

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No. 109-2004-ND-CP

Hanoi, 2 April 2004

DECREE ON BUSINESS REGISTRATION

The Government

Pursuant to the Law on the Organization of the Government dated 25 December 2001;

Pursuant to the Law on Enterprises dated 12 June 1999;

On the proposal of the Minister of Planning and Investment;

3. Business registration offices shall be prohibited from extorting or causing trouble to organizations and individuals while receiving application files and resolving business registration and changes in registered items.

CHAPTER II

Duties, Powers and Organizational Structure of Business Registration Offices

Article 3 Business registration offices

1. Business registration offices shall be organized at the level of cities and provinces under central authority (hereinafter referred to as the provincial level) and at the level of districts, townships and towns under provincial authority (hereinafter referred to as the district level) and shall comprise:
 - (a) Business registration offices within Departments of Planning and Investment (hereinafter referred to as provincial business registration offices);
 - (b) Depending on the specific requirements and duties of the work of business registration in localities, the chairman of a people's committee at the provincial level may, at his/her request, be appointed as a member of the provincial business registration office.

Planning and Investment on a periodical basis; and to provide information to organizations and individuals on request.

4. To require enterprises to report their business status where deemed necessary as stipulated in article 116.3 of the Law on Enterprises to activate implementation of the annual financial reporting regime by enterprises in accordance with article 118 of the Law on Enterprises
5. To request registrants to make corrections to or to reformulate their business registration application files if a declaration in their application is found to be inaccurate or incomplete. To refuse to issue business registration if any declaration in an application is found to be false.

If any declaration in a business registration application file is found to be inaccurate after issuance of a business registration certificate, depending on the seriousness of the breach, it shall be dealt with in accordance with Decree 37-2003-ND-CP of the Government dated 10 April 2004 on dealing with administrative offences in the business registration sector.

6. To inspect directly or to request the authorized State body to inspect enterprises on the basis of the items in their business registration.
7. To revoke the business registration certificate of an enterprise in the following circumstances:
 - (a) Any item in its declaration for business registration is false or contrary to article 9 of the Law on Enterprises
 - (b) Failure to register its tax code within a year from the date of issuance of its business registration certificate;
 - (c) Failure to conduct business activities at its registered office for a period of one year from the date of issuance of its business registration certificate or certificate of change of head office;
 - (d) Cessation of business activities for one full year without informing the business registration office;
 - (dd) Failure to report on its business activities to the business registration office for two consecutive years;
 - (e) Failure to send the reports stipulated in article 116.3 of the Law on Enterprises to the business registration office within six months from the date of a written demand;
 - (g) Conducting prohibited lines of business.

Article 6 Duties, powers and responsibilities of Ministry of Planning and Investment with respect to business registration

1. To issue, in accordance with its powers, professional guidelines and standard forms servicing the work of business registration.
2. To provide instructions and professional development training on business registration for personnel working in the business registration sector.
3. To provide regulations on a reporting system on business registration work and to inspect compliance with such system nationwide.
4. To establish and manage a database on enterprises nationwide; to provide information on enterprises to the relevant Government bodies on a

Vietnamese alphabet (A, B, C and so forth) immediately following the special name of such enterprise, unless the enterprise requesting registration is a subsidiary of the other registered enterprise;

- (e) The name of the enterprise requesting registration and the name of another registered enterprise are only different by virtue of the word "new" immediately before or by virtue of the word "new" immediately after the name of the registered enterprise;
- (g) The name in Vietnamese of the enterprise requesting registration and the name of another registered enterprise are only different by virtue of the following words: "northern", "north", "southern", "south", "middle", "central", "western", "west", "eastern" or "east", unless the enterprise requesting registration is a subsidiary of the registered enterprise;

CHAPTER IV

Order and Procedures for Business Registration of Enterprises Operating under the Law on Enterprises

Article 12 Business registration application file

1. In the case of limited liability companies and shareholding companies, a business registration application file shall comprise:
 - (a) Application for business registration in the standard form prescribed by the Ministry of Planning and Investment;
 - (b) Company charter;
 - (c) List of members in the case of a limited liability company having

(c) The application file for business registration is valid in accordance with article 3.3 of the Law on Enterprises

(d) Registration fees as required by regulations have been paid in full.

Upon issuance of a business registration certificate, the enterprise shall have its seal engraved and shall have the right to use its own seal.

4. If an application file is invalid or if the name selected for the enterprise is not in accordance with the regulations, the provincial business registration office must, within seven days from the date of receipt of the application file, provide written notice to the person establishing the enterprise. The notice must indicate clearly which items need to be changed and how. If no notice has been provided upon expiry of the above time-limit, the name of the enterprise shall be deemed to have been accepted and the application file for business registration shall be deemed to be valid.
5. If a business registration certificate has still not been received after fifteen (15) days from the date of submission of an application file for business registration, the person establishing the enterprise shall have the right to lodge a complaint with the provincial business registration office of the province in which the application file was submitted. If there has still been no response received from the provincial business registration office after seven days from the date of lodging the complaint, the person establishing the enterprise shall have the right to lodge a complaint with the people's committee of the province or to issue proceedings in the administrative court of the locality where the application file for business registration was submitted in accordance with law.
6. As from the date of issuance of business registration certificate, an enterprise shall have the right to conduct business operations and shall not be required to request permission from any State body, unless the enterprise conducts a conditional line of business.
7. Within seven days from the date of issuance of a business registration certificate, the provincial business registration office shall forward a copy of such certificate to the Ministry of Planning and Investment, to the centre for enterprise information, the tax office, to the Statistics Department, to the Department of Economic and Technological Management of the same province, and to the business registration office of the district in which the enterprise establishes its head office.
8. A business registration certificate issued by a provincial business registration office shall be of full force and effect throughout the whole country.

Article 14 Registration of establishment of branch offices and representative offices

1. Upon establishment of a branch or representative office, an enterprise must provide notice to the provincial business registration office of the province in which it establishes such a branch or representative office. The contents of the notice shall include:
 - (a) Name and address of the head office of the enterprise;
 - (b) Lines of business of the enterprise;
 - (c) Name of the branch or representative office it is proposed to establish, with the name to include the words "branch" or "representative office" respectively;
 - (d) Full name, identity card number, signature, and residential address of the legal representative of the enterprise;
 - (dd) Name and address of the location of the branch or representative office;
 - (e) Nature and scope of operations of the branch or representative office;
 - (g) Full name, residential address and identity card number of the person who will act as head of the branch or representative office.
2. In addition to the notice stipulated in clause 1 of this article, there must also be enclosed:
 - (a) Copy of the business registration certificate of the enterprise;
 - (b) Copy of the charter of the company in the case of limited liability companies, shareholding companies and partnerships;
 - (c) Written decision together with minutes of meeting on establishment of the branch or representative office of the Members' Council (in the case of limited liability companies having two members or more), of the company owner (the case of one member limited liability companies), of the Board of Management (in the case of shareholding companies), or of the partners (in the case of partnerships).

In the case of branches conducting a profession of business requiring a practising certificate, there must be a copy of a practising certificate of at least one of the persons who will work in the branch or representative office.

If the change of head office of the enterprise has not been registered after seven days from the above date, the enterprise shall have the right to

another name and to change the relevant items in its application file. In such cases, the provincial business registration office shall register the transfer of the head office after the enterprise has carried out all of the above requirements.

Within seven days of re-issuance of a business registration certificate, the enterprise must send a valid copy to the provincial business registration office of the province in which it was formerly registered.

3. A change of the head office of an enterprise shall not change any of the rights and obligations of the enterprise.

Article 17 Registration of change of name of enterprise

1. When changing its name, an enterprise shall provide notice to the provincial business registration office of the province in which it is registered. The contents of the notice shall include:
 - (a) Current name of the enterprise, its business registration number,

registration office of the province in which it is registered. The contents of the notice shall include:

voting unanimously in favour of the change of the legal representative of the company must be included.

The notice must be accompanied by the decision and copy minutes of meeting of the Members' Council (in the case of limited liability companies with two or more members) or the company owner (in the case of one member limited liability companies), and of the Board of Management (in the case of shareholding companies and one member limited liability companies organized on the model of having a board of

2. Upon any increase or decrease in charter capital, a company shall provide notice to the provincial business registration office at which the enterprise is registered. The contents of the notice shall include:
- (a) Name of the company, its business registration number, and date of issuance of its business registration certificate;
 - (b) Address of the head office of the company;
 - (c) Lines of business;
 - (d) Amount of the charter capital of the company formerly registered, amount of capital registered after increase or decrease, and method and date of increase or decrease of capital;
 - (dd) Full name, identity card number, signature and residential address of the legal representative of the company, or of the authorized partner in the case of a partnership.

The notice must be accompanied by the decision of and copy minutes of meeting of the Members' Council (in the case of limited liability companies with two or more members) or the company owner (in the case of one member limited liability companies), of the General Meeting of Shareholders (in the case of shareholding companies) or of the partners (in the case of partnerships). In the case of decrease of charter capital, in addition, the notice must be accompanied by the balance sheet of the company as at the date of the decision on decrease of charter capital.

Upon receipt of a notice the provincial business registration office shall provide a receipt and carry out registration of the increase in the charter capital of the company within seven days from the date of receipt of the notice.

3. In the case of a decrease in capital of an enterprise engaged in any line of business with legal capital requirements, the provincial business registration office shall register a decrease in invested capital or a decrease in charter capital only if the registered capital after such decrease will not be lower than the amount of legal capital prescribed for such line of business.

Article 20 Registration of change of members of companies

1. Changes of founding members of a shareholding company shall not be registered. Any change of founding members of a shareholding company shall be recorded in the register of company members, and the chairman of the Board of Management shall record such change on the basis of a document evidencing assignment of shares or purchase of new shares issued by the company.

A shareholder being a foreign organization or individual and not having permanent residence in Vietnam shall be recorded in the register of shareholders and become a shareholder of the company if the total aggregate number of shares held by foreign shareholders does not exceed thirty (30) per cent of the total number of shares which the company is entitled to issue.

2. Registration of change of members of a limited liability company with two

- (c) In the case of a change in membership as a result of inheritance, the company shall provide notice of the change to the provincial business registration office at which it is registered. The notice shall include the following main items:

Name of the company;

Business registration number of the company;

Address of the head office;

Full name, identity card number or passport number, nationality, value of capital of the member who was the legator;

Full name, identity card number or passport number (if any), nationality, signature and value of capital of each legatee;

Date of inheritance;

Full name, signature and identity card number of the legal representative of the company.

The notice shall be accompanied by copy documents evidencing inheritance. The provincial business registration office shall provide a receipt and carry out registration of the change in membership within seven days from the date of receipt of the notice.

Article 21 Right of enterprises to lodge complaint

If, after seven days from the date of submission of a notice to a provincial business registration office on an amendment of or addition to items of business registration as provided for in articles 15 to 20 inclusive of this Decree, registration of the amendment of or addition to items of business registration of the enterprise has not been carried out as stipulated, the enterprise shall have the right to lodge a complaint in accordance with article 13.5 of this Decree.

Article 22 Notice of temporary suspension of operations

An enterprise temporarily suspending its operations must provide written notice to the provincial business registration office at which the head office of the enterprise is registered and to the tax office within at least fifteen (15) days prior to temporary suspension of its operations. The contents of the notice shall include:

1. Name of the enterprise, its business registration number, and date of issuance of its business registration certificate;

2. Address of the head office of the enterprise;
3. Lines of business;
4. Period of temporary suspension of operations; dates of commencement and termination of such period;
5. Reasons for temporary suspension of operations;
6. Full name, signature and identity card number of the legal representative of the company.

The notice must be accompanied by the ~~signature~~ of and a copy of the minutes of meeting of the Members' Council (in ~~the~~ case of limited liability companies with two or more members), of the company ~~new~~ (in the case of one member limited liability companies), of the General Meeting of Shareholders (in the case of shareholding companies), or of partners (in the case of partnerships).

The provincial business registration office shall receive the notice and record it in a book for monitoring.

Article 23 Revocation of business registration certificates

1. Where a business registration office discovers that an enterprise has made a false declaration of an item in its business registration, the business registration office shall issue notice of breach and a decision on revocation of the business registration certificate.
2. Where the owner of a private enterprise, a member of a limited liability company, a founding shareholder of a shareholding company or a partner of a partnership which has been registered is one of the persons prohibited by article 9 of the Law on Enterprises from establishing an enterprise, he or she shall be dealt with as follows:
 - (a) In the case of a private enterprise, the provincial business registration office shall issue a ~~notice~~ of breach and a decision on revocation of the business registration certificate.
 - (b) In the case of a limited liability company or shareholding company, the provincial business registration office where the enterprise is registered shall issue a written notice requesting the company to change the member or shareholder not entitled to establish an enterprise and to register a ~~change~~ member or shareholder within three months from the date of the ~~notice~~. In the event of failure to register a change of member or shareholder within the above time-limit, the provincial business registration office shall proclaim a breach and issue a decision on revocation of the business registration certificate.

- (c) In the case of a partnership, the provincial business registration office shall issue a written notice requesting the partnership to change the member prohibited from establishing an enterprise and to register the change of membership of the partnership within fifteen (15) days from the date of notice. In the event of failure to register the change of partner within the above time-limit, the provincial business registration office shall proclaim a breach and issue a decision on revocation of the business registration certificate.
3. In the case where an enterprise ~~breac~~breaches the provisions in clauses 7(b), (c), (d) or (dd) of article 4 of this ~~Dec~~Decree, the provincial business registration office shall issue a written notice of the breach and request the legal

the date of the decision on revocation of the business registration certificate, the enterprise shall be deemed to have been dissolved and the

4. Within seven days from the date of issuance of a business registration certificate to an individual household business, the district business registration office shall forward a copy ~~of~~ such certificate to the tax office at the same level and to the Department for the specialized branch.
5. If a business registration

CHAPTER VI

- (e) Conducting a prohibited line of business, or conducting a conditional line of business when the conditions have not been satisfied.

Article 30 Effectiveness

1. This Decree shall be of full force and