

Hanoi, 12 February 2007

**DECREE
PROVIDING REGULATIONS FOR
IMPLEMENTATION OF COMMERCIAL LAW REGARDING PURCHASE
AND SALE OF GOODS AND ACTIVITIES DIRECTLY RELATED TO THE
PURCHASE AND SALE OF GOODS BY ENTERPRISES WITH FOREIGN
OWNED CAPITAL IN VIETNAM**

The Government

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

Pursuant to the *Commercial Law* dated 14 June 2005;

On the proposal of the Minister of Trade,

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Decree provides detailed regulations for implementation of a number of articles of the *Commercial Law* regarding activities of purchase and sale of goods and activities directly related to the purchase and sale of goods by enterprises with foreign owned capital in Vietnam.

Article 2 *Applicable entities*

This Decree shall apply to enterprises with foreign owned capital, and to organizations and individuals involved in management of purchase and sale of goods and of activities directly related to the purchase and sale of goods by enterprises with foreign owned capital in Vietnam.

Article 3 *Interpretation of terms*

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

1. *Activities of purchase and sale of goods and activities directly related to the purchase and sale of goods* means import, export, distribution and other activities stipulated in Chapters 4, 5 and 6 of the *Commercial Law*.
2. *Import and export of goods* means the activities stipulated in article 28 of the *Commercial Law*.
3. *Right to export* means the right to purchase goods in Vietnam for export, and includes the right to provide one's name on the goods export declaration in order to conduct and bear liability for the conduct of procedures relating to export. *Right to export* does not include the right to organize a network of purchasing in separate parcels throughout Vietnam for export, unless the law of Vietnam or an international treaty of which the Socialist Republic of Vietnam is a member stipulates otherwise.

4. *Right to import* means the right to import goods into Vietnam for sale to business entities which have the right to distribute such goods in Vietnam, and includes the right to provide one's name on the goods import declaration in order to conduct and bear liability for the conduct of procedures relating to import. *Right to import* does not include the right to organize or participate in a goods distribution system in Vietnam, unless the law of Vietnam or an international treaty of which the Socialist Republic of Vietnam is a member stipulates otherwise.
5. *Distribution* means activities of wholesaling, retailing, agency for purchase and sale of goods and franchising in accordance with the law of Vietnam.
6. *Right to distribute* means the right to undertake directly activities of distribution.
7. *Wholesaling* means the activity of selling goods to other business entities and organizations; and does not include the activity of selling goods directly to the final consumer.
8. *Retailing* means the activity of selling goods directly to the final consumer.
9. *Retail sales outlet* means a unit owned by an enterprise for the purpose of conducting retailing.

Article 4 *Conditions for enterprises with foreign owned capital to be granted a business licence for activities of purchase and sale of goods and activities related to purchase and sale of goods in Vietnam*

1. The conditions for an enterprise with foreign owned capital to be granted a business licence for activities of purchase and sale of goods and activities related to purchase and sale of goods in Vietnam shall comprise:
 - (a) It is an investor belonging to a country or territory participating in an international treaty of which the Socialist Republic of Vietnam is a member and in such treaty Vietnam has undertaken to open the market on activities of purchase and sale of goods and activities directly related to purchase and sale of goods;
 - (b) The form of investment is consistent with the schedule/s undertaken in international treaties of which the Socialist Republic of Vietnam is a member and is consistent with the law of Vietnam;
 - (c) The goods and services in which business is conducted are consistent with Vietnam's undertaking to open the market and are consistent with the law of Vietnam;
 - (d) The scope of operation is consistent with Vietnam's undertaking to open the market and is consistent with the law of Vietnam;
 - (dd) It has approval from the State body authorized pursuant to article 5 of this Decree.
2. The Minister of Trade shall be responsible to announce the schedule/s undertaken in international treaties of which the Socialist Republic of Vietnam is a member and the specific conditions pursuant to clause 1 of this article.
3. With respect to foreign investors not in the category stipulated in clause 1(a) above, the Minister of Trade shall consider each application on a case by case basis and must approve activities of purchase and sale of goods and activities directly related to purchase and sale of goods before the authorized State body grants a business licence.

Article 5 *Authority to issue business licences for activities of purchase and sale of goods and activities related to purchase and sale of goods, and to issue licences to establish retail sales outlets*

1. Provincial people's committees shall be responsible to issue business licences for activities of purchase and sale of goods and activities directly related to purchase and sale of goods (hereinafter referred to as *business licences*) to enterprises with foreign owned capital which have already been issued with an investment certificate or investment licence (hereinafter both referred to as an *investment certificate*) after receiving written approval from the Ministry of Trade.

2. A foreign investor investing in Vietnam for the first time which invests in activities of purchase and sale of goods and activities directly related to purchase and sale of goods shall submit an application file in order to conduct investment procedures with the State administrative body for investment. The State administrative body for investment shall obtain the opinion of the Ministry of Trade and shall only issue an investment certificate for activities of purchase and sale of goods and activities directly related to purchase and sale of goods if the Ministry of Trade has provided written approval. In this case the investment certificate shall act concurrently as the business licence. Investment procedures shall be implemented in accordance with the *Law on Investment*.
3. If a foreign investor only invests in import/export business or if an enterprise with foreign owned capital only requests addition of import/export business without distribution business or activities directly related to purchase and sale of goods, then the State administrative body for investment shall rely on the schedule/s undertaken in international treaties of which the Socialist Republic of Vietnam is a member to issue or supplement the investment certificate without requiring approval from the Ministry of Trade.
4. An enterprise with foreign owned capital which already has the right to distribute shall be permitted to establish its first retail sales outlet and shall not be required to conduct procedures applying for issuance of a licence to establish a retail sales outlet pursuant to this Decree. The establishment of any additional retail sales outlet after the first such establishment shall be subject to a decision of the provincial people's committee in accordance with guidelines of the Ministry of Trade and in accordance with the order and procedures stipulated in this Decree.

Article 6 *Compliance with provisions of relevant laws*

1. Enterprises with foreign owned capital must, in addition to exercise of rights and discharge of obligations stipulated in this Decree, also comply with the provisions of the *Law on Enterprises*, the *Law on Investment* and other relevant laws.
2. Where the activities stipulated in Chapters 4, 5 and 6 of the *Commercial Law* are regulated by another Decree, then the provisions of such other Decree shall apply.
3. Enterprises with foreign owned capital must pay fees in accordance with regulations of the Ministry of Finance when they conduct procedures for the issuance, re-issuance, amendment of or addition to business licences and licences to establish retail sales outlets.
4. In necessary cases, in accordance with the law of Vietnam, enterprises with foreign owned capital shall be obliged to report, supply data and explain issues relating to their activities at the request of an authorized State administrative body.

CHAPTER II

Procedures for Issuance of Business Licences

Article 7 *Application files for issuance of business licences:*

1. Request for issuance of a business licence on the standard form issued by the Ministry of Trade.
2. Explanatory statement on satisfaction of the conditions stipulated in sub-clauses (a), (b) and (c) of article 4.1 of this Decree.
3. Proposed business contents of purchase and sale of goods and of activities directly related to the purchase and sale of goods by the enterprise.
4. Copy investment certificate.

Article 8 *Rules for issuance of business licences*

1. An enterprise shall lodge three sets of its application file, one of which shall be an original, with the provincial people's committee in the location where the enterprise has its head office.
2. Within a time-limit of three working days from the date of receipt of the application file, the body which received the file shall check its validity and forward it to the Ministry of Trade for its opinion. Where an application file is invalid, the body which received the file shall notify the investor in writing in order for the latter to amend or supplement the file.
3. Within a time-limit of fifteen (15) working days from the date of receipt of the application file, the Ministry of Trade shall provide its written opinion on issues for which such Ministry has the administrative function.
4. Within a time-limit of fifteen (15) working days from the date of receipt of the opinion of the Ministry of Trade, the provincial people's committee shall make a decision on issuance of a business licence.

In a case of non-issuance of a business licence, the body which received the file shall notify the enterprise in writing, stating clearly the reasons therefor.

5. Within a time-limit of seven (7) working days from the date of issuance of a business licence, the body which received the file shall provide copies of the business licence to the Ministry of Trade and to the provincial people's committee in the location where the enterprise has its head office.

Article 9 *Contents and effective term of business licences*

1. A business licence shall contain the following items:
 - (a) Name and head office address of the enterprise;
 - (b) Business contents of purchase and sale of goods and activities directly related to the purchase and sale of goods as stipulated in article 12 of this Decree;
 - (c) Effective term of the business licence.
2. In the cases stipulated in article 5 of this Decree, the effective term of the business licence shall be equal to the duration of operation of the investment project as recorded in the investment certificate.

Article 10 *Amendment of and/or addition to business licences*

1. If an enterprise with foreign owned capital wishes to change one of the items stipulated in sub-clauses (a) and (b) of article 9.1 of this Decree, it must conduct procedures to amend and/or add to the business licence with the body which issued the licence.
2. An application file for amendment and/or addition to a business licence shall contain the following items:
 - (a) Request for amendment and/or addition to the business licence on the standard form issued by the Ministry of Trade;
 - (b) Copy issued business licence.
3. The business licence-issuing body shall be responsible, within a time-limit of ten (10) working days from the date of receipt of a complete and valid file in accordance with clause 2 of this article, to amend and/or add to the business licence if such amendment and/or addition is consistent with the law of Vietnam and an international treaty of which the Socialist Republic of Vietnam is a member. In a case of non-approval to the amendment and/or addition to the business licence, the business licence-issuing body must notify the enterprise in writing, stating clearly the reasons therefor.

4. On receipt of the amended business licence, the enterprise must hand in the original of its old licence to the business licence-issuing body.

Article 11 *Re-issuance of business licences for activities of purchase and sale of goods and activities related to purchase and sale of goods*

1. A business licence which is lost, torn, corrupted, burnt or destroyed in any other form shall be re-issued.
2. An enterprise whose business licence is lost must declare such loss with the police office in the location where the business licence is lost and with the business licence-issuing body, and must publish an announcement on the mass media on three consecutive occasions. Thirty (30) days after the date of the first announcement, the enterprise shall lodge an Official Letter requesting that the business licence-issuing body re-issue the licence.
3. An application file for re-issuance of a business licence shall comprise:
 - (a) Request for re-issuance of a business licence on the standard form issued by the Ministry of Trade;
 - (b) Certification from the police office of declaration of loss of the business licence; and explanatory statement of the reason for the loss or destruction in some other form of the business licence.
4. The business licence-issuing body shall be responsible to re-issue a business licence within a time-limit of seven (7) working days from the date of receipt of a complete and valid application file.

Article 12 *Operational contents of purchase and sale of goods and activities related to purchase and sale of goods*

1. The operational contents of purchase and sale of goods and activities related to purchase and sale of goods of an enterprise with foreign owned capital must be specifically recorded in the business licence, including:
 - (a) Activities of purchase and sale of goods and activities directly related to the purchase and sale of goods which the enterprise has the right to conduct;
 - (b) The types of goods in which business is prohibited, applicable to each activity stipulated in clause 1(a) of this article;
 - (c) The types of services permitted to be provided which directly relate to the purchase and sale of goods.
2. An enterprise with foreign owned capital shall only be permitted to conduct activities consistent with the items recorded in its business licence.
3. An enterprise shall only be permitted to conduct business in goods and services which the law stipulates are conditional when the enterprise has satisfied all the conditions stipulated by the law of Vietnam.

CHAPTER III

Procedures for Issuance of Licences to Establish Retail Sales Outlets

Article 13 *Application files to establish retail sales outlets*

1. An application file to establish a retail sales outlet in Vietnam shall contain the following items:
 - (a) Name and head office address of the enterprise;

- (b) Names and addresses of retail sales outlets already established;
 - (c) Name and address of the retail sales outlet it is proposed to establish;
 - (d) Operational contents of the retail sales outlet;
 - (dd) Full name, residential address, and number of identity card or passport or other legal personal identification of the head of the retail sales outlet;
 - (e) Full name and signature of the legal representatives of the enterprise.
2. Copy business licence.

Article 14 *Rules for issuance of licences to establish retail sales outlets*

1. An enterprise shall lodge three sets of its application file, one of which shall be an original set, with the provincial people's committee in the location where the enterprise proposes to establish the retail sales outlet.
2. Within a time-limit of three working days from the date of receipt of the application file, the body which received the file shall check its validity and forward the file to the Ministry of Trade for its opinion. Where an application file is invalid, the body which received the file shall notify the investor in writing in order for the latter to amend or supplement the file.
3. Within a time-limit of fifteen (15) working days from the date of receipt of the application file, the Ministry of Trade shall provide its written opinion on issues for which such Ministry has the administrative function.
4. Within a time-limit of fifteen (15) working days from the date of receipt of the opinion of the Ministry of Trade, the provincial people's committee shall make a decision on issuance of a licence to establish the retail sales outlet.

In a case of non-issuance of a licence, the body which received the file shall notify the enterprise in writing, stating clearly the reasons therefor.

5. Within a time-limit of seven (7) working days from the date of issuance of a licence to establish a retail sales outlet, the body which received the file shall provide copies of the licence to the Ministry of Trade and to the provincial people's committee in the location where the enterprise has its head office.

Article 15 *Contents and effective term of licences to establish retail sales outlets*

1. A licence to establish a retail sales outlet shall contain the following items:
 - (a) Name and head office address of the enterprise;
 - (b) Name and address of the retail sales outlet;
 - (c) Operational contents of the retail sales outlet;
 - (d) Full name, residential address, and number of identity card or passport or other legal personal identification of the head of the retail sales outlet;
 - (dd) Effective term of the licence to establish the retail sales outlet.
2. In the case stipulated in article 5.4 of this Decree, the effective term of the licence to establish the retail sales outlet shall be equal to the effective term of the business licence.

Article 16 *Amendment of and/or addition to licences to establish retail sales outlets*

1. Within a time-limit of ten (10) working days from the date of a decision by an enterprise with foreign owned capital to change any one of the items stipulated in sub-clauses (a), (b), (c) or (d) of article 15.1, the enterprise must conduct procedures to amend and/or add to its licence to establish the retail sales outlet.
2. An application file for amendment and/or addition to a licence to establish a retail sales outlet shall contain the following items:
 - (a) Request for amendment and/or addition to the licence on the standard form issued by the Ministry of Trade, specifying the amended or supplemented contents;
 - (b) Copy issued licence to establish the retail sales outlet.
3. The business licence-issuing body shall be responsible, within a time-limit of ten (10) working days from the date of receipt of a complete and valid file, to amend and/or add to the licence to establish the retail sales outlet.
4. On receipt of the amended licence to establish the retail sales outlet, the enterprise must hand in the original of its old licence to the business licence-issuing body.

Article 17 *Re-issuance of licences to establish retail sales outlets*

1. An enterprise with foreign owned capital whose licence to establish a retail sales outlet is lost, torn, corrupted, burnt or destroyed in any other form shall be re-issued with a licence.
2. The application file and procedures for re-issuance of a licence to establish a retail sales outlet shall be implemented the same as for a business licence stipulated in article 11 of this Decree.

CHAPTER VIII

Implementing Provisions

Article 18 *Dealing with breaches*

1. Any enterprise with foreign owned capital which commits a breach may, depending on the nature and seriousness of the breach, be subject to an administrative penalty. In the case of a serious breach, the business licence or licence to establish a retail sales outlet shall be withdrawn.
2. In a case where a breach shows sign of constituting a crime, the offender shall be prosecuted for criminal liability in accordance with law.

Article 19 *Effectiveness*

This Decree shall be of full force and effect after fifteen (15) days from the date of its proclamation in the Official Gazette.

Article 20 *Organization of implementation*

1. The Ministry of Trade shall provide guidelines for the implementation of this Decree.
2. The Ministry of Finance shall provide regulations on the amount and management of fees for the issuance, re-issuance, amendment and addition to business licences and licences to establish retail sales outlets.

3. Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of provinces and cities under central authority shall be responsible for the implementation of this Decree.

On behalf of the Government
Prime Minister

NGUYEN TAN DUNG