

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;

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Decree governs business registration offices and business registration of enterprises operating pursuant to the *Law on Enterprises* and individual household businesses.

Article 2 *Right to business registration*

1. Individuals and organizations shall have the right to establish an enterprise and to carry out business registration in accordance with law, which right shall be protected by the State.
2. Ministries, ministerial equivalent bodies, Governmental bodies and people's committees of cities and provinces under central authority shall not be permitted to promulgate regulations on business registration for specific application in their own branches and localities.

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 establish a business registration office at the district level; if no such office is established, the duties of business registration stipulated in article 5 of this Decree shall be assigned to the planning and financial office or the economic office (hereinafter together referred to as *district business registration offices*);
2. Provincial business registration offices and district business registration offices (in a case of districts which establish a district business registration office) shall have their own bank accounts and seals.

Article 4 *Duties, powers and responsibilities of provincial business registration offices*

1. To receive directly business registration application files and to consider their regularity, and to issue business registration certificates to enterprises.
2. To provide guidance to registrants with respect to conditional lines of business and the conditions for conducting such lines of business.
3. To establish and manage a database on enterprises within their regions; to provide information on enterprises within their regions to the relevant provincial people's committee and departments and to the Ministry of

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

4. To require enterprises to report on 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 any 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.

A business registration office shall not have the right to revoke the business registration certificate of an enterprise except in the specific circumstances stipulated in this clause.

Article 5 *Duties, powers and responsibilities of district business registration offices*

1. To receive directly business registration application files from individual household businesses, to consider the regularity of the files, and to issue business registration certificates to such businesses.
2. To provide guidance to registrants with respect to conditional lines of business and the conditions for conducting such lines of business.
3. To establish and manage a database on individual household businesses within their locality; to report periodically on such businesses and on enterprises, branches and representative offices of enterprises within their locality to the district people's committee and to the provincial business registration office.
4. To check directly or to check in co-ordination with the authorized State body, the contents of business registration of enterprises and individual household businesses within their locality; to verify the contents of business registration of enterprises, branches and representative offices which are located within their district on request of a provincial business registration office.
5. To revoke business registration certificates of individual household businesses in the following circumstances:
 - (a) Failure to conduct business activities for a period of sixty (60) days from the date of issuance of the business registration certificate;
 - (b) Cessation of business activities for sixty (60) consecutive days without informing the district business registration office at which they have registered business;
 - (c) Transfer of business location to another district;
 - (d) Conducting prohibited lines of business.

A district business registration office shall not have the right to revoke the business registration certificate of an individual household business except in the specific circumstances stipulated in this clause.

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 periodical basis and to organizations and individuals on request.
5. To supervise and inspect business registration work; to check legal instruments on business registration issued by ministries, people's councils and people's committees of cities and provinces under central authority; to identify any legal instrument issued by such body which is ultra vires or contrary to the *Law on Enterprises* or this Decree, and to resolve such matter in accordance with articles 3, 4, 5 and 13 of Decree 86-2002-ND-CP of the Government dated 5 November 2002 on functions, duties, powers and organizational structure of ministries and ministerial equivalent bodies.
6. To engage in international co-operation in the business registration sector.

CHAPTER III

Naming of Enterprises

Article 7 *Names of enterprises*

1. The name of an enterprise must include at least the following two components:
 - (a) Form of the enterprise;
 - (b) Special name.

The special name of an enterprise must be written in Vietnamese, may be followed by numbers and signs, and must be pronounceable.
2. An enterprise may include its lines of business or one of its auxiliary lines of business in its name.

Article 8 *Prohibitions with respect to naming of enterprise*

1. Identical names or names causing confusion with an already registered enterprise may not be used.
2. The name of a State body or an unit of the people's armed forces or the name of a political organization or socio-political organization may not be used to form all or a part of the special name of an enterprise, unless such body, unit or organization agrees.
3. When selecting the special name of an enterprise, it shall be prohibited to use words or signs which are contrary to the historical traditions, culture, ethics and fine customs of the people.

Article 9 *Names of enterprises written in foreign languages*

The name of an enterprise written in a foreign language means the translation of the name into a foreign language from the name in Vietnamese. Upon translation into a foreign language, the special name of an enterprise may either remain unchanged or be translated fully into the foreign language.

Article 10 *Identical names and names causing confusion*

1. An identical name means that the name which an enterprise requests to be registered is, as written and read in Vietnamese, in all respects the same as that of another registered enterprise.
2. Confusion with the name of another enterprise shall be deemed to be caused in the following cases:
 - (a) The name in Vietnamese of the enterprise requesting registration reads the same as the name of another registered enterprise;
 - (b) The name in Vietnamese of the enterprise requesting registration reads the same as the name of another registered enterprise except for the sign "&";
 - (c) The abbreviated name of the enterprise requesting registration is in all respects the same as the abbreviated name of another registered enterprise;
 - (d) The name in a foreign language of the enterprise requesting registration is identical to the name in a foreign language of another registered enterprise;
 - (dd) The name in Vietnamese of the enterprise requesting registration and the name of another registered enterprise are only different by virtue of ordinary numbers, the order of numbers, or letters of the

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;
- (h) Other cases where a name causes confusion pursuant to a decision of the Ministry of Planning and Investment.

Article 11 *Other matters relevant to naming of enterprises*

1. Based on the provisions in this Chapter, within a period of three months from the date of effectiveness of this Decree, provincial business registration offices shall collate lists of enterprises within their locality with identical names and of enterprises with names which cause confusion with names of other enterprises. The national centre for enterprise information shall collate a list of enterprises with identical names and of enterprises with names which cause confusion with names of other enterprises nationwide, and post it on the information page on domestic enterprises forming part of the national system of enterprise information.
2. It shall not be mandatory to register a different name in the case of enterprises which were registered prior to the date of effectiveness of this Decree and which have a name which causes confusion with the name of another enterprise.
3. The Ministry of Planning and Investment shall provide detailed guidelines on the provisions in this Chapter with respect to naming of enterprises.

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 two members or more; list of founding shareholders in the case of a shareholding company.

In the case of companies conducting lines of business with legal capital requirements, confirmation from the authorized body or a legal certificate of the capital of the company must also be submitted.

In the case of companies conducting lines of business requiring a practising certificate, a valid copy of the practising certificate of one of the company managers must be provided in accordance with the provisions of article 3.12 of the *Law on Enterprises*.

2. In the case of partnerships, 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) Partnership charter;
 - (c) List of partnership members.

In the case of partnerships conducting lines of business with legal capital requirements, confirmation from the authorized body or a legal certificate of the capital of the partnership must also be submitted.

In the case of partnerships conducting lines of business requiring a practising certificate, valid copies of the practising certificates of partnership members must be provided.

3. In the case of private enterprises, a business registration application file shall comprise:

Application for business registration in the standard form prescribed by the Ministry of Planning and Investment.

In the case of private enterprises conducting lines of business with legal capital requirements, confirmation from the authorized body or a legal certificate of the capital of the enterprise must also be submitted.

In the case of private enterprises conducting lines of business requiring a practising certificate, a valid copy of the practising certificate of the owner of the private enterprise or of the managing director of the enterprise must be provided.

Article 13 *Order and procedures for business registration*

The order and procedures for business registration shall be implemented as follows:

1. The founder of the enterprise or its representative shall submit a complete application file in accordance with the provisions of article 12 of this Decree to the provincial business registration office of the province in which the enterprise establishes its head office. Founding members, founding shareholders, company owners, owners of private enterprises, partnership members and legal representatives of enterprises shall be jointly liable for the accuracy and truthfulness of the contents of the application for business registration.

In the case of all types of enterprise, a provincial business registration office shall not require the person establishing the enterprise to submit any document other than those stipulated in article 12 of this Decree.

2. Upon accepting an application file, a provincial business registration office must provide a receipt to the person submitting the file. A provincial business registration office shall be responsible for the validity of files, but not for any breaches of law by enterprises which occur after business registration.
3. A provincial business registration office shall issue a business registration certificate to the enterprise within ten (10) days from the date of receipt of the application file where the following conditions are satisfied:
 - (a) The line of business is not on the list of prohibited lines of business;
 - (b) The name selected for the enterprise complies with the provisions in Chapter II of this Decree;

- (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 a 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, to 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 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 (in 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 lines of business requiring a practising certificate, there must be a copy of the practising certificate of at least one of the persons who will work in the branch or representative office.

3. If the lines of business of the branch are consistent with the lines of business of the enterprise or if the nature of the operations of the representative office is consistent with the nature of the operations of the enterprise, within seven days from the date of receipt of the notice, the provincial business registration office shall issue a business registration certificate for the operation of the branch or representative office.

Upon issuance of a business registration certificate for its operation, the branch or representative office shall have its seal engraved and shall have the right to use its own seal.

4. In cases where an enterprise establishes a branch or representative office in a province or city other than the locality of its head office, within seven days from the date of issuance of a business registration certificate for its operation, the branch or representative office must provide written notice to the provincial business registration office of the province in which its head office is located in order to supplement its business registration file.
5. The establishment by an enterprise of an overseas branch or representative office shall be implemented in accordance with the laws of such foreign country.

Within fifteen (15) days from the date of official opening of an overseas branch or representative office, an enterprise must provide written notice to the provincial business registration office of the province in which its head office is located in order to supplement the business registration file of the enterprise.

Article 15 *Registration of amendment of and addition to lines of business*

1. In the case of any amendment of or addition to lines of business, an enterprise shall provide notice to the provincial business registration office at which it is registered. The contents of the notice shall include:
 - (a) Name of the enterprise, its business registration number, and date of issuance of its business registration certificate;
 - (b) Address of the head office of the enterprise;
 - (c) Lines of business formerly registered;
 - (d) Additional or amended lines of business proposed to be registered;
 - (dd) Full name, identity card number, signature and residential address of the legal representative of the enterprise.

In the case of addition of lines of business with legal capital requirements, confirmation from the authorized body or a legal certificate of the capital of the company must be submitted.

In the case of addition of lines of business requiring a practising certificate, a valid copy of the practising certificate(s) as stipulated must be submitted.

The notice must be accompanied by the written decision together with minutes of meeting on amendment of or addition to lines of business of the Members' Council (in the case of limited liability companies having two members or more), of the company owner (in 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).

2. Upon receipt of such notice, the provincial business registration office shall provide a receipt and shall, within seven days from the date of receipt of the notice, carry out registration of the amendment of or addition to lines of business.

Article 16 *Registration of change of address of head office of enterprise*

1. When changing the address of the head office from one location to another within a province or city under central authority, the enterprise shall provide notice to the provincial business registration office. The contents of the notice shall include:
 - (a) Name of the enterprise, its business registration number, date of issuance of its business registration certificate;
 - (b) Address of the head office of the enterprise;
 - (c) Proposed address of the change of head office;
 - (d) Full name, identity card number, signature, and residential address of the legal representative of the enterprise.

The notice must be accompanied by a written decision together with minutes of meeting on registration of the change of address of the head office of the enterprise from the Members' Council (in the case of limited liability companies having two members or more), of 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).

Upon receipt of notice, the provincial business registration office shall provide a receipt and shall, within seven days from the date of receipt of the notice, carry out registration of the change of head 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 transfer to the new location but it must provide written notice of the new head office to all creditors for their information.

2. When an enterprise transfers its head office to a different province, it must provide notice to both the provincial business registration office of the province in which it is registered and to the provincial business registration office of the province in which it proposes to locate its new office. The contents of the notice shall include:
 - (a) Name of the enterprise, its business registration number, and the place and date of issuance of its business registration certificate;
 - (b) Address of the head office of the enterprise;
 - (c) Proposed address of the change of head office;
 - (d) Full name, identity card number, signature, and residential address of the legal representative of the enterprise.

The enterprise must include in the notice to the provincial business registration office of the province in which it proposes to locate its new office, the charter of the company and a list of members (in the case of limited liability companies with two or more members), a list of founding shareholders (in the case of shareholding companies), and a list of partners (in the case of partnerships). The notice must also be accompanied by a written decision together with minutes of meeting from the Members' Council (in the case of limited liability companies having two members or more), of 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 cases where the name of the enterprise is not identical to or does not cause confusion with the name of an enterprise already registered in the locality to which the enterprise proposes to transfer, the provincial business registration office of the locality in which the enterprise proposes to establish its new office shall carry out registration of the change of head office and re-issue a business registration certificate to the enterprise within fifteen (15) days from the date of receipt of the notice.

In cases where the name of the enterprise is identical to or causes confusion with the name of an enterprise already registered in the locality to which the enterprise proposes to transfer, within fifteen (15) days from the date of receipt of the notice, the provincial business registration office of the locality in which the enterprise proposes to establish its new office must provide written notice to the enterprise and also advise it to select

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, and date of issuance of its business registration certificate;
 - (b) Address of the head office of the enterprise;
 - (c) Proposed new name;
 - (d) Full name, identity card number, signature, and residential address of the legal representative of the enterprise.

The notice must be accompanied by the written decision of and minutes of meeting of the Members' Council (in the case of limited liability companies), of 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 partners (in the case of partnerships).

2. In cases where the proposed new name of an enterprise is not contrary to the regulations on naming enterprises, the provincial business registration office shall provide a receipt and carry out registration of the change of name within seven days from the date of receipt of the notice.
3. A change of name of an enterprise shall not change any of the rights and obligations of the enterprise.

Article 18 *Registration of change of legal representative of enterprise*

1. In cases where a partnership admits a new partner into the partnership or dismisses a partner from the partnership or where a partner retires from the partnership, the partnership 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) Name of the partnership, its business registration number, and date of issuance of its business registration certificate;
- (b) Address of the head office of the partnership;
- (c) Full name and residential address of the new partner, of the partner who has been dismissed, or of the partner who has retired from the partnership;
- (d) Signatures of all partners in the partnership or authorized partners.

Upon receipt of notice, the provincial business registration office shall provide a receipt and carry out registration of the change of partners within seven days from the date of receipt of the notice.

2. In the case of any change of the legal representative of a limited liability company or shareholding company, the company shall provide notice to the provincial business registration office at which it 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) Full name, identity card number, position and residential address of the current legal representative of the company;
- (d) Full name, identity card number, position and residential address of the replacement for the current legal representative of the company;
- (dd) Full name and signature of the chairman of the Members' Council (in the case of limited liability companies with two or more members), of the legal representative of the company (in the case of one member limited liability companies), or of the chairman of the Board of Management in the case of shareholding companies and one member limited liability companies organized on the model of board of management. If the chairman of the Members' Council or Board of Management or if the legal representative of the company is missing from his or her place of residence, is in temporary detention, is incapable of being aware of or controlling his acts due to mental or other illness, or refuses to sign the notice of the company, the full names and signatures of members of the Members' Council or of the Board of Management attending and

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), of 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 management).

Upon receipt of a notice, the provincial business registration office shall provide a receipt and carry out registration of the change of the legal representative of the limited liability company or shareholding company within seven days from the date of receipt of the notice.¹

Article 19 *Registration of change in invested capital of owner of private enterprise and in charter capital of company*

1. Upon any increase or decrease of invested capital, the owner of a private enterprise shall be required to provide notice of change of capital to the provincial business registration office at which the enterprise is registered. The contents of the notice shall include:
 - (a) Name of the enterprise, its business registration number, and date of issuance of its business registration certificate;
 - (b) Full name, identity card number, signature and residential address of the owner of the enterprise;
 - (c) Address of the head office of the enterprise;
 - (d) Lines of business;
 - (dd) Amount of invested capital formerly registered, amount of capital registered after the change, and method and date of change of invested capital.

Upon receipt of a notice, the provincial business registration office shall provide a receipt and carry out registration of the change in invested capital within seven days from the date of receipt of the notice.

1 *Phillips Fox Note: As corrected by Official Letter 3494-VP-CP-DMDN of the Office of Government dated 8 July 2004.*

2. Upon any increase or decrease in its 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), of 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 only 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 or more members shall be carried out as follows:

(a) In the case of a change resulting from the company admitting a new member, the company shall provide notice 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;
- Name and head office (in the case of a member being an organization), full name, identity card number or passport number (in the case of a member being an individual), nationality, value of capital and share of capital, date of capital contribution, type of asset contributed as capital, and quantity and value of each type of asset contributed as capital by the new member;
- Share of capital of current members as changed proportionately upon admission of the new member;
- Change in the charter capital after registration of the newly admitted member;
- Full name, identity card number and signature of the legal representative of the company.

The notice shall be accompanied by the decision of and a copy of the minutes of meeting of the Members' Council on admission of the new member and a document evidencing the capital contribution of the new member to the company; in the case of a member being a foreign organization, a valid copy of the licence for establishment or of the business registration certificate; in the case of a member being a foreign individual, a copy of his or her currently valid passport shall be required.

Upon receipt of a notice, the provincial business registration office shall provide a receipt and carry out registration of the change of membership and the increase in charter capital of the company within seven days from the date of receipt of the notice. Where a new member being a foreign organization or individual does not have permanent residence in Vietnam, registration of a change of membership shall only be carried out if the share of capital of the group of such members does not exceed thirty (30) per cent of the charter capital of the company.

(b) In the case of a change of members resulting from assignment of a share of capital, the company shall provide notice to the provincial business registration office at which the enterprise has registered its business. The notice shall include the following main items:

- Name of the company;
- Business registration number of the company;
- Address of the head office;
- Name and address of the head office (in the case of an organization) or full name, identity card number or passport number (in the case of an individual), nationality and share of capital of the assignor member;
- Name and address of the head office (in the case of an organization) or full name, identity card number or passport number (in the case of an individual), nationality of the assignee and proportionate share of capital in the company after the assignment;
- Date of assignment;
- Full names, signatures and identity card numbers of the legal representative of the company and of the assignor and assignee.

The notice shall be accompanied by the assignment contract and documents evidencing the completion of the assignment certified by the company. The provincial business registration office shall provide a receipt and carry out registration of the change of membership within seven days from the date of receipt of the notice. Where a new member is a foreign organization or individual not having permanent residence in Vietnam, the registration of a change in membership shall only be conducted if the share of capital of foreign shareholders does not exceed thirty (30) per cent of the charter capital of the company.

- (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 decision 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 owner (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 a 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 of 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 breaches the provisions in clauses 7(b), (c), (d) or (dd) of article 4 of this Decree, the provincial business registration office shall issue a written notice of the breach and request the legal representative of the enterprise to attend the head office of such provincial business registration office for the purpose of explanation. If the requested person fails to attend within fifteen (15) days from the date appointed in the notice, the provincial business registration office shall proclaim the breach committed by the enterprise and revoke the business registration certificate of the enterprise.
4. Where an enterprise fails to send a report as stipulated in article 116.3 of the *Law on Enterprises* to the provincial business registration office within six months from the date of receipt of a written demand as stipulated in article 121.3(d) of the *Law on Enterprises*, the provincial business registration office shall, within fifteen (15) days of expiry of the time-limit in the request for the report, issue a written notice requesting the legal representative of the enterprise to attend the head office of such provincial business registration office for the purpose of explanation. If the requested person fails to attend within fifteen (15) days from the date appointed in the notice, the provincial business registration office shall proclaim the breach committed by the enterprise and revoke the business registration certificate of the enterprise.
5. Where a provincial business registration office discovers that an enterprise is conducting a prohibited line of business, the provincial business registration office shall issue a written notice requesting the enterprise to cease immediately the conduct of such line of business. If the enterprise continues to conduct the prohibited line of business, the provincial business registration office shall revoke the business registration certificate and notify the competent State bodies for resolution in accordance with law.
6. Upon proclamation of any breach committed by an enterprise in accordance with clauses 1, 2, 3, 4 and 5 of this article, the provincial business registration office shall require the enterprise to carry out procedures for dissolution in accordance with article 112.5 of the *Law on Enterprises*. If a dissolution file is not received within six months from

the date of the decision on revocation of the business registration certificate, the enterprise shall be deemed to have been dissolved and the provincial business registration office shall remove the name of the enterprise from the business register. In such case, the legal representative, all members (in the case of a limited liability company), the company owner (in the case of a one member limited liability company), all members of the Board of Management (in the case of a shareholding company) and all partners shall be jointly liable for outstanding debts (if any) of the enterprise which has been dissolved.

CHAPTER V

Business Registration of Individual Household Businesses

Article 24 *Individual household businesses*

1. An individual household business is owned by an individual or a household, may be registered for business at one location only, conducts business at a fixed location, does not employ more than ten (10) employees, does not have a seal, and shall be liable for its business activities to the extent of the whole of its assets.
2. Individual household businesses which engage in agricultural, forestry and fishery production or salt-making or which are street vendors or service providers earning low income shall not be required to register their businesses. People's committees of cities and provinces under central authority shall stipulate the applicable level of income within their locality, whereby individual household businesses and service providers earning income below such level shall not be required to register their businesses. The stipulated level of income may not be higher than the threshold at which high income earners must pay personal income tax.
3. Any individual household business which employs more than ten (10) employees or which has more than one business location shall be required to convert to become an enterprise.

Article 25 *Right to carry out business registration*

1. All Vietnamese citizens who have reached the age of eighteen (18) years having full capacity for civil acts and households shall have the right to carry out business registration in accordance with the provisions of this Chapter, except minors, persons whose capacity for civil acts is reduced or lost, and persons who are subject to criminal prosecution, who are serving prison sentences, or who have had their practising right revoked by a court.

2. All individuals and household businesses stipulated in clause 1 of this article shall conduct business registration for one individual household business only.

Article 26 *Order and procedures for business registration of individual household businesses*

1. An individual or the representative of a household shall submit an application for business registration as an individual household business to the district business registration office where the business is located.
2. The application for business registration shall comprise:
 - (a) Full name, identity card number, signature and residential address of the individual or representative of the household;
 - (b) Address of business location;
 - (c) Lines of business;
 - (d) Business capital.

In the case of lines of business which require practising certificates as prescribed by laws, ordinances or decrees, a valid copy of the practising certificate of the individual or representative of the household must be attached to the application.

A district business registration office shall not require a business registration applicant to submit any document other than those stipulated in this clause.

3. Upon receipt of an application, a district business registration office shall provide a receipt and, within seven days from the date of receipt of the application, issue a business registration certificate to the individual household business if it satisfies the following conditions:
 - (a) Line of business is not on the list of prohibited lines of business;
 - (b) Where the individual household business has a special name, such name is not identical to that of an individual household business already registered in the district;
 - (c) Business registration fees as required have been paid in full.

A district business registration office shall not have the right to delay or refuse business registration of an individual household business for any reason.

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 certificate has still not been received after fifteen (15) days from the date of submission of an application file for business registration, the applicant on behalf of the individual household business shall have the right to lodge a complaint with the district business registration office to which the application file was submitted. If there has been no response received from the district business registration office after seven days from the date of lodging the complaint, the applicant on behalf of the individual household business shall have the right to lodge a complaint with the people's committee of the district or to issue proceedings in the administrative court of the locality where the application file for business registration was submitted, in accordance with law.

Article 27 *Commencement of business*

An individual household business may conduct its business activities after the date of issuance of the business registration certificate, unless it conducts a conditional line of business.

Article 28 *Registration of change to items of business registration*

1. In the case of any change to the registered contents of business registration, an individual household business shall notify such change to the district business registration office which issued the business registration certificate.
2. In the case of transfer of the business location to another district, an individual household business shall surrender the business registration certificate to the district business registration office which issued it and shall conduct business registration at the district business registration office where the new business location is situated.
3. In the case where business activities are suspended for thirty (30) or more days, an individual household business shall notify the district business registration office which issued its business registration certificate and also the tax office which directly manages the district business registration office.
4. When an individual household business terminates its business activities, it must surrender its business registration certificate to the district business registration office at which the individual household business is registered.

CHAPTER VI

Implementing Provisions

Article 29 *Dealing with breaches*

1. State employees or officers who request persons establishing enterprises to submit additional documents or to conduct additional procedures or who impose conditions for business registration which are contrary to this Decree; or who are authoritarian, extort or cause trouble to organizations and individuals while resolving business registration or checking registered items shall be subject to disciplinary action in accordance with law.
2. State employees or officers who refuse to issue business registration certificates to persons satisfying conditions or who issue business registration certificates to persons not satisfying conditions shall, depending on the nature and seriousness of the breach, be subject to disciplinary action or criminal prosecution in accordance with law.

Where any loss is caused by a breach of the provisions of this clause, the State employee or officer concerned must compensate the organization or individual which suffered loss.

3. Persons committing any of the following breaches shall, depending on the nature and seriousness of the breach, be subject to administrative penalty or criminal prosecution in accordance with law:
 - (a) Conducting business in the form of a private enterprise, limited liability company, shareholding company, partnership or individual household business without carrying out business registration in accordance with this Decree;
 - (b) Continuing to conduct business after revocation of a business registration certificate;
 - (c) Declaring dishonestly, inaccurately or beyond the time-limit any change in registered items of an enterprise;
 - (d) Valuing assets contributed as capital deliberately higher than their actual value;
 - (dd) Failing to submit annual financial statements to the business registration office or tax office, or submitting untruthful or inaccurate statements;

- (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 effect after fifteen (15) days from the date of its publication in the Official Gazette. All previous provisions which are inconsistent with this Decree are hereby repealed.
2. This Decree shall replace Decree 02-2000-ND-CP of the Government dated 3 February 2000 on Business Registration.
3. Joint Circular 05-2000-TTLB-BKH-TCCBCP of the Ministry of Planning and Investment and the Government Personnel Committee (now the Ministry of Interior) dated 7 June 2000 on guidelines on organization of provincial and district business registration offices is hereby repealed.

Article 31 *Guidelines for implementation*

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

The Minister of Planning and Investment shall reach agreement with the Minister of Interior on promulgation of regulations on staffing and standards required of staff in business registration offices.

The Minister of Planning and Investment shall provide guidelines for implementation of this Decree.

For the Government
The Prime Minister

PHAN VAN KHAI