

Hanoi, 4 April 2006

# DECREE PROVIDING DETAILED REGULATIONS FOR IMPLEMENTATION OF COMMERCIAL LAW WITH RESPECT TO COMMERCIAL ENHANCEMENT ACTIVITIES

## The Government

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

Pursuant to the *Commercial Law* dated 17 July 2005.

## General Provisions

### Article 1 *Governing scope*

This Decree provides detailed regulations for implementation of the *Commercial Law* with respect to a number of commercial enhancement activities, comprising promotions, commercial advertising, and trade fairs and exhibitions.

### Article 2 *Applicable entities*

1. Business entities directly conducting commercial enhancement activities and business entities engaged in the business of commercial enhancement services.
2. Organizations with trade-related activities and entities with the right to conduct commercial enhancement activities as stipulated in articles 91, 103 and 131 of the *Commercial Law* must comply with the provisions in this Decree when conducting commercial enhancement activities.
3. Individuals who conduct commercial activities independently and regularly but who are not required to have business registration as stipulated in article 2.3 of the *Commercial Law* shall be permitted to conduct the commercial enhancement activities regulated in this Decree in the same manner as business entities, except for the activities stipulated in articles 11, 12, 13, 34 and 36 of this Decree.

### Article 3 *State administrative bodies for commercial enhancement activities*

1. The Ministry of Trade shall be responsible before the Government to carry out the function of State administration of the commercial enhancement activities regulated in the *Commercial Law* and in this Decree.



3. The value of goods and services used in a promotion means the expenses which the business entity holding the promotion must pay in order to have such goods and services

3. Where the promoted goods and services are goods and services for which the State fixes the framework of prices or a minimum price, the selling price of such promoted goods and the charge for providing such promoted services may not be reduced below such minimum price.
4. The total duration of a promotional program in the form of a price reduction for any one type of goods or service shall not exceed ninety (90) days in any one year, and the duration of any one promotional program shall not exceed forty five (45) days.
5. It shall be strictly prohibited to take advantage of this form of promotion in order to dump goods and services.

**Article 10** *Selling goods or providing services to customers together with coupons for purchase of goods or use of services*

1. Coupons for purchase of goods or coupons for use of services which are given together with goods sold or services provided means coupons for the purchase of goods or coupons for receipt of services of the same business entity which is holding the promotion, or coupons for goods and services of another business entity or organization.
2. The maximum value of coupons for purchase of goods or coupons for use of services given together with any one unit of the goods sold or service provided during the duration of a promotion must comply with the provisions on the maximum limit on the value of items used in promotions stipulated in article 5 of this Decree.
3. The relevant information stipulated in article 97 of the *Commercial Law* must be specified on coupons for purchase of goods or coupons for use of services.

**Article 11** *Selling goods or providing services together with contest forms for customers, from amongst which winners will be selected in accordance with announced rules and announced prizes*

1. The relevant information stipulated in article 97 of the *Commercial Law* must be specified on contest forms.
2. The contents of a contest must not be contrary to the historical, cultural and ethical traditions and fine customs of Vietnam.
3. The contest and the opening of prizes must be organized publicly, must be witnessed by a representative of customers, and must be notified to the Department of Competition (ĐPT) of the AMC of the

3. If the lucky draw program takes the form of issuance of numbered tickets for participation in a draw, the following provisions must be complied with:
  - (a) The form of the numbered tickets for participation in the draw must be different from that of the tickets issued by the State for the construction lottery, over which the State has a monopoly, and the winning results of that State lottery may not be used as the winning results of the promotion;
  - (b) The numbered tickets for participation in the draw must have printed [*on them*] the following information: the quantity of tickets issued, the number of prizes and the value of each type of prize, the location for presentation of prizes, the date and location of conducting the draw, and the details stipulated in article 97 of the *Commercial Law*;
  - (c) The opening of prizes shall only apply with respect to tickets which have been issued.
4. The total duration of the promotion of any one type of trademark of goods or service shall not exceed one hundred and eighty (180) days in any one year, and the duration of any one promotional program shall not exceed ninety (90) days.
5. If there are no winners of prizes in a lucky draw program within thirty (30) days from the expiry of the time-limit for presentation of prizes, fifty (50) per cent of the value of the announced prizes shall be paid into the State Budget in accordance with article 97 of the *Commercial Law*.
6. The Ministry of Finance shall co-ordinate with the Ministry of Trade to provide specific guidelines on implementation of clause 5 of this article.

**Article 13** *Holding programs for regular customers*

1. A business entity holding this form of promotion must comply with the provision on reporting relevant information stipulated in article 97 of the *Commercial Law*, and shall be responsible to acknowledge promptly and accurately the participation of customers in the program for regular customers.
2. The customer card or coupon recording the purchase of goods or services must contain all of the following basic particulars:
  - (a) Name of the card or coupon;
  - (b) Conditions for and means of recording the participation of customers in the program for regular customers and the purchase of goods and services by customers; if it is not possible to record all of the particulars stipulated in this clause, all such particulars must be provided promptly to customers when they commence participation in the program;
  - (c) The relevant details stipulated in article 97 of the *Commercial Law*.

**Article 14** *Promotions of goods and services via internet and other electronic means*

In the case of a promotional program in which the promoted goods are purchased and sold or the promoted services are provided via the internet and other electronic means, the business entity holding the promotion must comply with the provisions on promotions in the *Commercial Law* and in this Decree.

## SECTION 3

### Order and Procedures for Holding Promotions

#### **Article 15** *Announcement that promotion is to be held*

1. Any business entity holding the promotional activities stipulated in Section 2 of this Chapter must, within at least seven working days prior to holding the promotion, forward a written notification about the promotional program to the Department of Trade in the place where the promotion is to be held.
2. The following details must be included in the notification about the promotional program:
  - (a) Name of the promotional program;
  - (b) Geographical area in which the promotional program will be held; and geographical area in which the goods being the subject of the promotional program are sold;
  - (c) Form of the promotion;
  - (d) Promoted goods and services, and goods and services used for the promotion;
  - (dd) Commencement and completion dates of the promotional program;
  - (e) Customers of the promotional program;
  - (g) Prize structure and total value of prizes of the promotional program.
3. With respect to the form of promotion being a sale of goods or provision of services together with contest forms for customers from amongst which winners will be selected in accordance with announced rules and announced prizes as stipulated in article 11 of this Decree, within a time-limit of seven working days from the expiry of the date for presentation of prizes, the business entity holding the promotion shall be responsible to:
  - (a) Forward a written report about the winning results to the Department of Trade in the place where the promotion was held;
  - (b) Make a public announcement of the winning results on at least one [*form of*] mass media in the province or city under central authority where the promotion was held and at the sales outlets for the goods being the subject of the promotional program.

#### **Article 16** *Order and procedures for registration to hold promotional programs in form of selling goods or providing services together with participation in lucky draw programs*

1. Promotional programs in the form of selling goods or providing services together with participation in lucky draw programs as stipulated in article 12 of this Decree shall require registration with the following competent State administrative body for commerce:
  - (a) The Department of Trade, if the promotional activity is to be held within the area of one province or city under central authority;
  - (b) The Ministry of Trade, if the promotional activity is to be held within the area of two or more provinces or cities under central authority.
2. An application file for registration to hold a promotion shall comprise:
  - (a) Application to hold the promotion on the sample form stipulated by the Ministry of Trade. Registration to hold a promotion shall comprise the following details: name of the promotional program; geographical area in which the promotion will be held; promoted goods and services; goods and services used for the promotion; duration of the promotion; and customers of the promotional program;

- (b) Rules of the promotional program;
  - (c) Sample numbered ticket for participation in the draw in cases where the promotional program takes the form of issuance of numbered tickets for participation in a draw;
  - (d) Pictures of the promoted goods and services and of the goods and services used for the promotion;
  - (dd) Sample winning coupon (if any);
  - (e) Copy certificate of confirmation of goods quality of the promoted goods and services and of the goods and services used for the promotion.
3. Within a time-limit of seven working days from the date of receipt of a valid application file for registration to hold a promotional progr





2. Any business entity with a promotional program which is suspended shall be obliged to announce publicly the suspension and to implement fully the undertakings made to customers participating in such program, except in the cases stipulated in clause 3 of this article.
3. In the case of a business entity using goods and services in which business is prohibited; goods and services in which business is restricted; goods the circulation of which is not yet permitted or services the provision of which is not yet permitted; wines and beer targeted at persons under eighteen (18) years of age; tobacco or wines with an alcoholic



comply with the decision of the State administrative body stipulated in clause 1 of this article.

## CHAPTER IV

### Trade Fairs and Exhibitions

#### SECTION 1

##### Goods and Services Displayed and Introduced at Trade Fairs and Exhibitions

**Article 29** *Provisions on labelling of goods displayed and introduced at trade fairs and exhibitions in Vietnam*

1. Goods which are displayed and introduced at trade fairs and exhibitions in Vietnam must be labelled in accordance with the law on labelling of goods.
2. The temporary importation of goods for participation in a trade fair or exhibition in Vietnam must comply with the law on labelling of goods.<sup>3</sup>

**Article 30** *Display of counterfeit goods or goods in breach of intellectual property rights in order to make comparison with genuine goods*

1. The display of counterfeit goods or goods in breach of intellectual property rights in order to make a comparison with genuine goods must be approved by the competent State administrative body for commerce in accordance with law.
2. Where counterfeit goods or goods in breach of intellectual property rights are displayed in order to make a comparison with genuine goods, the former goods must be certified by the competent State administrative body in accordance with law as being counterfeit goods or goods in breach of intellectual property rights.
3. Where counterfeit goods or goods in breach of intellectual property rights are displayed, there must be a notice specifying that such goods are counterfeit goods or goods in breach of intellectual property rights.

**Article 31** *Use of names and themes of trade fairs and exhibitions*

1. When a business entity or organization with trade-related activities holds a trade fair or exhibition, it shall have the right to choose the name and theme of the trade fair or exhibition.
2. If the name and theme chosen for a trade fair or exhibition uses words which advertise the quality or brand name of any goods and services or the reputation or trade name of a business entity, organization or individual participating in the trade fair or exhibition, the business entity or organization with trade-related activities holding the trade fair or exhibition must comply with the following provisions:
  - (a) Must have proof that the quality or brand name of the goods and services participating in the trade fair or exhibition is consistent with the registered name or theme of such trade fair or exhibition;
  - (b) Must have proof that the reputation or trade name of the business entity, organization or individual participating in the trade fair or exhibition are consistent with the registered name or theme of such trade fair or exhibition.

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<sup>3</sup> *Phillips Fox note: The structure of this sentence is the literal translation.*

**Article 32** *Issuance of awards, quality certificates and brand name certificates for goods and services, and issuance of prestige certificates and trade name certificates for business entities, organizations or individuals participating in trade fairs and exhibitions*

Issuance of awards, quality certificates and brand name certificates for goods and services, and issuance of prestige certificates and trade name certificates for business entities, organizations or individuals participating in trade fairs and exhibitions must be implemented in accordance with the relevant law.

**Article 33** *Temporary import and re-export of goods and services participating in trade fairs and exhibitions in Vietnam; and temporary export and re-import of goods and services participating in overseas trade fairs and exhibitions*

The temporary importation and re-exportation of goods for participation in a trade fair or exhibition in Vietnam and the temporary exportation and re-importation of goods for participation in an overseas trade fair or exhibition must comply with the law on customs and other relevant law.

## SECTION 2

### **Order and Procedures for Registration to Hold and to Participate in Trade Fairs and Exhibitions**

**Article 34** *Holding trade fairs and exhibitions in Vietnam*

1. The holding of a trade fair or exhibition in Vietnam must be registered with the Department of Trade in the place where the trade fair or exhibition is to be held, prior to 1 October in the year prior to the year in which the trade fair or exhibition is to be held.
2. The Department of Trade shall, prior to 1 November at the latest in the year prior to the year in which the trade fair or exhibition is to be held, send confirmation of registration to hold the trade fair or exhibition to the business entity or organization with trade-related activities. In the case of refusal to confirm such registration, the Department of Trade shall provide a written response specifying the reasons for the refusal.
3. If two or more business entities or organizations with trade-related activities register to hold trade fairs or exhibitions with overlapping names, themes, duration [*and/or*] the same location, the Department of Trade shall organize a negotiation in order to select the business entity or organization with trade-related activities permitted to hold the trade fair or exhibition.
4. If the negotiation stipulated in clause 3 of this article is unsuccessful, the Department of Trade shall issue a decision confirming registration for one of the business entities or organizations with trade-related activities to hold the relevant trade fair or exhibition, based on the following grounds:
  - (a) Results of similar trade fairs and exhibitions previously held;
  - (b) Ability to hold trade fairs and exhibitions;
  - (c) Experience in holding a trade fair or exhibition of the same name or theme or in holding similar trade fairs and exhibitions;
  - (d) Assessment from relevant industrial associations.
5. Within thirty (30) days from the date of completion of a trade fair or exhibition, the business entity or organization with trade-related activities must forward a written report to the Department of Trade on the results of the trade fair or exhibition in accordance with the contents registered with the Department of Trade.

**Article 35** *Amending or adding to contents registered for holding trade fair or exhibition in Vietnam*

1. Any business entity or organization with trade-related activities which amends or adds to the contents registered for holding a trade fair or exhibition must send a written document to the Department of Trade no later than thirty (30) days but not more than forty five (45) days prior to the opening day of the trade fair or exhibition, depending on the contents registered as stipulated in guidelines of the Ministry of Trade.
2. Within a time-limit of ten (10) working days from the date of receipt of a valid written document for registration, the Department of Trade shall provide written confirmation of



seriousness of the breach, be subject to administrative penalty or be subject to criminal prosecution in accordance with law.

**Article 41** *Complaints and denunciations*

1. Any business entity, organization with trade-related activities or individual conducting commercial activities shall have the right to make a complaint or denunciation about unlawful decisions or acts or about conduct causing difficulties by a State employee or official. The lodging of complaints and denunciations and their resolution shall be implemented in accordance with the law on complaints and denunciations.
2. Any person authorized to resolve a complaint or denunciation who fails to do so, who is irresponsible during the resolution of a complaint or denunciation, or who resolves unlawfully a complaint or denunciation shall, depending on the nature and seriousness of the breach, be disciplined or be subject to criminal prosecution; and if the offender causes loss and damage, he or she must pay compensation in accordance with law.

## CHAPTER VI

### Implementing Provisions

**Article 42** *Effectiveness*

1. This Decree shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette.
2. Decree 32-1999-ND-CP of the Government dated 5 May 1999 on promotions, commercial advertising, and trade fairs and exhibitions shall no longer be effective after the date of effectiveness of this Decree.

**Article 43** *Organization of implementation*

Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for implementation of this Decree.

For the Government  
The Prime Minister

PHAN VAN KHAI