

THE GOVERNMENT

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

Pursuant to the November 29, 2005 Investment Law;

Pursuant to the November 29, 2005 Enterprise Law;

At the proposal of the Minister of Planning and Investment,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Scope of regulation

This Decree provides for:

1. The re-registration and transformation stipulated in Clauses 2 and 3, Article 170 of the Enterprise Law of foreign-invested enterprises which have been granted investment licenses under the Law on Foreign Investment in Vietnam; and the registration for new investment certificates stipulated in Clause 1, Article 88 of the Investment Law by parties to business cooperation contracts which have been granted investment licenses under the Law on Foreign Investment in Vietnam.
2. Rights and obligations of foreign-invested enterprises which are not required to make re-registration under the Enterprise Law and the Investment Law; the adjustment of investment licenses of foreign - invested enterprises which are not re-registered or do not register for new investment certificates.

Article 2.- Subjects of application

1. Foreign-invested enterprises which have been granted investment licenses under the Law on Foreign Investment in Vietnam, including:
 - a/ Joint venture enterprises;
 - b/ Enterprises with 100% foreign capital;
 - c/ Foreign-invested joint-stock companies set up under the Government's Decree No. 38/2003/ND -CP of April 15, 2003, on transformation of a number of foreign -invested enterprises into joint-stock companies.
2. Investment projects in the form of business cooperation contract, which have been granted investment licenses under the Law on Foreign Investment in Vietnam.

Article 3.- Interpretation of terms

1. "Re-registration" means the business registration according to the provisions of the Enterprise Law by a foreign-invested enterprise set up under the Law on Foreign Investment in Vietnam in order to execute

an investment project under the Investment Law and be granted a new investment certificate but not changing the type of enterprise stated in the granted investment license; the investment certificate is concurrently the business registration certificate.

2. "Enterprise transformation" means the transformation of the type of enterprise by a foreign -invested enterprise under the Enterprise Law and the Investment Law for which a new investment certificate is granted.

3. "Registration for a new investment certificate" means the registration by the parties to a business cooperation contract to convert the investment license into an investment certificate.

4. "Re-registered enterprise" means a foreign-invested enterprise which is granted a new investment certificate under the Enterprise Law and the Investment Law in replacement of the investment license granted under the Law on Foreign Investment in Vietnam.

5. "Transformed enterprise" means a foreign-invested enterprise which changes its form under the Enterprise Law and the Investment Law and is granted a new investment certificate.

6. "Enterprise which is not re-registered" means an enterprise which does not make re-registration within 2 years after the effective date of the Enterprise Law.

7. "Valid copy" means a notarized copy or a copy authenticated by the agency granting the original.

Article 4.- Right to decide on re-registration or transformation of enterprises

1. A foreign-invested enterprise may decide on its re-registration or transformation in accordance with the provisions of the Enterprise Law, the Investment Law and this Decree.

2. The party to a business cooperation contract may decide to register for a new investment certificate, for projects which have been granted investment licenses under the Investment Law.

Article 5.- Investment certificates and the competence to grant investment certificates

1. Investment certificates shall be made according to a form set by the Ministry of Planning and Investment. The investment certificate is concurrently the business registration certificate.

2. The competence to grant investment certificates and the state management of re-registered and transformed enterprises shall be as stipulated in the Government's Decree guiding the implementation of a number of articles of the Investment Law.

Chapter II

RE-REGISTRATION AND TRANSFORMATION OF FOREIGN -INVESTED ENTERPRISES

Article 6.- Forms of re-registration of enterprises

1. A joint-venture enterprise or an enterprise with 100% foreign capital with two or more owners shall be re-registered into a limited liability company with two or more members.

2. An enterprise with 100% foreign capital invested by a foreign organization or individual shall be re-registered into a one-member limited liability company.

3. A foreign-invested joint-stock company set up under the Government's Decree No. 38/2003/ND -CP of April 15, 2003, shall be re-registered into a joint-stock company.

Article 7.- Dossiers of re-registration of enterprises

A dossier of re-registration of an enterprise comprises:

1. A written application for re-registration of the enterprise, signed by the representative at law of the enterprise.
2. The draft charter of the enterprise, which has been amended to comply with the provisions of enterprise law.
3. Valid copies of the investment license and modified licenses.

If, when making re-registration, the enterprise requests the modification of the contents related to business registration and the investment project, the above dossier must also comprise documents required by law for the modified contents.

The investment certificate-granting agency may not ask enterprises to submit papers other than those specified in this Article.

Article 8.- Order and procedures for re-registration of enterprises

1. The enterprise applying for re-registration shall submit a dossier specified in this Decree to the investment certificate-granting agency according to the provisions of Clause 2, Article 5 of this Decree and be accountable for the truthfulness and accuracy of the contents of the re -registration dossier.
2. Within 15 working days after receiving a complete and valid dossier, the investment certificate-granting agency shall consider and grant an investment certificate. If refusing to grant a certificate, or requesting modification of the dossier, it shall clearly notify in writing the enterprise of the reasons thereof.

Article 9.- Rights and obligations of re-registered enterprises

1. Re-registered enterprises shall take over all legitimate rights and interests, and be responsible for unpaid debts, labor contracts and other obligations of pre -re-registered enterprises.
2. A re-registered enterprise has the following rights:
 - a/ To operate under the investment certificate;
 - b/ To retain its registered name, seal, account and tax identification number.
 - c/ Other rights provided for in the Enterprise Law and the Investment Law.
3. A re-registered enterprise has the obligations defined in the Enterprise Law and the Investment Law.

Article 10.- Forms of transformation of enterprises

1. A joint-venture enterprise or an enterprise with 100% foreign capital with two or more owners shall be transformed into a one-member limited liability company.

2. An enterprise with 100% foreign capital invested by a foreign organization or individual shall be transformed into a limited liability company with two or more members.
3. A foreign-invested enterprise being a limited liability company shall be transformed into a joint -stock company and vice versa.

Article 11.- Conditions for transformation of enterprises

1. To be-transformed enterprises must satisfy the conditions set in the Enterprise Law applicable on a case-by-case basis.
2. When enterprises are transformed into joint-stock companies, owners of foreign-invested enterprises must be founding shareholders. When an enterprise has many owners, at least one of them must be a founding shareholder.

Article 12.- Dossiers of transformation of enterprises

1. A dossier of transformation of an enterprise comprises:

a/ A written application for transformation of the enterprise clearly stating the contents of transformation, signed by the representative at law of the enterprise;

b/ The draft charter of the enterprise, which is compliant with the enterprise law;

c/ The decision on enterprise transformation, issued by the owner of the enterprise with 100% foreign capital, the management board of the joint-venture enterprise, or the General Meeting of Shareholders of the foreign-invested joint-stock company. Such a decision must contain the following principal contents: names and addresses of the head offices of the pre-transformed enterprise and transformed enterprise; time limit and conditions for the transfer of property, contributed capital amounts, shares or bonds of the foreign-invested enterprise to the transformed enterprise; plan on employment of laborers; and time limit for transformation.

The decision on enterprise transformation must be sent to all creditors and notified to the enterprise's laborers within 15 days after it is approved;

d/ Valid copies of the investment license and modified licenses.

2. When, upon transformation, new members are added, the above dossier must also comprise:

a/ For a new member being an individual: a copy of the identity card, passport or other lawful personal identification paper;

b/ For a new member being a legal person: a copy of the establishment decision, business registration certificate or other paper of equivalent validity of the legal person; the authorization decision, identity card, passport or other lawful personal identification paper of the authorized representative.

For a new member being a foreign legal person, the copies of the business registration certificate and charter must be authenticated by the agency where the legal person makes registration within 3 months before the date of submission of the dossier.

3. When, upon transformation, the enterprise requests modification of contents related to business registration and the investment project, the transformation dossier must also comprise documents required by law for the to be-modified contents.

Article 13.- Order of transformation of enterprises

1. The enterprise transformation may be carried out after or at the same time with the re -registration of foreign-invested enterprises.

2. The to be-transformed enterprise shall submit a dossier provided for in this Decree at the investment certificate-granting agency under the provisions of Clause 2, Article 5 of this Decree and be responsible for the truthfulness and accuracy of the contents of the enterprise transformation dossier.

3. Within 30 working days after receiving a complete and valid dossier, the investment certificate -granting agency shall consider and grant an investment certificate. If refusing to grant a certificate or requesting modification of the dossier, it shall clearly notify in writing the enter prise of the reasons therefor.

Article 14.- Rights and obligations of transformed enterprises

1. Transformed enterprises shall take over all legitimate rights and interests, and be liable for unpaid debts, labor contracts and other obligations of pre -transformed enterprises.

2. A transformed enterprise is entitled to operate under its investment certificate; to continue to enjoy investment preferences stated in the investment license, for licensed investment projects in which foreign investors hold at least 30% of the charter capital; and to other rights specified in the Enterprise Law and the Investment Law.

3. A transformed enterprise has the obligations defined in the Enterprise Law and the Investment Law.

Article 15.- Re-registration and transformation of enterprises in case of commitment to transfer assets without indemnification

1. Foreign-invested enterprises whose foreign investors have committed to transfer without indemnification the invested assets at the end of the operation duration to the Vietna mese Government may be re-registered or transformed under this Decree if satisfying the following conditions:

a/ Not changing the commitment to transfer their assets without indemnification, for licensed projects;

b/ Taking over and continuing to execute i nvestment projects related to the assets which the foreign investors have committed to transfer without indemnification.

2. In case of changes in the contents related to the transfer without indemnification, the re -registration and transformation under the provisions of this Decree must be approved by the Prime Minister.

Chapter III

REGISTRATION FOR NEW INVESTMENT CERTIFICATES

Article 16.- Cases of registration for new investment certificates

The registration for new investment certificates under the provisions of Article 88 of the Investment Law applies to investment projects in the form of business cooperation contract which were licensed before July 1, 2006.

Parties to business cooperation contracts that request the re-registration of investment projects under the Investment Law shall carry out procedures for registration for a new investment certificate under this Decree.

Article 17.- Dossiers of registration for new investment certificates

A dossier of registration for a new investment certificate comprises:

1. A written application for a new investment certificate, signed by the parties to the business cooperation contract.
2. Valid copies of the investment license and modified licenses.

When the parties to a business cooperation contract request modification of the contents related to the investment project and business cooperation contract, the above dossier must also comprise documents required by the investment law for the to be -modified contents.

The investment certificate-granting agency may not request parties to business cooperation contracts to submit papers other than those specified in this Article.

Article 18.- Order and procedures for registration for new investment certificates

1. The parties to a business cooperation contract shall submit a dossier specified in this Decree to the investment certificate-granting agency under the provisions of Clause 2, Article 5 of this Decree and be responsible for the truthfulness and accuracy of the contents of the dossier of registration for a new investment certificate.
2. Within 7 working days after receiving a complete and valid dossier, the investment certificate -granting agency shall consider and grant an investment certificate. If refusing to grant a certificate or requesting modification of the dossier, it shall clearly notify in writing the enterprise of the reasons therefor.

Article 19.- Rights and obligations of parties to business cooperation contracts

1. To operate under new investment certificates.
2. To take over the rights and obligations specified in the granted investment licenses and modified licenses, the approved business cooperation contracts and the Investment Law.

Chapter IV

FOREIGN-INVESTED ENTERPRISES WHICH ARE NOT RE-REGISTERED AND BUSINESS COOPERATION CONTRACTS FOR WHICH INVESTMENT CERTIFICATES ARE NOT RENEWED

Article 20.- Rights and obligations of enterprises which are not re-registered

1. An enterprises which is not re-registered has the rights:

a/ To continue to operate under the granted investment license and enterprise charter; to propose the modification of the investment license when necessary, except the modification of business lines and operation duration;

b/ To retain its registered name, seal, account and tax identification number;

c/ Other rights provided for by the Enterprise Law and the Investment Law.

2. An enterprises which is not re-registered has the obligations:

a/ To operate only within the business lines and duration specified in the granted investment license. The granted investment license is concurrently the business registration certificate;

b/ To observe the provisions of the Enterprise Law, the Investment Law and relevant laws.

Article 21.- Rights and obligations of parties to business cooperation contracts for which investment certificates are not renewed

1. The parties to a business cooperation contract may continue to operate under the granted investment license and the approved business cooperation contract.

2. The parties to a business cooperation contract are obliged to observe the provisions of the Investment Law and relevant laws.

Article 22.- Modification of investment licenses of enterprises which are not re-registered and business cooperation contracts for which investment certificates are not renewed

1. If, in the course of operation, foreign-invested enterprises which are not re-registered and parties to business cooperation contracts for which investment certificates are not renewed wish to modify their investment licenses, their demand shall be considered, except the modification of business lines and operation duration.

2. The investment certificate-granting agency shall approve the proposals to modify investment licenses of enterprises which are not re-registered or parties to business cooperation contracts in the form of certificates of modification of investment licenses; such a certificate of modification constitutes part of an investment license.

3. The investment certificate-granting agency shall issue a document approving the modification without modifying the investment license in the following cases:

a/ The enterprise opens a transaction office, goods store or shop for display of products (other than a production unit) in the province or centrally run city where the enterprise is headquartered;

b/ The enterprise moves its head office within the province or centrally run city.

Article 23.- Dossiers, order and competence to modify investment licenses

1. Depending on the to be-modified contents of their investment licenses, enterprises which are not re-registered and parties to business cooperation contracts for which investment certificates are not renewed shall make dossiers of modification as stipulated in the Decree guiding the implementation of a number of articles of the Investment Law and send them to investment certificate-granting agencies.

2. The order and competence to grant certificates of modification of investment licenses shall comply with the provisions on decentralization of state management of investment in the Decree guiding the implementation of a number of articles of the Investment Law.

Chapter V

IMPLEMENTATION PROVISIONS

Article 24.- Implementation provisions

1. This Decree takes effect 15 days after its publication in “CONG BAO.”
2. The Minister of Planning and Investment shall, based on this Decree, promulgate the form of dossier of enterprise re-registration and transformation; the form of proposal for a new investment certificate; and the form of certificate of modification of an investment license.
3. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, and presidents of provincial/municipal People’s Committees shall implement this Decree.

On behalf of the Government
Prime Minister
NGUYEN TAN DUNG