitals decide whether to establish research and development organizations at the local level, provided approval is obtained directly from the management level.

- Political and socio-political organizations that are not at the central, social and social-professional organizations, organizations and individuals are allowed to establish research and development organizations at the local level according to Decree No. 81.

- Science and technology organizations established as cooperations or associations must seek approval from a relevant authorized agency or organization.



At present, several PLHIV groups have been established as science and technology organizations after first seeking membership in the Viet Nam Union of Science and Technology Associations (VUSTA). VUSTA is responsible for permitting the establishment of organizations and creating favorable conditions for organizations to register with the Ministry of Science and Technology. Once the Ministry of Science and Technology has permitted an organization to undertake science and technology-related activities, VUSTA is responsible for guiding and supporting the organization to carry out its activities in accordance with the terms of reference approved by VUSTA. VUSTA is specifically responsible for: (1) providing information on legal and policy issues relevant to science and technology-related activities; (2) capacity building; and (3) inspecting and monitoring to ensure the organization is implementing its activities in accordance with the law and its terms of reference. Organizations regulated by VUSTA must pay VUSTA a monthly management fee.

6. The application for registration

In order to apply for establishment, science and technology organizations must submit:

- Registration form
- Establishment decision
- Charter (or draft Charter, for organizations established by individuals)
- List of science and technology personnel
- Curriculum vitae of the organization's head
- Documents of headquarters
- List of facilities

7. Organizations authorised to issue the registration certificate

According to Article 7 of Circular No. 02, the issuing of registration certificate for the following science and technology organizations is defined as follows:

- Science and technology organizations which shall register their operation at the Ministry of Science and Technology include:

+ Research and development organizations established by the Government.

+ Research and development organizations established under decisions of the Prime Minister or of ministers or provincial-level People's Committee chairpersons as authorized by the Prime Minister.

The above research and development organizations include research and development organizations named in the decrees defining the functions and tasks of ministries; research and development organizations on the lists of other non-business organizations of ministries as decided by the Prime Minister; and research and development organizations established under decisions of ministers or provincial-level People's Committee chairpersons as authorized in writing by the Prime Minister.

+ Research and development organizations established under decisions of the National Assembly, the Supreme People's Court or the Supreme People's Procuracy.

+ Research and development organizations established under decisions of central-level political organizations or socio-political organizations.

+ Foreign-invested science and technology organizations.

- Science and technology organizations not defined in Clause 1 of this Article shall register their operation at provincial-level Science and Technology Departments of localities where they are headquartered.



Unlike organization types such as associations, social funds and charity funds, science and technology organizations have to go through two stages to obtain legal status: establishment and registration of science and technology activities. Science and technology organizations can operate when having a registration certificate for the implementation of science and technology activities.

8. Relevant legal documents

- Law on Science and Technology

- Decree No. 81/2002/NĐ-CP dated October 17, 2002 detailing the implementation of a number of articles of the Law on Science and Technology

- Circular No. 02/2010/TT- BKHCN dated March 18, 2010 by the Ministry of Science and Technology guiding the implementation of the establishment and registration of science and technology organizations

- Decision No. 97/2009/QĐ-TTg dated July 24, 2009 issuing a list of fields in which individuals can establish a science and technology organization



Registration Case Study

Action Center for People Living with HIV

The Provisional Management Board of the Viet Nam Network of People living with HIV (VNP+) took the initiative to become established as the "Action Center for People Living with HIV". The center was established as a science and technology organization in August 2009, by the Viet Nam Union of Scientific and Technology Associations (VUSTA). The main tasks of the center are to serve as a national network of PLHIV groups, conduct research, implement HIV projects and programs, communicate HIV prevention messages and support capacity building for PLHIV. To date, the center has 4 key members and an office based in Ha Noi. In November 2009, the Ministry of Science and Technology issued a registration certificate to the center.

The Center's registration was successful in part because Mr. Pham Quoc Hung, the director of the center, prepared the required documents very carefully. He took particular care developing the charter, as it outlines the function and mission/goal of the center.

IV. COOPERATIVE GROUPS

1. Definition of a cooperative group

According to Article 111 of the Civil Code, a cooperative group is defined as follows:

A cooperative group is based on cooperation contracts certified by commune/ward/township People's Committees and is entered into by three or more individuals who jointly contribute property and labor in order to perform certain tasks and to jointly enjoy benefits and bear liabilities.

2. Rights and obligations of a cooperative group

According to Article 12 of Decree No. 151/2007/NĐ-CP dated October 10, 2007 stipulating the organization and operation of cooperative groups (hereafter called Decree No. 151), a cooperative group has the following rights:

- Participate in those fields of trade and production not banned by the law and operate freely only in the location wherein the cooperation contract was certified
- Export, import and cooperate with other Vietnamese and foreign individuals and/or organizations for the expansion of production and business as permitted by law
- Be involved in the development and implementation of programs, plans and projects targeting collective economic development, socio-economic development, poverty-alleviation and vocational guidance at the community level
- Have a bank account
- Sign civil contracts
- Distribute the benefits and handle the losses
- Other rights in the contract of cooperation but not contrary to the provisions of the law

According to Article 13 of Decree No. 151, a cooperative group has the following obligations:

- Bear the civil responsibility for the fulfilment of those rights and obligations established by the group's representative in the name of the group
- Be responsible for the group's assets
- Fulfill commitments made to members, organizations and other individuals
- Bear responsibility for laborers hired by the cooperative group, according to the provisions of the law



A cooperative group may be the most appropriate option for groups engaged in production or business, socio-economic development, job creation, and poverty alleviation. Besides helping each other to increase their salaries, members can participate in developing and implementing HIV prevention programs and projects such as HIV communication, counseling and community-based care and support for PLHIV.

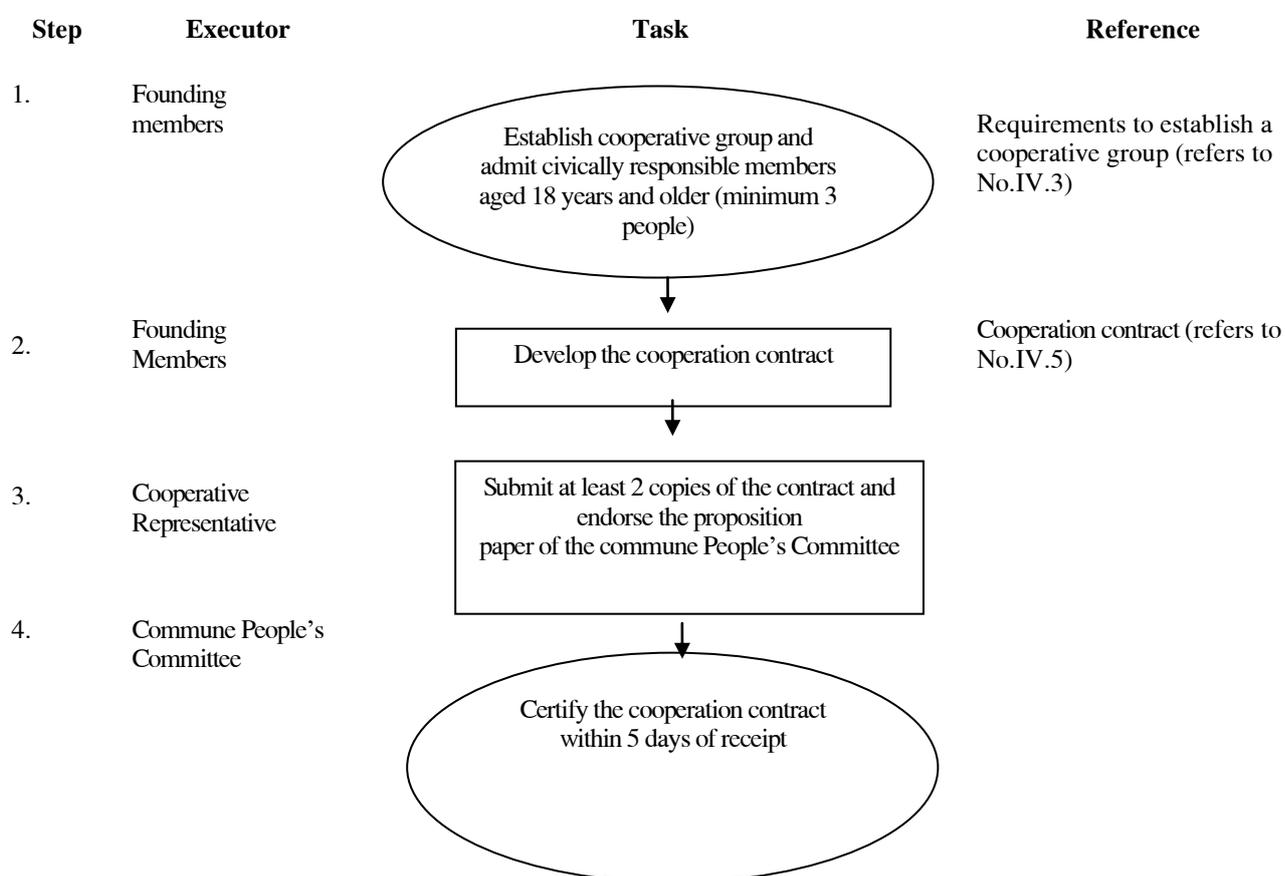
3. Requirements to establish a cooperative group

To establish a cooperative group, the following requirements must be met:

- The group must be composed of at least 3 members.
- The group must have a joint cooperation contract among the group members.
- The cooperative's contract must be certified by a commune People's Committee.

 According to the Law, cooperative groups meeting all conditions to become a legal entity may register their activities with and obtain legal status from a competent State agency.

4. Steps to establish a cooperative group



5. Contents of a cooperation contract

As stipulated in Article 111 of the Civil Code and Article 5 of Decree No. 151 the main contents of a cooperation contract include:

- Purpose and duration of contract
- Full name, residence and signatures of the director and members

- Assets contributed (if any); formula for dividing income and profit between members
- Rights, obligations and responsibilities of the members, directors and executive committee (if any)
- Requirements for becoming a member and for terminating membership.
- Requirements for dissolving the group
- Other agreements

6. Organization authorized to certify the cooperation contract

As stipulated in Article 6 of Decree No. 151, the cooperation contract will be certified by the commune People's Committee.



To become a cooperative group, the cooperation contract should be certified by the commune People's Committee. After certification, the group will receive information, counseling and training as stipulated in Circular No. 04/2008/TT-BKH dated July 09, 2009 by the Ministry of Planning and Investment guiding a number of provisions of the Government's Decree No. 151.

7. Relevant legal documents

- Decree No. 151/2007/NĐ-CP dated October 10, 2007 on the organization and operation of cooperative groups
- Circular No. 04/2008/TT-BKH dated July 9, 2008 by the Ministry of Planning and Investment guiding provisions of Decree No. 151/2007 on the organization and operation of cooperative groups



Registration Case Study

Hope Cooperative Group in Thai Binh

The Thai Binh Network of PLHIV groups took the initiative to found a cooperative group. After 5 months of preparation, the Hope Cooperative Group, comprised of 5 key members (including a leader, a deputy head and 2 members), was established by the Dong Hung Commune People's Committee. The Hope Cooperative Group has its own stamp and office located in Phong Loi Tay village, Dong Hop Commune, Dong Hung District. The group formed a clothing establishment to help create jobs for its 36 members. Besides the clothing industry, the group participates in credit activities for household economic development, expands their group at communes, communicates and educates the community on fighting against stigma and discrimination, and provides counseling, care and treatment for PLHIV. According to the group's leader Mr. Pham Cong Chuan, the Hope Cooperative Group has received support from the commune People's Committee and relevant provincial branches and agencies, and has also received technical and financial support from COHED through the Irish Aid project.

V. COOPERATIVES

1. Definition of a cooperative

According to the Law on Cooperatives 2003, a cooperative is a collective economic organization established within the provisions of the law by individuals, households or legal entities (hereinafter referred to as cooperative members) who share common needs and interests and volunteer to contribute capital and labor in order to maximise the collective strength of all members, to help one another conduct production/business activities more efficiently and to improve members' material and spiritual lives, thus contributing to national socio-economic development.

A cooperative operates as a type of enterprise, having the status of a legal entity, enjoying autonomy and taking responsibility for financial obligations within the scope of its sufficient initial operating capital, accumulated capital and other capital sources, in accordance with the provisions of the law.

2. Rights and obligations of a cooperative

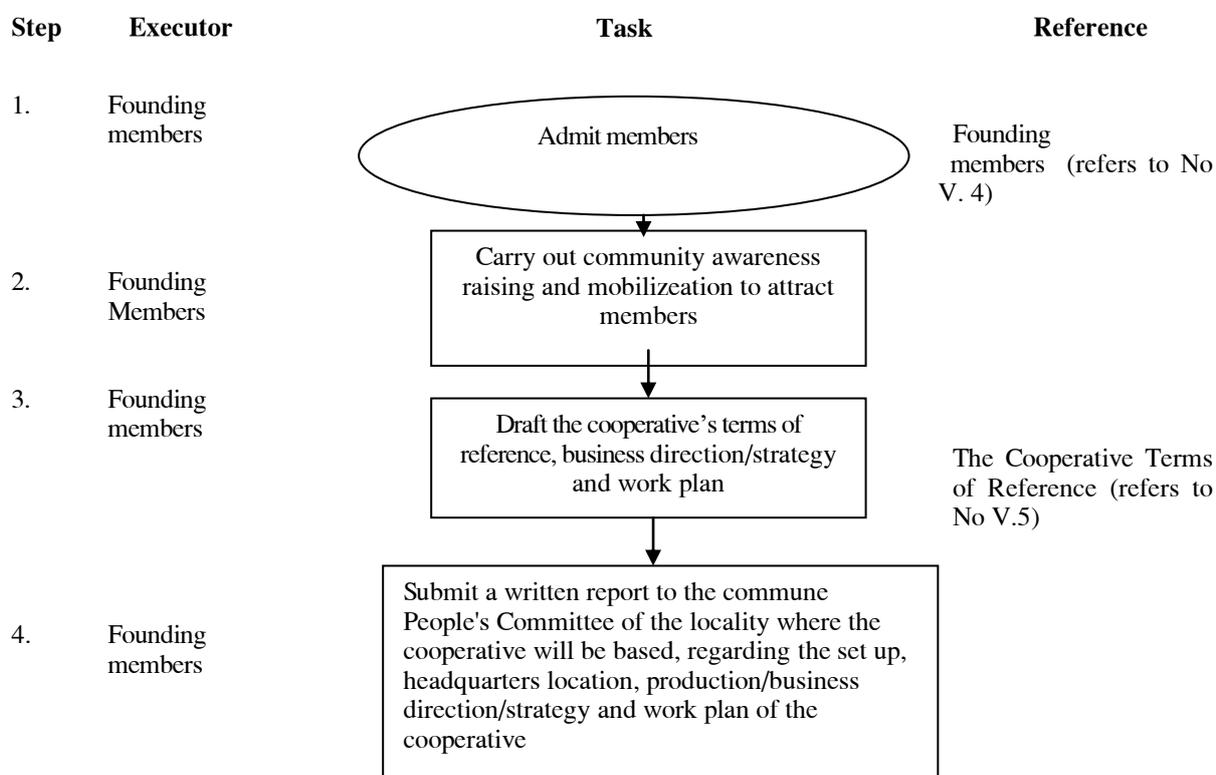
According to Article 6 of Law on Cooperatives, a cooperative has the following rights:

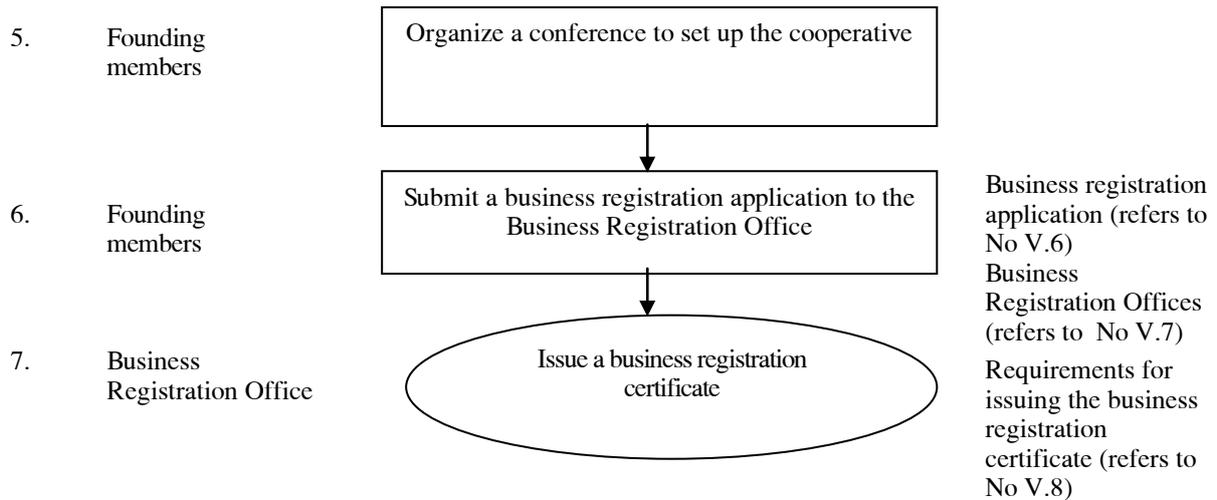
- Choose to operate in any field of production/business not prohibited by law
- Independently determine the form and structure of the cooperative's production/business
- Import/export products directly and enter into joint-ventures and associations with domestic and foreign organizations and individuals for the purpose of production/business expansion, in accordance with the provisions of the law
- Hire outside labor if cooperative members fail to meet the cooperative's production/business requirements, in accordance with the provisions of the law
- Decide on the admission of new members, permit members to terminate their membership and expel members, according to the provisions of the cooperative's charter
- Determine income distribution and handle the cooperative's losses.
- Choose the appropriate method for commending and/or rewarding members who are highly successful in building and developing the cooperative, discipline members who violate the cooperative's charter and decide on the compensation paid by members who have caused damage to the cooperative
- Borrow capital from credit institutions and mobilize capital from other sources
- Manage internal credit in accordance with the provisions of the law.
- Receive protection for the cooperative's industrial property rights in accordance with the provisions of the law
- Refuse the request of organizations and individuals which is contrary to the provisions of law
- Make complaints for violations of its rights and interests

According to Article 7 of the Law on Cooperatives, a cooperative has the following obligations:

- Undertake production/business activities in strict accordance with just those fields of production/business or concerning those commodity items listed in the cooperative's registration
- Comply strictly with the provisions of the law concerning accounting, statistics and auditing
- Pay taxes and fulfill other financial obligations in accordance with the provisions of the law
- Reserve and expend working capital and manage and use State-assigned land in accordance with the provisions of the law
- Bear responsibility for financial obligations stipulated by the cooperative's charter and for accumulated capital and other financial resources, in accordance with the provisions of the law
- Ensure that members' rights and responsibilities are fulfilled
- Pay compulsory social insurance premiums for members and laborers who work regularly for the cooperative, in accordance with the provisions of the cooperative's charter and the provisions of the insurance law
- Provide training and capacity building for all cooperative members

3. Steps to establish a cooperative





4. Founding members

According to Decree No.177/2004/NĐ-CP dated October 12, 2004 of the Government, the founding members of a cooperative must be Vietnamese citizens aged 18 years or older and civically responsible as defined by the Civil Code. They must be competent representatives of households or legal entities, understand the legal implications of forming a cooperative and make a written commitment to building and developing the cooperative on the basis of their own initiative.

5. The cooperative's charter

According to Article 12 of the 2003 Law on Cooperatives, the cooperative's charter must include:

- The name and logo (if any) of the cooperative
- The address of the cooperative's headquarters
- The cooperative's field of production and/or business
- Procedures for becoming a member and for terminating membership
- Regulations on the interests, responsibilities and obligations of cooperative members
- Procedures for paying compulsory social insurance premiums and determining beneficiaries
- The cooperative's charter capital
- Explanation of the minimum contributed capital (including the level, form and terms of members' contributions and the requirements for the return of the capital contributed by cooperative members)

- System of resource mobilization
- System for paying remunerations and handling losses, for distributing profits according to the capital and labor contributed by cooperative members, in accordance with the extent that the services were used by the cooperative, and the system governing the deduction of monies for setting up, managing and using the cooperative's funds
- Modalities for managing, using, saving and handling the cooperative's common property and accumulated capital when the cooperative is operating and when it is dissolved
- The organization and management structure of the cooperative and the functions, powers, tasks and responsibilities of the Management Board
- Management Board's director, the cooperative manager, the Control Board, the Control Board's director, and the sections assisting the cooperative
- The cooperative's legal representative
- Modalities for holding a founding congress of cooperative members and adopting the congress's decisions
- System for handling violations of the cooperative's charter and guidelines for settling internal disputes
- Modalities for amending the cooperative's charter
- Other regulations as decided on by the congress of cooperative members, provided they do not contradict the law

6. Business registration application

According to Article 14, Decree No. 87/2005/NĐ-CP dated July 11, 2005 of the Government on the business registration of cooperatives and Circular No. 05/2005/TT-BKH dated 15 December 2005 of the Ministry of Planning and Investment, the business registration application of cooperatives must include:

- An application for business registration
- The cooperative's charter
- A membership list, including the number of members and the membership of the Management Board and Control Board
- The minutes of the cooperative's founding congress

7. Business Registration Offices

A cooperative must apply for business registration at the provincial or district-level Business Registration Office of the locality where the cooperative will be based, depending on its ability.

- The Provincial Business Registration Office is located within the Business Registration Department that belongs to the Department of Planning and Investment.

- The District Business Registration Office is located within the Department of Planning and Investment that belongs to the district People's Committee.



Within fifteen days of receiving a complete and valid application, the Business Registration Office must consider the application and either grant the business registration certificate to the cooperative or provide the cooperative with a refusal in writing.

8. Requirements for issuing a business registration certificate

In order to qualify for a business registration certificate, cooperatives must meet the following requirements:

- Have a valid business registration application

- Be engaged in fields of production and/or business not prohibited by law

- Have a name and logo (if any)

- Have charter capital (For cooperatives engaged in fields of production and/or business that require legal capital as stipulated by the State, then the charter capital must not be lower than this legal capital).

- Have fully paid the required business registration fees.



A cooperative has the status of a legal entity and may operate from the date it is granted a business registration certificate.

Cooperatives are entitled to be notified of the policies relevant to them, such as those that support and encourage the development of cooperatives in terms of training, land, finance, credit, trade promotion, applied technology, infrastructure investments serving for the cooperative's production and the lives of its members and their participation in socio-economic development programs.

9. Relevant legal documents

- Law on Cooperatives 2003

- Decree No. 177/2004/NĐ-CP dated October 12, 2004 guiding a number of articles of the Law on Cooperatives 2003

- Decree No. 87/2005/NĐ-CP dated July 11, 2005 on business registration by cooperatives

- Decree No. 77/2005/NĐ-CP dated June 9, 2005 promulgating the model terms of reference of cooperatives

- Circular No. 05/2005/TT-BKH dated December 15, 2005 guiding a number of provisions of the Government's Decree No.87/2005/NĐ-CP dated July 11, 2005 on business registration by cooperatives

- Decree No. 88/2005/NĐ-CP dated July 11, 2005, on a number of policies to support and encourage the development of cooperatives

- Circular No. 02/2006/TT-BKH dated February 13, 2006 of the Ministry of Planning and Investment guiding the implementation of some articles of the Government's Decree No. 88/2005/NĐ-CP

- Circular No. 66/2006/TT-BTC dated July 17, 2006 of the Ministry of Finance guiding the implementation of the Government's Decree No. 88/2005/NĐ-CP of July 11, 2005, on financial support for founding members of to-be-established cooperatives and subjects entitled to training and re-training in cooperatives



Registration Case Study

Hoa Phuong self-help cooperative in Hai Phong

The Hoa Phuong self-help cooperative in Hai Phong city was established in October 2003.

Having identified its members' needs for stable employment and income, the cooperative's management board decided to apply for legal registration as a cooperative so they could engage in economic activities. Ten days after submitting the application form and supporting documents to the Economic Department of Hong Bang District People's Committee in Hai Phong, the group was legally established and registered as a cooperative in January 2010.

The cooperative has many productive and business activities, including: embroidery, sea snail husbandry, motorbike washing and industrial garment manufacture. Cooperative members also participate in activities such as community and home-based care and counseling, as well as communication projects to reduce stigma and discrimination against people living with HIV

The number of group members has increased from 6 members in 2003 to 250 members in 2011.

VI. HOUSEHOLD BUSINESSES

1. Definition of a household business

As stipulated in Article 49 of Decree No. 43/2010/ND-CP dated April 15, 2010 of Government on enterprise registration (hereafter called Decree No. 43), a household business is a business established by an individual, group or household of Vietnamese citizens. A household business may only be registered in one location, may not employ more than ten employees, may not have a stamp and is liable for all assets pertaining to the business's activities.

2. The right to set up a household business and the obligation to register that business

As stipulated in Article 50 of Decree No. 43:

- All persons who are 18 years or older, legal citizens of Viet Nam and civically responsible as defined by the Civil Code have the right to set up a household business and the responsibility to register that business according to Decree No. 43.

- Those individuals and households listed in Clause 1 of this article may register only one household business each, nationwide.

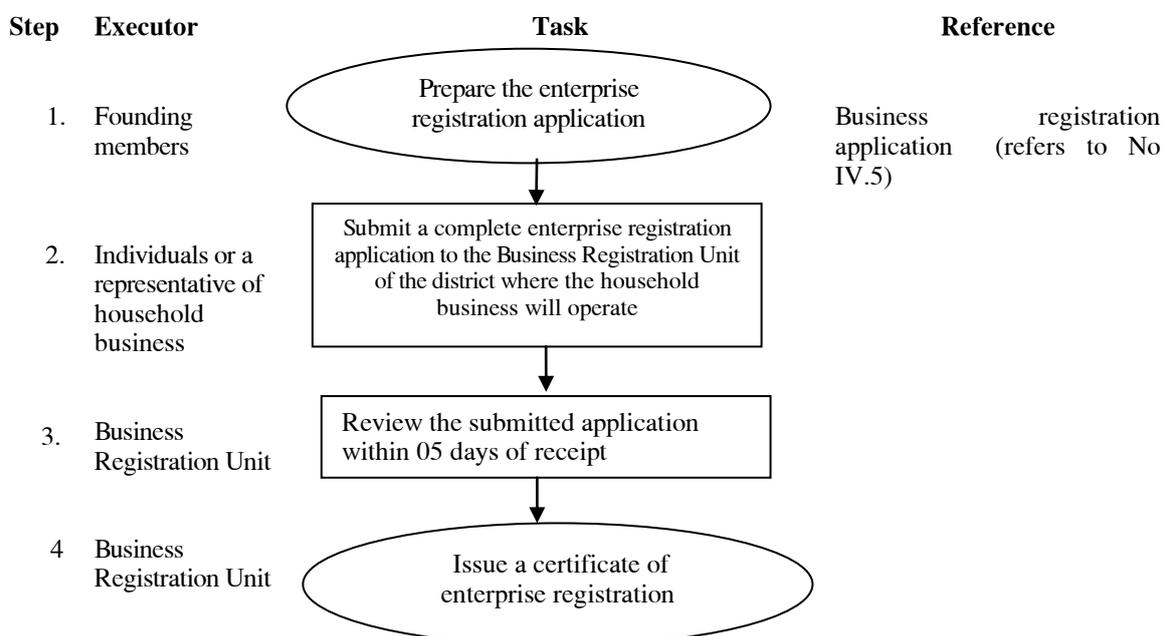
3. Requirements for issuing a household business registration certificate

As stipulated in Article 52 of Decree No. 43, household businesses must meet the following requirements in order to qualify for a household business registration certificate:

- Be engaged in fields of production and/or business not prohibited by law
- Have a business name that conforms to the parameters listed in Article 56 of Decree No. 43

- Have fully paid the required business registration fees

4. Steps to register a household business



5. Household business registration application

- The name of the household business and address of the business place;

- Business field

- Business existing capital;

- Full names, identity number and the date of issuance of identification cards, residence addresses and signatures of individuals who found the household business, for household business founded by a group of individuals and of the founding household for household business founded by individuals or households.



For business activities that require a certificate, a valid copy of the representative's certificate should be included in the application.

For business activities that require legal capital, a valid copy of written certification of proof of legal capital, issued by a competent agency or organization, should be included in the application.

6. Organization authorised to issue the certificate of household business registration

The Household Business Registration Unit in the district where the household business expects to operate is authorised to issue the Certificate of Household Business Registration.

7. Relevant legal documents

- Decree No. 43/2010/ND-CP dated April 15, 2010 of the Government on enterprise registration

- Circular No. 14/2010/TT-BKH dated June 4, 2010 of the Ministry of Planning and Investment guiding a number of articles of Decree No. 43/2010/ND-CP dated April 15, 2010, regarding dossiers, order and procedures for enterprise registration



Household businesses which regularly employ more than ten laborers must register as enterprises.

VII. ENTERPRISES

1. Definition of an enterprise

An enterprise is an economic organization that has its own name, assets and permanent office and is duly constituted for the purpose of conducting business.

2. Types of enterprises

According to the 2005 Law on Enterprises, an enterprise may be established as a partnership, limited liability company or shareholding company, or as a private enterprise.

3. Rights and obligations of an enterprise

Rights:

- Conduct any business activities not prohibited by law.
- Conduct business activities that are subject to certain requirements under the Investment Law and other related laws, if all necessary requirements are met
- Receive encouragement, support and incentives from the State for the production or provision of public goods or services
- Seek out markets and customers and sign contracts
- Make use of cutting edge science and technology in order to enhance business performance and competitiveness

Obligations:

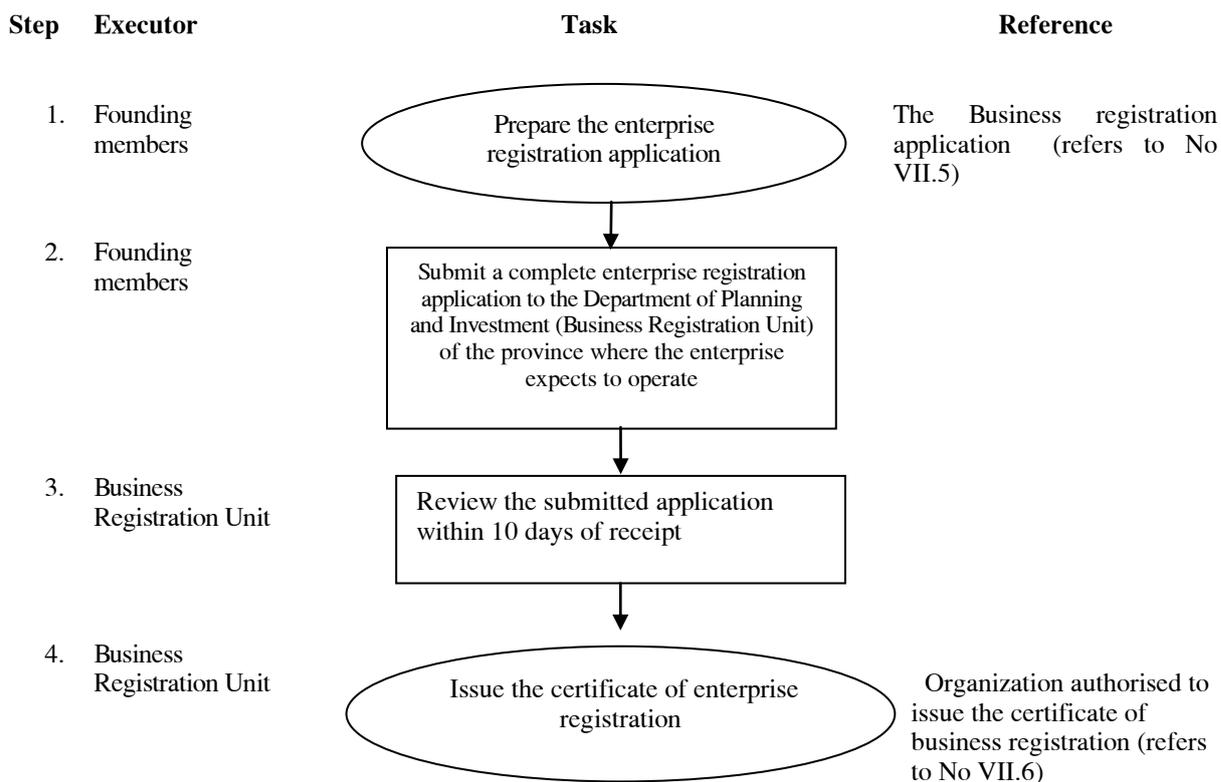
- Conduct only those business activities listed on the Certificate of Business Registration and ensure all business requirements are fulfilled, as required by law
- Maintain financial records and submit financial reports faithfully, accurately and promptly in accordance with accounting laws
- Register for a tax code, pay taxes and perform other financial obligations in accordance with the law
- Safeguard the rights and interests of employees, in accordance with the Labor Law, and ensure that social insurance, health insurance and other insurance are given to employees, in accordance with insurance laws
- Ensure and be liable for the quality of goods and services, in accordance with the declared or registered standard

4. Requirements for issuing an enterprise registration certificate

According to Article 24 of the Enterprise Law 2005, enterprises will be granted an enterprise registration if the following requirements are satisfied:

- The registered business activities are not prohibited by law
- The enterprise has a name, in compliance with articles 31, 32, 33 and 34 of the Enterprise Law
- The enterprise has a headquarters that complies with article 35 of the Enterprise Law
- The business registration application is valid, as stipulated by law
- The business registration fee is fully paid, as stipulated by law

5. Steps to register a business



6. The enterprise registration application

The enterprise registration application for each type of enterprise is stipulated in Decree No. 43. In general, the enterprise registration application must include:

- Application form (following the template stipulated in Circular No. 14/2010/TT-BKH dated June 4, 2010 of the Ministry of Planning and Investment guiding a number of articles of Decree No. 43/2010/ND-CP dated April 15, 2010, regarding dossiers, order and procedures for enterprise registration

- Draft charter (not required for private enterprise)

- List of members and copies of their identification cards, passports or other legal proofs of identity

- Certification of legal capital, issued by relevant agency (for business activities requiring legal capital, as stipulated by law)

- Professional certificate (for business activities requiring a professional certificate, as stipulated by law)

7. Organization authorised to issue the enterprise registration certificate

Business Registration Unit belonging to Department of Planning and Investment is authorised to issue a Certificate of Enterprise Registration to operating enterprises.

8. Relevant legal documents

- Enterprise Law, 2005
- The Law on Enterprise Income Tax
- Decree No. 102/2010/ND-CP dated October 1, 2010 of Government guiding the implementation of some articles of the Enterprise Law
- Decree No. 43/2010/ND-CP dated April 15, 2010 of Government on enterprise registration
- Circular No. 14/2010/TT-BKH dated June 4, 2010 of the Ministry of the Ministry of Planning and Investment guiding a number of articles of Decree 43/2010/ND-CP dated April 15, 2010, regarding dossiers, order and procedures for enterprise registration



According to the current Law on Corporate Income Tax, companies whose work force is at least 51% PLHIV or recovering drug users will be exempted from paying corporate income tax. However, this law may be revised to allow proportional exemptions for work forces that are less than 51% PLHIV and recovering drug users. However, this tax exemption for enterprise reserved for employee being disabled people, recovering drug users and people living with HIV will be reviewed and revised by Government.



Registration Case Study

Thanh Danh Limited Company for Research, Consulting and Development

In 2010 the Glink self-help group decided to establish itself as a legal entity and register as an enterprise. Two weeks after submitting the application form and supporting documents, the Glink group was registered by the Ho Chi Minh City Department of Planning and Investment as the Thanh Danh Limited Company for Research, Consulting and Development.

The company aims to provide legal consultancy services, to conduct research and engage in community development projects, specifically for men who have sex with men (MSM).

The company's board includes three founding members (director, deputy director and chief accountant) who hold professional certificates relevant to the company's field of activity as stipulated by the law. The director graduated from the Judicial Academy with specialization in legal consulting.

Soon after its registration, the enterprise was awarded two projects. The first, funded by AIDS Project Angeles through the MSM Global Forum (MSMGF), aims to reduce stigma and discrimination against MSM in Viet Nam. The second is to provide legal and administrative consulting for five domestic and foreign enterprises in Ho Chi Minh city.

A FINAL REMARK

This handbook is intended to be used as a reference to help groups of people living with HIV and other grass-roots CSOs involved in HIV/AIDS work become aware of and comply with the State's legal regulations governing legal establishment and registration.

Groups must determine what their functions, tasks and charter are before selecting an organization type and applying for establishment/registration. An organization may be established and registered as a legal entity only after it has become fully compliant with all requirements and procedures prescribed by current laws and regulations.

When considering the seven types of organizations, groups should choose their type based on the goals of their group, namely:

- Association: An organization whose purpose is to collaborate to protect members' legitimate rights and interests and carry out joint activities more efficiently (i.e. HIV counseling, behavior change communication, peer education and outreach, care and support for PLHIV, vocational training, job placement, job creation and policy advocacy).

- Social Fund or Charity Fund: An organization whose purpose is to mobilize resources to support people living with HIV.

- Science and Technology Organization: An organization whose purpose is to conduct scientific research and provide science and technology services.

- Cooperative Group, Cooperative or Enterprise: An organization whose purpose is to have a business and create income and jobs and use the revenues obtained from the business to provide HIV/AIDS services.

PART C

ANNEX

I. RELEVANT LEGAL DOCUMENTS, FORMS AND WEBSITE ADDRESSES FOR DOWNLOADING FURTHER INFORMATION

Associations

1. Decree No. 45/2010/NĐ-CP dated 21/4/2010 by the Government stipulating the organization, operation and management of an association

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve hoi hiep hoi/nghi dinh 45 ve thanh lap Hoi.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20hoi%20hiep%20hoi/nghi%20dinh%2045%20ve%20thanh%20lap%20Hoi.pdf)

2. Circular No. 11/2010/TT-BNV dated November 26, 2010 of Ministry of Home Affairs on organization, operation and management of associations.

http://www.unaids.org.vn/sitee/images/stories/son/circular_no11-2010-tt-bnv.pdf

Social Funds and Charity Funds

1. Decree No. 148/2007/NĐ-CP of the Government dated September 25, 2007 on the organization and operation of social funds and charity funds

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve quy xh tu nhien/Nghi dinh 148 ve to chuc hoat dong cua Quy XH, Quy tu thien.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20quy%20xh%20tu%20nhien/Nghi%20dinh%20148%20ve%20to%20chuc%20hoat%20dong%20cua%20Quy%20XH,%20Quy%20tu%20thien.pdf)

2. Circular No. 09/2008/TT-BNV dated December 31, 2008 guiding the implementation of a number of articles of Decree No.148/2007/NĐ-CP dated September 25, 2007 on the organization and operation of social funds and charity funds

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve quy xh tu nhien/Thong tu 09 huong dan Nghi dinh 148ve hoat dong Quy.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20quy%20xh%20tu%20nhien/Thong%20tu%2009%20huong%20dan%20Nghi%20dinh%20148%20ve%20hoat%20dong%20Quy.pdf)

3. Decision No. 10/2008/QĐ-BTC of the Ministry of Finance dated February 12, 2008 prescribing the system of financial management of social funds and charity funds

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve quy xh tu nhien/Quy et dinh so 10 cua Bo tai chinh ve quy che quan ly tai chinh Quy.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20quy%20xh%20tu%20nhien/Quy%20et%20dinh%20so%2010%20cua%20Bo%20tai%20chinh%20ve%20quy%20che%20quan%20ly%20tai%20chinh%20Quy.pdf)

Science and Technology Organizations

1. The Law on Science and Technology

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve to chuc khcn/LuatKhoa hoc-Cong nghe.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20to%20chuc%20khcn/Luat%20Khoa%20hoc-Cong%20nghe.pdf)

2. Decree No. 81/2002/NĐ-CP of the Government dated October 17, 2002 detailing the implementation of a number of articles of the Law on Science and Technology

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve to chuc khcn/Nghi dinh 81thi hanh Luat KHCN.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20to%20chuc%20khcn/Nghi%20dinh%2081%20thi%20hanh%20Luat%20KHCN.pdf)

3. Decision No. 97/2009/QĐ-TTg of the Prime Minister dated July 24, 2009 issuing a list of fields within which individuals may establish science and technology organizations

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve to chuc khcn/Quy et dinh97.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20chuc%20khcn/Quy%20dinh97.pdf)

4. Circular No. 02/2010/TT- BKHCN dated March 18, 2010 by the Ministry of Science and Technology guiding the implementation of the establishment and registration of Science and Technology Organizations

http://www.unaids.org.vn/site/images/stories/son/thong_tu_02_cua_bo_khcn.pdf

Cooperative Groups

1. Decree No. 151/2007/NĐ-CP of the Government dated October 10, 2007 stipulating the organization and operation of cooperative groups

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve to hop tac/nghi dinh 151 ve to hop tac.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20hop%20tac/nghi%20dinh%20151%20ve%20hop%20tac.pdf)

2. Circular No. 04/2008/TT-BKH of the Ministry of Planning and Investment dated July 9, 2008 guiding a number of provisions of the Government's Decree No. 151/2007/NĐ-CP

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve to hop tac/Thong tu 04 cua BKHDT huong dan ND 151 ve to hop tac.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20hop%20tac/Thong%20tu%2004%20cua%20BKHDT%20huong%20dan%20ND%20151%20ve%20hop%20tac.pdf)

Cooperatives

1. Law on Cooperatives 2003

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve htx/Luat hop tac xa 2003.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20htx/Luat%20hop%20tac%20xa%202003.pdf)

2. Decree No. 177/2004/NĐ-CP dated October 12, 2004 guiding a number of articles of the Law on Cooperatives 2003

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve htx/nghi dinh 177 huong dan luat HTX.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20htx/nghi%20dinh%20177%20huong%20dan%20luat%20HTX.pdf)

3. Decree No.77/2005/NĐ-CP dated June 7, 2005 promulgating the model terms of reference of cooperatives

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve htx/Nghi dinh 77 ve mau dieu le HTX.doc.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20htx/Nghi%20dinh%2077%20ve%20mau%20dieu%20le%20HTX.doc.pdf)

4. Decree No. 87/2005/NĐ-CP dated November 7, 2005 on the business registration of cooperatives

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve htx/nghi dinh 87 dang ky KD HTX.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20htx/nghi%20dinh%2087%20dang%20ky%20KD%20HTX.pdf)

5. Decree No. 88/2005/NĐ-CP dated July 11, 2005 on a number of policies to support and encourage the development of cooperatives

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve htx/ND 88 ve chinh sach phat trien to hop tac.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20htx/ND%2088%20ve%20chinh%20sach%20phat%20trien%20to%20hop%20tac.pdf)

6. Circular No. 05/2005/TT-BKH dated December 15, 2005 guiding a number of provisions of the Government's Decree No.87/2005/NĐ-CP dated November 7, 2005 on the business registration of cooperatives

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve htx/Thong tu 05 huong dan Nghi dinh 87 ve dang ky HTX.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20htx/Thong%20tu%2005%20huong%20dan%20Ngh%C3%ADnh%2087%20ve%20dang%20ky%20HTX.pdf)

7. Circular No. 02/2006/TT-BKH dated April 13, 2006 of the Ministry of Planning and Investment guiding the implementation of some articles of the Government's Decree No. 88/2005/NĐ-CP

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve htx/thong tu so 02 cua BKHDT hg dan ND 88.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20htx/thong%20tu%20so%2002%20cua%20BKHDT%20hg%20dan%20ND%2088.pdf)

8. Circular No. 66/2006/TT-BTC dated July 17, 2006 of the Ministry of Finance guiding the implementation of the Government's Decree No. 88/2005/NĐ-CP of July 11, 2005 on financial support for the founding members of proposed cooperatives and subjects entitled to training and re-training in cooperatives

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve htx/Thong tu 66 cua Bo tai chinh huong dan ND88 ve chinh sach ho tro phat trien to hop tac.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20htx/Thong%20tu%2066%20cua%20Bo%20tai%20chinh%20huong%20dan%20ND88%20ve%20chinh%20sach%20ho%20tro%20phat%20trien%20to%20hop%20tac.pdf)

Household businesses

1. Decree No. 43/2010/ND-CP dated April 15, 2010 of Government on enterprise registration

http://www.unaids.org.vn/site/images/stories/son/decree_43_2010_nd_cp.pdf

2. Circular No. 14/2010/TT-BKH dated June 4, 2010 of the Ministry of the Ministry of Planning and Investment guiding a number of articles of Decree 43/2010/ND-CP dated April 15, 2010, regarding dossiers, order and procedures for enterprise registration

http://www.unaids.org.vn/site/images/stories/son/circular_14_2010_tt_bkh_guiding_decree_43.pdf

Enterprises

1. Enterprise Law 2005

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve doanh nghiep cty/luat doanh nghiep 2005.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20doanh%20nghiep%20cty/luat%20doanh%20nghiep%202005.pdf)

2. Law on Enterprise Income Tax 2005

[http://www.unaids.org.vn/resource/topic/legaldocs/VB ve doanh nghiep cty/Luat thue thu nhap doanh nghiep 2008.pdf](http://www.unaids.org.vn/resource/topic/legaldocs/VB%20ve%20doanh%20nghiep%20cty/Luat%20thue%20thu%20nhap%20doanh%20nghiep%202008.pdf)

3. Decree No. 43/2010/NĐ-CP dated April 15, 2010 of Government on enterprise registration

http://www.unaids.org.vn/sitee/images/stories/son/decree_43_2010_nd_cp.pdf

4. Decree No. 102/2010/NĐ-CP dated October 1, 2010 of Government guiding the implementation of some articles of the Enterprise Law

http://www.unaids.org.vn/sitee/images/stories/son/decree_102-2010-nd-cp.pdf

5. Circular No. 14/2010/TT-BKH dated June 4, 2010 of the Ministry of the Ministry of Planning and Investment guiding a number of articles of Decree No. 43/2010/NĐ-CP dated April 15, 2010, regarding dossiers, order and procedures for enterprise registration

http://www.unaids.org.vn/sitee/images/stories/son/circular_14_2010_tt_bkh_guiding_decree_43.pdf

Policies governing the use of aid

1. Decree No. 69/2008/NĐ-CP dated May 30, 2008 of the Government on the policies regarding social encouragement for activities in the domain of education, vocational training, health, culture, sport and environment

http://www.unaids.org.vn/sitee/images/stories/son/nd69-2008_khuyen%20khich%20xhh.pdf

2. Decree No. 93/2009/QĐ- TTg dated October 22, 2009 of the Government on the management and utilization of aid from international non-governmental organizations

http://www.unaids.org.vn/sitee/images/stories/son/nghi_dinh_93_ban_hanh_quy_che_quan_ly_va_su_dung_vien_tro_pcpnn.pdf

3. Circular No. 135/2008/TT-BTC dated December 31, 2008 of Ministry of Finance guiding Decree No 69/2008/NĐ-CP dated May 30, 2008 of the Government on the policies regarding social encouragement for activities in the domain of education, vocational training, health, culture, sport and environment

http://www.unaids.org.vn/resource/topic/legaldocs/VB_ve_chinh_sach/Thong_tu_huong_danND_69.pdf

4. Circular No. 07/2010/TT-BKH dated March 30, 2010 of the Ministry of Planning and Investment guiding Decree No. 93/2009/QĐ-TTg dated October 22, 2009 of the Government on the management and use of foreign non-governmental aid

http://www.unaids.org.vn/sitee/images/stories/son/thong_tu_07_huong_dan_nd93_ve_quan_ly_va_su_dung_vien_tro.pdf

II. HIV/AIDS ASSOCIATIONS

1. Viet Nam HIV/AIDS Association

Address: No 138 Giang Vo, Ba Dinh, Ha Noi

Telephone: (04) 462792099

2. Ha Noi HIV/AIDS Association

Address: No 86A Tho Nhuom, Hoan Kiem, Ha Noi

Telephone: (04) 22104773

3. Ho Chi Minh HIV/AIDS Association

Address: No 121 Ly Chinh Thang, Ward 17, District 3, Ho Chi Minh City

Telephone: (08) 39309309, x168

4. An Giang HIV/AIDS Association

Address: No 10 - 11 Le Loi, My Binh, Long Xuyen

Telephone: 0763.211275/955401

5. Hai Phong HIV/AIDS Association

Address: No 38 Le Dai Hanh, Hai Phong

Telephone: (031) 3822355

6. Khanh Hoa HIV/AIDS Association

Address: No 31 Le Thanh Phuong, Nha Trang

Telephone: (058) 3562744

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