

**GOVERNMENT**

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**The Socialist Republic of Vietnam  
Independence - Freedom - Happiness**

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No: /2005/NĐ-CP

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**Final Draft**

**DECREE**

**DETAILED PROVISIONS OF THE COMMERCIAL LAW ON  
ENTERPRISES WITH FOREIGN INVESTED CAPITAL  
SPECIALIZING IN PURCHASE AND SALE OF GOODS AND OTHER  
ACTIVITIES DIRECTLY RELATING TO PURCHASE AND SALE OF  
GOODS IN VIETNAM**

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**GOVERNMENT**

Pursuant to the Law on the organization of the Government dated 26 December 2001;

Pursuant to the Commercial Law dated 14 June 2005;

At the proposal of the Minister of Trade

**DECREE:**

**Chapter I  
GENERAL PROVISIONS**

**Article 1. Governing Scope**

This Decree provides detailed elaboration of the Commercial Law on the registration and operations of enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods.

**Article 2. The right to establish enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods sale and purchase in Vietnam**

1. Foreign business entities are permitted to set up in Vietnam joint venture companies and wholly foreign-invested enterprises under the forms in accordance with the laws of Vietnam, in order to specialize in conducting

purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam in accordance with the provisions in Articles 16, 21, and 22 of the Commercial Law, the provisions herein and in accordance with the commitments under international treaties to which Vietnam is a party.

2. In accordance with international treaties to which Vietnam is a party, the Minister of Trade shall announce the roadmap permitting foreign business entities to set up joint venture companies and wholly foreign-invested enterprises specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam.

3. In special circumstances, with respect to foreign business entities from countries or territories with which Vietnam has not entered into international commitments on market access in terms of activities of specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam, the Minister of Trade shall decide the grant to establish enterprises with foreign invested capital in accordance with the instructions of the Prime Minister.

### **Article 3 Interpretation of terms**

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

1. ***Purchase and sale of goods and other activities directly relating to purchase and sale of goods*** means activities of importing, exporting, distributing and others as stipulated in Chapters IV, V and VI of the Commercial Law;

2. ***Right to Export*** means the right to buy goods in Vietnam for export, and to declare exports in one's own name to carry out and be responsible for export procedures. The right to export shall not include the right to set up a business network to gather goods in Vietnam for export, except as Vietnamese laws or international treaties to which Vietnam is a party may otherwise provide.

3. ***Right to Import*** means the right to import goods from abroad into Vietnam to re-sell to business entities entitled to distribute such kinds of goods in Vietnam, and to declare imports in one's own name to carry out and be responsible for import procedures. The right to import shall not include the right to set up or engage in a distribution network in Vietnam, except as Vietnamese laws or international treaties to which Vietnam is a party may otherwise provide.

4. ***Right to distribute*** means the right to conduct the activities of whole sale, retail sale, goods sale and purchase agencies and franchise business in

accordance with the laws of Vietnam.

5. **Whole sale** means the sale of goods, provision of services directly relating to such sale of goods to retail traders, production traders or other whole sale traders; and shall not include the activities of selling goods in various units of goods directly to end users.

6. **Retail sale** means the sale of goods, provision of services directly relating to such sale of goods in various units of goods directly to end-users.

7. **Retail outlets** means dependant units of an enterprise established for retail sale, including supermarkets, retail shops, retail counters, fixed retail points, automatic selling machines or units to receive orders by mail, fax, telephone or through the internet.

**Article 4. Issuance of registration certificates to establish enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam**

1. Ministry of Trade shall be responsible for managing, issuing, re-issuing, amending, supplementing and revoking registration certificates to establish enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in accordance with this Decree.

2. Those foreign invested enterprises specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam, which intend to conduct production activities shall apply to the competent State agency for investment management for a business – registration certificate for such that investment project in production in accordance with the Enterprise Law and the Law on Investment.

**Chapter II**  
**CONDITIONS AND PROCEDURES TO ESTABLISH ENTERPRISES**  
**WITH FOREIGN INVESTED CAPITAL SPECIALIZING IN**  
**PURCHASE AND SALE OF GOODS AND OTHER ACTIVITIES**  
**DIRECTLY RELATING TO PURCHASE AND SALE OF GOODS IN**  
**VIETNAM**

**Article 5. Conditions for a registration certificate to establish enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam**

Business entities shall be issued with a registration certificate to establish enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam (hereinafter referred to as **Registration Certificates**) if satisfy all the following conditions:

1. The application follows the roadmap under international treaties to which Vietnam is a party as announced by the Minister of Trade;
2. Goods and services for business do not fall under the List of Goods and Services subject to Business Prohibition in accordance with the laws of Vietnam;
3. The name of the enterprise is in accordance with the provisions of the Law on Enterprises;
4. The proposed head office is in accordance with the provisions of the Law on Enterprises;
5. The application documents to establish an enterprise with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods follows the provisions of this Decree;
6. All fees have been paid in full in accordance with the provisions herein.

#### **Article 6. Application for a Registration Certificate**

The application documents for a Registration Certificate shall include:

1. An application letter for a Registration Certificate according to the form issued by Ministry of Trade;
2. The charter of the enterprise;
3. The member list and following relevant documentations as appropriate:
  - a) For members as individuals, a copy of the ID card, passport or other legitimate personal identifications;
  - b) For members as economic entities: a copy of the business registration certificate or the equivalent; the letter of authorization and copy of the ID card, passport or other legitimate personal identifications of the duly authorized representative;

For members as economic entities, a copy of the business registration certificate or the equivalent must be certified by the competent authority where the head office is located, which is dated no more than 3 months as of the date the application is submitted.

4. Joint venture contracts if a joint venture enterprise is applied for;

5. The project on the establishment of the enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam.

#### **Article 7. Period of time for issuing a Registration Certificate**

1. In case of incomplete application documents, within 3 working days from the date of receiving the application, Ministry of Trade shall inform the applicant in writing for proper amendments and supplements;

2. Within 3 working days from the date of receiving a complete and eligible application, the application documents shall be forwarded relevant Ministries, Agencies and provincial People's Committee by Ministry of Trade for consultation;

3. Within 15 working days from the date of receiving a complete and eligible application relevant Ministries, agencies and Provincial People's Committees shall submit their views and comments in writing to Ministry of Trade on the content of the application under their scope of authorities; the failure to submit their views and comments in writing within the time period shall be considered as accepting the application;

4. For application under the jurisdiction of the Prime Minister as referred to in Article 2.3 herein, within 30 days from the date of receiving a complete and eligible application, the Minister of Trade shall submit his evaluation and assessment to the Prime Minister. Within 15 days from the date of receiving the submission of the Minister of Trade, the Prime Minister shall issue written instructions. Within 5 working days from the date of receiving the written instructions of the Prime Minister, the Minister of Trade shall decide on the issuance of a Registration Certificate;

5. For application under the jurisdiction of the Minister of Trade, within 30 working days from receiving a complete and eligible application documents, Ministry of Trade shall complete its evaluation and assessment of the application and issue a Registration Certificate.

6. The time provided for in this Article shall not include the time to

rectify, and amend the application as requested by Ministry of Trade.

7. Where a Registration Certificate is issued, Ministry of Trade shall be responsible to send a copy of such Registration Certificate to Ministry of Planning and Investment, the relevant provincial People's Committees, the department of trade or the department of trade and tourism (hereinafter referred to as the **provincial Department of Trade**), the provincial tax authority, and the statistic authority where the head office of the enterprise is located.

8. Once the time provided in this Article has elapsed without issuing a Registration Certificate, Ministry of Trade shall notify in writing to the applicant and state clearly the reason of rejection.

**Article 8. Establishment of the management of enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam**

1. The establishment of the management and personnel appointment of enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam shall be decided by foreign entrepreneurs in accordance with the provisions of the Law on Enterprises.

2. The number of foreigners working for enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam must be in accordance with the laws on labor and Vietnam's commitments under international treaties to which Vietnam is a party.

**Article 9. Notification of the establishment of enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of goods in Vietnam**

1. Within 30 days from the date of issuing the Registration Certificate, enterprises with foreign invested capital specializing in purchase and sale of goods and other activities directly relating to purchase and sale of in Vietnam (hereinafter referred to as the **enterprises**) shall publish in 3 consecutive issues of hardcopy or electronic newspapers the following contents:

a) Name and address of the head office of the enterprise, its branches and representative offices (if any)

b) Content and scope of activities.

c) Charter capital or initial investment capital subject to the form of the

enterprise in accordance with the Law on Enterprises;

d) Full name, address, nationality, number of the ID card, passport or other personal identifications; or the number of establishment decisions or of the registration certificates of the owners and founding members;

dd) Full name, address, nationality, and number of the ID card, passport or other personal identifications of the legal representative of the enterprise.

2. Within the period specified in clause 1 of this Article, the Enterprise must officially commence operations and send a written notice to Ministry of Trade of the commencement of its operations.

3. Upon occurrence of any change in the contents of the Registration Certificate, the enterprise must give a notice of such changes within a period and in the manner as stipulated in clause 1 of this Article.

#### **Article 10. Amending and supplementing Registration Certificates**

1. Upon any change in one of the following contents, the enterprises shall apply for amending and supplementing their Registration Certificates at Ministry of Trade within 10 days as of the occurrence of such changes:

a) the legal representative of the enterprise;

b) the location of its head office;

c) charter capital or initial investment capital subject to the types of the enterprises in accordance with the provisions of the Law on Enterprises;

d) the name or contents of operations of the Enterprise.

2. Applications for amending and supplementing Registration Certificates shall include:

a) An application for amending and supplementing the Registration Certificates according to the form stipulated by Ministry of Trade;

b) The original of the Registration Certificates granted.

3. Within 10 days from the date of receiving complete and eligible documents from the enterprises as stipulated in clause 2 of this Article, Ministry of Trade shall be responsible to amend and supplement the Registration Certificates.

## **Article 11. Re – issuing Registration Certificates**

1. The Registration Certificates shall be re – issued where lost, torn, burnt or otherwise destroyed.

2. Application documents for re-issuance of Registration Certificates shall include:

a) An application for re-issuance of Registration Certificates according to the form stipulated by Ministry of Trade;

b) The original of the Registration Certificates as granted where the same are torn or certification of the police for the same having being lost, burnt or otherwise destroyed.

3. Within 10 days from the date of receiving complete and eligible documents as stipulated in clause 2 of this Article, Ministry of Trade shall be responsible to re-issue Registration Certificates.

## **Chapter III ACTIVITIES AND OPERATIONS OF ENTERPRISES WITH FOREIGN INVESTED CAPITAL SPECIALIZING IN PURCHASE AND SALE OF GOODS AND OTHER ACTIVITIES DIRECTLY RELATING TO PURCHASE AND SALE OF GOODS IN VIETNAM**

### **Article 12. Content of activities**

1. Enterprises shall be allowed to carry out the business activities as specified in the Registration Certificates in accordance with the provisions of Article 2 herein.

2. Where an enterprise engages in trading goods and services which are subject to conditions stipulated by the laws of Vietnam, then the enterprise shall only be permitted to carry out such business upon its satisfaction of the conditions.

Conditions for a specific business are requirements that an enterprise must satisfy or obtain in order to carry out such business, as in terms of business license, certificate of eligibility for business, professional certificate, certificate of occupational insurance, requirements on legal capital or other requirements in accordance with the Law on Enterprises.

### **Article 13. Registration of the tax code and import-export code**



Before conducting business activities, an enterprise shall register for a tax code. If it is to engage in import-export activities, the enterprise shall register for an import-export code in accordance with the laws of Vietnam.

#### **Article 14. Opening accounts**

1. Enterprises are permitted to open accounts in foreign currencies and local currency at banks permitted to operate in Vietnam to serve their operations.

2. In special cases, enterprises may open accounts at offshore banks subject to approval by the State Bank of Vietnam. Enterprises shall report on their bank statements for such accounts to the State Bank of Vietnam.

3. The opening, operation and closure of accounts by enterprises shall comply with regulations of the State Bank of Vietnam.

#### **Article 15. Operation Reports**

1. On an annual basis, before the last working day of January of the following year, enterprises shall send written operation reports to Ministry of Trade.

2. Enterprises shall comply with the regulations on financial report and statistic report in accordance with the laws of Vietnam.

3. Where necessary in accordance with the laws of Vietnam, enterprises shall report, submit documentations or explanations on issues relating to their operations upon the request of competent State agencies.

#### **Article 16. Compliance with relevant laws and regulations**

Enterprises shall comply with relevant laws and regulations including:

1. Regulations on profit repatriation and transfer of assets abroad by Enterprises;

2. Regulations on taxes, charges and fees, accounting and statistics;

3. Regulations on employment;

4. Regulations on foreign exchange;

5. Regulations on land;

6. Regulations on re-organization, dissolution and bankruptcy;
7. Other related regulations

**Chapter IV**  
**REPRESENTATIVE OFFICES, BRANCHES, RETAIL OUTLETS**  
**OF ENTERPRISES WITH FOREIGN INVESTED CAPITAL**  
**SPECIALIZING IN PURCHASE AND SALE OF GOODS AND OTHER**  
**ACTIVITIES DIRECTLY RELATING TO PURCHASE AND SALE OF**  
**GOODS IN VIETNAM**

**Article 17. Establishment of representative offices or branches by an enterprise**

1. Enterprises shall be allowed to open representative offices in Vietnam or abroad in accordance with the regulations on enterprises.
2. Enterprises shall be allowed to set up branches overseas according to their need for business. Such establishment shall be decided by the Minister of Trade in accordance with international commitments under international treaties to which Vietnam is a party.

**Article 18. Retail outlets of the enterprises having the right to distribute**

1. An enterprise which has the right to distribute shall be allowed to set up one retail outlet of its own to conduct commercial activities right after the issuance of the Registration Certificates.
2. The establishment of additional retail outlets owned by the enterprises which have the right to distribute other than the first retail outlet shall be subject to consideration by the Minister of Trade on a case by case basis and in accordance with Vietnamese commitments under international treaties to which Vietnam is a party.

**Article 19. Application documents for establishing retail outlets**

Application documents for establishing retail outlets by the enterprises which have the right to distribute shall include:

1. An application letter for setting-up of retail outlets in the form issued by Ministry of Trade
2. Original of the registration certificate

3. Contents and scope of operations; and location of the outlets.

**Article 20. Period of time for notifying the enterprises for their applications for establishing retail outlets**

1. Within 3 working days from the date of receiving an application, if the application is found to be incomplete or ineligible, Ministry of Trade shall give a written notice to the enterprise for fulfilling the application.

2. Within 30 working days from the date of receiving a complete and eligible application, Ministry of Trade shall complete their assessment and issue a Registration Certificate for establishing retail outlets.

3. The period of time stipulated in clause 2 of this Article does not include the time spent by enterprises to correct and supplement their documents upon the request of Ministry of Trade.

4. In case the period of time stipulated in clause 2 of this Article, no registration certificate is issued, Ministry shall in writing inform the relevant applicant clearly stating the reasons for such refusal.

**Article 21. Amending and supplementing registration certificate of establishing retail outlets**

1. Upon occurrence of any of the following cases, the enterprise owning the retail outlet shall carry out the procedures for amending and supplementing the registration certificate of establishing retail outlets with Ministry of Trade within 10 days as of such occurrence:

- a) Changing the location of such retail outlets;
- b) Changing the name or contents of operations of the retail outlets.

2. The application for amending and supplementing the registration certificate of establishing retail outlets shall include:

- a) An application for amending and supplementing registration the certificate of establishing retail outlets in the form stipulated by Ministry of Trade;
- b) The original of the registration certificate of establishing a retail outlet as granted.

3. Within 10 days as of receipt of complete and eligible application file from the enterprise as specified in clause 2 of this Article, Ministry of Trade

shall be responsible for amending and supplementing the registration certificate of establishing retail outlets.

**Article 22. Re-issuing registration certificates of establishing retail outlets**

1. An enterprise may be re-issued with a registration certificate of establishing retail outlets where the granted registration certificate is lost, torn, burnt or otherwise destroyed.

2. An application for re-issuance of a registration certificate of establishing retail outlets shall include:

a) An application for re-issuance of a registration certificate of establishing retail outlets in the form stipulated by Ministry of Trade;

b) The original registration certificate of establishing a retail outlet if the same has been torn or certification of the police if the same has been lost or burnt or otherwise destroyed.

3. Within 10 days as of the receipt of complete and eligible file from the enterprise in accordance with clause 2 of this Article, Ministry of Trade shall reissue a registration certificate of establishing retail outlets.

**Article 23. Fees for issuance, re-issuance, amendment and supplement with regard to registration certificates and registration certificate of establishing retail outlets**

1. The applicant shall pay an amount of fee for such issuance, re-issuance, amendment or supplement with respect to the registration certificate of establishing the enterprise or the registration certificate of establishing retail outlets.

2. Ministry of Finance shall take the lead and co-ordinate with Ministry of Trade in providing in details for the levels of such fees and the management of such fees for such issuance, re-issuance, amendment or supplement with respect to the registration certificate of establishing the enterprise or the registration certificate of establishing retail outlets.

**Chapter V**

**DEALING WITH BREACHES OF ENTERPRISES WITH FOREIGN  
INVESTED CAPITAL SPECIALIZING IN PURCHASE AND SALE OF  
GOODS AND OTHER ACTIVITIES DIRECTLY RELATING TO  
PURCHASE AND SALE OF GOODS IN VIETNAM**

## **Article 24. Breaches of provisions on the registration and operation of the enterprises**

Any of the following actions of breaches by business entities shall, depending on the nature of such breaches, be subject to administrative fines in accordance with the laws on dealing with administrative breaches:

1. Providing fraud information in application documents for establishing enterprises, or for establishing retail outlets in Vietnam.
2. Failing to announce the establishment of enterprises after being granted Registration Certificates.
3. Failing to operate within the time period stipulated after being granted Registration Certificates.
4. Failing to give periodical or ad hoc reports or provide materials or explanations on issues relating to the enterprise's business activities as required by competent state agencies.
5. Failing to give a notice on the commence of official operations within the time limit specified herein;
6. Fail to carry out the procedures for amending and/or supplementing Registration Certificates and Registration Certificates of establishing retail outlets as specified herein;
7. Adding, erasing, or changing the contents of the Registration Certificates and Registration Certificates of establishing retail outlets.
8. Operating in conditional fields or industries as may regulated by laws without business license or certificate for business eligibility.
9. Remaining operating after competent state agencies announce the decision to revoke Registration Certificates or Registration Certificates of establishing retail outlets.
10. Opening retail outlets in Vietnam without permission by competent State agencies.
11. Failing to register for a tax code in accordance with relevant laws;
12. Ceasing operations without notice to competent State agencies;
13. Trading in goods falling under the list of Goods prohibited from

business or prohibited goods as specified herein;

14. Operating other than as stipulated in the Registration Certificates and Registration Certificates of establishing retail outlets;

15. Breaching other provisions herein.

**Article 25. Revoking Registration Certificates and Registration Certificates of establishing retail outlets**

1. Registration Certificates shall be revoked in the following cases:

a) The contents in the application for issuance of a Registration Certificate are incorrect/fake;

b) Enterprise registered by those people who are prohibited from setting up enterprises in accordance with the Law on Enterprises;

c) Enterprise fails to register for a tax code within 12 months as of the date of issuance of a Registration Certificate;

d) No operation is carried out at the registered head office for 6 consecutive months as of the date of issuance of the Registration Certificate;

đ) No report on the operations of the Enterprise is sent to the authority issuing Registration Certificate within 12 consecutive months;

e) Enterprise ceases its operations for 12 consecutive months without a notice to the authority issuing Registration Certificate;

g) Enterprise fails to send reports to competent authorities within 3 months after so requested in writing;

h) Enterprise trades in goods and/or services which fall in the list of goods and services prohibited from business in accordance with relevant laws;

i) Enterprise fails to operate in accordance with the contents of the Registration Certificate.

2. Registration Certificates of establishing retail outlets shall be revoked in the following cases:

a) The contents in the application file for issuance of a Registration Certificate of establishing retail outlets are incorrect/fake;

b) No operation is carried out at the registered head office for 6 consecutive months as of the date of issuance of the Registration Certificate of establishing retail outlets;

c) Enterprise ceases its operations for 12 consecutive months without notice to the authority issuing the Registration Certificate of establishing retail outlets;

d) Enterprise fails to send a report to the competent authority within 3 months after so requested in writing;

d) Enterprise trades in goods and/or services which fall in the list of goods and services prohibited from business or prohibited goods as stipulated herein;

e) Enterprise fails to operate in accordance with the contents of the Registration Certificate of establishing retail outlets.

3. Ministry of Trade shall be responsible to announce publicly any decision on revoking Registration Certificates and Registration Certificates of establishing retail outlets.

#### **Article 26. Authorizations and procedures for issuing penalties on administrative breaches**

Principles, authorizations, forms and procedures for issuing penalties on administrative breaches towards acts regulated at Article 24 of this Decree are subjected to regulations on penalties on administrative breaches.

#### **Article 27. Appeals and denouncement**

Enterprises have the right to appeal and take legal action against illegal decisions and actions, disturbance and extortion from government officials and agencies. Appeals, legal actions and their settlement shall be subjected to laws on appeals and denouncement.

### **Chapter VI IMPLEMENTING PROVISIONS**

#### **Article 28. Entry into force**

The Decree shall enter into force 15 days after being published on Government Gazette

#### **Article 29. Implementation**

1. The Minister of Trade shall be responsible to provide instructions on the implementation of this Decree.

2. Ministers, Head of ministerial-level agencies, Chairmen of Provincial People's Committees are obliged to implement this Decree.

**Recipients:**

- Central Secretariat of the Party,
- Prime Minister, Vice-Prime Ministers,
- Ministries, Ministry-level Agency, Agency of Government,
- People's Council, People's Committees of provinces and centrally-governed cities
- Office of the National Assembly
- Ethnic Council and Committees of the National Assembly
- Office of the President,
- Party's Central Office and Party's departments
- People's Supreme Procuracy,
- People's Supreme Court
- Central offices of social bodies
- Government Gazette
- Government Office: Minister-chairman, Vice-chairmen, Spokesman of Prime Minister
- Archived.

**ON BEHALF OF THE  
GOVERNMENT  
PRIME MINISTER**

**PHAN VAN KHAI**