

Legal news

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ENTERPRISE LAW

A pathfinder for businesses

By Pham Thi Cuc

Reports about Vietnam's business environment in past years have revealed that its business registration procedures were complicated and costly in comparison to the rest of the world.

After taking this information into consideration and following improvements in the Enterprises Law and its implementing instruments, the ministries of Planning and Investment, Finance and Public Security have issued joint circular No. 05/2008/TTLT-BTC-BCA on 29 July 2008, providing guidelines on coordination mechanisms between state authorities in charge of business, tax and stamp sample registrations for enterprises in accordance with the Enterprise Law ("Circular 05"). This Circular replaces joint circular No. 02/2007/TTLT/BKH-BTC-BCA dated February 27, 2007 ("Circular 02") and regulations on business registration code stipulated in Part 1, Section V of Circular 03/2006/TT-BKH dated October 19, 2006. The new Circular is expected to cut down on administrative costs for business entities.

First, Circular 05 more clearly determines responsibilities of competent state authorities and applicants in respect to application files for business registration. Accordingly, business registrars will be responsible for sufficient application files. Likewise, applicants will be responsible for their accuracy and honesty. In the spirit of this Circular, the business registrars are neither entitled nor obliged to value or give comments on the accuracy or honesty of application files. The applicant shall be solely responsible for information in the application files throughout the enterprise's life. Circular 05 further stipulates that all disputes arising between the enterprise's members will be subject to a Vietnamese court's jurisdiction in accordance with the Civil Proceeding Code of 2004, regardless of whether such disputes have a foreign factor. This provision prohibits recourse to arbitration or foreign court proceedings in solving such disputes.

Merging business and tax registration certificates into a single unique certificate is one of the most remarkable aspects of Circular 05. Before, the main documents required to prove the legal status of an enterprise included business registration, tax registration and stamp sample registration certificates. Now, under Circular 05, business codes are eliminated and tax codes are used in conjunction with enterprise codes, which are shown in the business registration certificate granted to the enterprise. The enterprise code is unique for each enterprise.

As a result, application files and procedures for business and tax registrations are significant streamlined, especially from the point of view of the applicant. Previously, the applicant had to prepare two sets of dossiers, even though some contents were the same, and then had to submit them to state authorities to apply for two certificates. From now on, only one set of dossiers needs to be submitted for tax and business registrations. Tax registration statements related to a newly established

enterprise or tax registration change statement when a change in business registration leads to a change in tax registration shall be kept along with files an the enterprise's establishment or business registration change.

The above amelioration shortens time for business registration as well as for changing business registrations. The time limit for obtaining a business and tax registration certificate is five working days upon the submission date of proper application dossiers-- 10 fewer working days than in the previous version. These changes not only diminish a business entity's burden in terms of administrative expenses and time, but also lessen chances for misappropriation by business experts. However, the extent of advantages gained from these changes will much depend on how Circular 05 is applied in practice.

It seems clear that Circular 05 has an impact on all current and future enterprises, including branches and representative offices. Circular 05 does not request all established enterprises, which have two separate tax codes and business codes, to register a change of business code immediately. Instead the change may be implemented in conjunction with an enterprise's request to change its business registration. In this case, the original copy of tax code registration must be submitted to the business registrar along with the application files for business registration change as prescribed by prevailing law.

The great advantages brought by Circular 05 cannot be denied, but there are still some points that remain unclear. For example:

- Circular 05 states that the business registrar shall play a role in receiving application dossiers and handling administrative procedures with respect to business registration, including tax registration. However, this Circular also stipulates that when the contents of tax registration statements are changed, the enterprise has to submit a new statement to the tax authority within 10 days from the date of the change. In fact, only some of the information included in the statement on tax registration is shown in the business and tax registration certificate. For changes that result in business and tax registration certificate changes, does the enterprise have to submit application files to the business registrar and a new statement of tax registration to the tax authority? Or is it only changes that do not result in change of business and tax registration that need to be notified to the tax authority?
- Circular 05 applies to enterprises established and operated in accordance with the Enterprise Law. It is not clear whether Circular 05 governs foreign investment enterprises that have been granted investment certificates or only enterprises that are registered with business registrars. Decree 139/2007/ND-CP, guiding the implementation of the Enterprise Law, allows foreign investors to acquire unlimited shares or equity of a domestic enterprise. For acquisitions up to 99 percent, these procedures are to be carried out in the business registrars under departments of planning and investment. However, in practice, due to a lack of specific procedural provisions, some business registrars refuse applications for changing registrations regarding the purchase of more than 49 per cent of total shares or equity. Are procedures different for these types of foreign investment

enterprises which have been granted a business registration certificate rather than an investment certificate?

Overall, in consideration of the progress that has been made in regards to business registration procedures, Circular 05 is highly appreciated and is expected to create a more streamlined legal environment for the operation and development of enterprises in Vietnam.

Other Sectors

Finance

- On August 29, 2008, the State Bank of Vietnam stipulated Decision No.1907/QD-NHNN on interest rates applied to obligatory reservation deposits in Vietnamese Dong for credit institutions.
- Decision No.1906/QD-NHNN of the State Bank of Vietnam, dated August 29, 2008 on the basic interest rate in Vietnamese Dong.
- On August 27, 2008, the Prime Minister issued Decision No.118/2008/QD-TTg promulgating the Statutes on financial management for activities of rescue, safeguard and response to natural calamities and catastrophes.
- Decision No.115/2008/QD-TTg of the Prime Minister, dated August 27, 2008 promulgating the regulations on public management and use of State-owned assets in State authorities, public non-business professional units and organizations entrusted to manage and use State-owned assets.
- On August 28, 2008, the Ministry of Finance stipulated Circular No.75/2008/TT-BTC guiding the management of investment capitals from communal budget sources.

Taxation

- Decision No.119/2008/QD-TTg of the Prime Minister, dated August 29, 2008 promulgating the absolute rates of export tax applied to raw ores and fine ores of cooper.
- On August 5, 2008, the Ministry of Finance issued Decision No.67/2008/QD-BTC on the amendment of rates of preferential import tax applied to a number of items in the preferential import tariff.
- Decision No.1636/QD-TCHQ of the General Department of Customs, dated August 4, 2008 promulgating a process of inspection and determination of taxable value for exported and imported goods.

Trade

- On August 27, 2008, the Ministry of Finance stipulated Decision No.69/2008/QD-BTC promulgating the minimum selling prices of cigarettes.
- Decision No.88/2008/QD-BNN of the Ministry of Agriculture and Rural Development, dated August 22, 2008 promulgating a "List of breeding foods and raw materials of breeding foods imported to Vietnam under HS Codes".

- On August 22, 2008, the People's Committee of Hanoi City issued Decision No.03/2008/QD-UBND providing the functions, duties, authority and apparatus organization of the Department of Industry and Trade of Hanoi City.
- Decision No.26/2008/QD-BCT of the Ministry of Industry and Trade, dated August 7, 2008 promulgating this Ministry's Programme on the popularization of and education regarding laws from 2008 to 2012.
- On August 6, 2008, the Ministry of Industry and Trade stipulated Decision No.4379/QD-BCT on the establishment of regional Export and Import Management Bureaux in Nghe An, Thanh Hoa and Tien Giang provinces, and Can Tho City.
- Decision No.4376/QD-BCT of the Ministry of Industry and Trade, dated August 6, 2008 providing the functions, duties and authority of the Trade Offices in countries and territories around the world.
- On August 1, 2008, the Ministry of Industry and Trade issued Decision No.24/2008/QD-BCT on the application of an automatic import licensing regime for a number of items.
- Decision No.23/2008/QD-BCT of the Ministry of Industry and Trade, dated July 31, 2008 on the addition to quota for import of salt in Article 1 of Decision No.014/2007/QD-BCT of the Minister of Industry and Trade, dated December 28, 2007 on the quotas for imported goods in 2008.
- On July 31, 2008, the Ministry of Industry and Trade stipulated Decision No.22/2008/QD-BCT promulgating the Statutes on border markets, border-gate markets and markets in border-gate economic zones.
- Decision No.21/2008/QD-BCT of the Ministry of Industry and Trade, dated July 31, 2008 promulgating the Statutes on operation of the Steering Committee for frontier commercial activities with countries bordering Vietnam.
- On July 25, 2008, the Ministry of Industry and Trade issued Circular No.10/2008/TT-BCT guiding the implementation of a number of articles in Decree No.40/2008/ND-CP, dated April 7, 2008 on the production of and business in alcohols.

Health

- Decision No.120/2008/QD-TTg of the Prime Minister, dated August 29, 2008 providing the conditions to determine exposure to HIV due to occupational accidents and risks.
- On August 27, 2008, the Prime Minister stipulated Decision No.117/2008/QD-TTg on the adjustment of rates of payment for health insurance regarding people enjoying social policies.

- Decision No.31/2008/QD-BYT of the Ministry of Health, dated August 22, 2008 announcing a list of legal instruments issued by this Ministry until December 31, 2007, which are invalid.
- On August 19, 2008, the Ministry of Health issued Decision No.30/2008/QD-BYT promulgating guidelines for diagnosis, handling and contagion prevention of gripe A (H5N1) in humans.
- Decision No.29/2008/QD-BYT of the Ministry of Health, dated August 18, 2008 promulgating the code of conducts of officers and official servants in health care non-business professional units.

Transport

- On August 29, 2008, the Ministry of Transport stipulated Decision No.15/2008/QD-BGTVT promulgating the regulations on the registration of means of inland waterway transport.
- Decision No.14/2008/QD-BGTVT of the Ministry of Transport, dated August 21, 2008 promulgating the regulations on the recognition and management of activities of specialist laboratories in the transport construction branch.
- On August 6, 2008, the Directorate for Standards and Quality issued Decision No.1024/QD-TDC guiding the evaluation to certify the standard satisfaction for motorcycle helmets.
- Decision No.13/2008/QD-BGTVT of the Ministry of Transport, dated August 6, 2008 approving the adjustment of and supplement to the master plan on Vietnam's development of inland waterway transport until 2020.
- On August 20, 2008, the Ministry of Public Security stipulated Circular No.12/2008/TT-BCA on the amendment of and supplement to a number of provisions of this Ministry's Circular No.01/2007/TT-BCA-C11, dated January 2, 2007, on the organization of registration and grant of number plates to vehicles of land road transport.

Environment

- Decision No.116/2008/QD-TTg of the Prime Minister, dated August 27, 2008 providing the functions, duties, authority and organizational structure of the Vietnam Sea and Island General Department under the Ministry of Natural Resources and the Environment.
- On August 4, 2008, the Ministry of Industry and Trade issued Decision No.25/2008/QD-BCT approving the zoning plan for exploration, exploitation, processing and use of gemstone ores, rare earth, and uranium for the period until 2015 with consideration to 2025.

- Decision No.105/2008/QD-TTg of the Prime Minister of the Prime Minister, dated July 21, 2008 approving the plan on exploration, exploitation, and use of minerals for the production of cement in Vietnam until 2020.
- On August 28, 2008, the Ministry of Agriculture and Rural Development stipulated Circular No.90/2008/TT-BNN guiding the settling "forest animals that have been confiscated as exhibits".

Science - Technology

- Decision No.11/2008/QD-BKHHCN of the Ministry of Science and Technology, dated August 29, 2008 on the amendment of and supplement to the "List of measurement instruments, which should be verified" accompanying Decision No.13/2007/QD-BKHHCN of the Minister of Science and Technology, dated July 6, 2007.
- On August 11, 2008, the Ministry of Agriculture and Rural Development issued Decision No.86/2008/QD-BNN promulgating the Statutes on the recognition of technical progresses and new technologies of the Agriculture and rural development branch.
- Decision No.66/2008/QD-BTC of the Ministry of Finance, dated August 4, 2008 promulgating a "national technical code on national reserve regarding generators".
- On August 4, 2008, the Ministry of Finance stipulated Decision No.65/2008/QD-BTC promulgating a "National technical code on national reserve regarding preserved rices separately poured in low pressure conditions".
- Decision No.09/2008/QD-BKHHCN of the Ministry of Science and Technology, dated August 1, 2008 promulgating the "regulations on the management of imperative scientific and technological duties newly arisen in localities".

Post - Telecommunications

- On August 28, 2008, the Government issued Decree No.97/2008/ND-CP on the management, provision, and use of internet services and electronic information on the internet.
- Decision No.48/2008/QD-BTTTT of the Ministry of Information and Communication, dated August 29, 2008 promulgating the 4 (four) first digitals of the National postal code.

Interior Affairs

- On July 31, 2008, the Government Office stipulated Decision No.993/QD-VPCP providing the functions, duties, authority and organizational structure of the Departments and Units under the Government Office.

- Decision No.04/2008/QD-UBND of the People's Committee of Hanoi City, dated August 28, 2008 providing the functions, duties, authority and organizational structure of the Department of Interior Affairs of Hanoi City.

Miscellaneous

- On August 27, 2008, the Standing Committee of the National Assembly issued Ordinance No.05/2008/UBTVQH12 on the procedures for seizure of seagoing vessels.
- Decision No.121/2008/QD-TTg of the Prime Minister, dated August 29, 2008 approving the master planning on Vietnam's development of construction materials until 2020.
- On August 29, 2008, the People's Committee of Ho Chi Minh City stipulated Decision No.68/2008/QD-UBND promulgating the Statutes on protection of State secrets in the area of Ho Chi Minh City.
- Decision No.49/2008/QD-BGDĐT of the Ministry of Education and Training, dated August 25, 2008 promulgating the Regulation on the organization and operation of boarding-schools for pupils from minority ethnicities.
- On August 8, 2008, the Prime Minister issued Decision No.108/2008/QD-TTg providing the functions, duties, authority and organizational structure of the National Border Committee under the Ministry of Foreign Affairs.
- Decision No.1015/2008/QD-BKH of the Ministry of Planning and Investment, dated August 6, 2008 providing the sample card of Inspectors under this Ministry, and the management and use of such cards.
- On August 1, 2008, the People's Committee of Hanoi City stipulated Decision No.01/2008/QD-UBND providing the percentage (%) in sharing sources of revenues through fees for land use and land rentals generated through bidding to select an investor for projects using land in the area of Hanoi City.
- Decision No.77/2008/QD-BVHTTDL of the Ministry of Culture, Sports and Tourism, dated August 28, 2008 promulgating the standard statutes on the organization and operation of communal libraries.

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