

GOVERNMENT

No.: 37/2017/ND-CP

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Hanoi, April 04, 2017

DECREE

ON REQUIREMENTS FOR SEAPORT OPERATIONS

Pursuant to the Law on Government Organization dated June 19, 2015;

Pursuant to the Vietnam Maritime Code dated December 08, 2015;

Pursuant to the Law on Investment dated November 26, 2014 and the Law on amendments to Article 6 and Appendix 4 on the list of conditional business lines stipulated in the Law on Investment;

Pursuant to the Law on Enterprises dated November 26, 2014;

At the request of Minister of Transport;

The Government has promulgated the requirements for seaport operations.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Decree deals with requirements for seaport operations, including the operation of: Seaports, port terminals, wharves, floating terminals, anchorage, transshipment areas, offshore oil terminals (hereinafter referred to as “seaports”).

Article 2. Regulated entities

This Decree is applied to organizations and individuals involved in seaport operations in Vietnam.

Article 3. Definitions

For the purposes of this Decree, the terms below shall be construed as follows:

1. Seaport operations consist of activities related to the direct operation of a seaport.

2. A port-operating enterprise is an enterprise that directly runs a seaport.

Article 4. Rules for operating a seaport

1. According to this Decree, an enterprise may only run a seaport after it obtains the Certificate of eligibility for seaport operations.

2. A port-operating enterprise shall run its seaport in accordance with the right purposes and functions of the seaport announced.

3. A port-operating enterprise shall maintain the fulfillment of all requirements prescribed in this Decree and other relevant provisions of law during its operation.

Chapter II

REQUIREMENTS FOR SEAPORT OPERATIONS

Article 5. Requirements applied to port-operating enterprises

1. Port-operating enterprises shall be established in accordance with regulations of law on enterprises.

2. If a port-operating enterprise is a foreign-invested enterprise providing material handling services, it may only establish a joint venture in which the proportion of the foreign investor's stakes is conformable with the Schedule of Commitments of Vietnam upon its accession to the World Trade Organization (WTO).

Article 6. Organizational structure and human resources

1. The organizational structure of a seaport shall consist of:

- a) A division specialized in the management of seaport operations;
- b) A division specialized in the management of maritime security as prescribe;
- c) A division or a person in charge of labor safety and hygiene as regulated.

2. Human resource requirements:

- a) The person in charge of managing seaport operations shall achieve a bachelor's degree or higher degree in maritime, economics or trade and have at least 05-year experience of working in the field of seaport operations;
- b) Seaport security officers shall be trained and granted Certificates in accordance with the regulations of the Minister of Transport in adherence to the International Ship and Port Facility Security Code (abbreviated as "ISPS Code");

c) The person in charge of seaport labor safety and hygiene shall be trained and granted Certificates of fire prevention and fighting; labor safety and hygiene as prescribed.

Article 7. Required facilities

1. Port-operating enterprises shall ensure adequate facilities, warehouses, storage yards and necessary equipment in accordance with national technical standards applicable to seaports; In the cases where a seaport does not have enough storage areas, the port-operating enterprise shall enter into a warehouse or storage yard lease contract for at least 05 years, unless its operation involves only in floating terminals, anchorage, transshipment areas and/or offshore oil terminals.

2. Port-operating enterprises shall have all material handling equipment, specialized equipment, means of transport and other necessary equipment to meet the requirements for material handling activities and be suitable for functions and purposes of the seaport's operation announced.

Article 8. Labor safety and hygiene and fire safety requirements

1. The port-operating enterprise shall have enough human resources and plans to ensure labor safety and hygiene as prescribed in the Government's Decree No. 39/2016/ND-CP dated May 15, 2016 detailing the implementation of a number of articles of the Law on Labor Safety and Hygiene and the Government's Decree No. 37/2016/ND-CP dated May 15, 2016 detailing and guiding the implementation of a number of articles of the Law on Labor Safety and Hygiene on compulsory insurance of occupational accidents and occupational diseases.

2. The port-operating enterprise shall prepare proper fire safety plans under the Government's Decree No. 79/2014/ND-CP dated July 31, 2014 detailing the implementation of a number of articles of the Law on fire prevention and fighting and the Law on amendments to some articles of the Law on fire prevention and fighting.

Article 9. Environmental safety requirements

1. Means of collecting wastes discharged from ships when operating in seaports shall be adequate as prescribed in the International Convention for the Prevention of Pollution from Ships (MARPOL Convention) to which Vietnam is a signatory.

2. The port-operating enterprise shall have sufficient documents on seaport environmental safety approved by competent authorities under provisions of the Law on Environmental Protection and the Government's Decree No. 18/2015/ND-CP dated February 14, 2015 on environmental safety planning, strategic environmental assessment, environmental impact assessment and environmental safety plans.

3. The human resources, the system, works and equipment for managing and treating the wastes produced within seaport areas shall be adequate as prescribed in Article 68 of the Law on Environmental Protection.

Chapter III

PROCEDURES FOR APPLYING FOR THE CERTIFICATE OF ELIGIBILITY FOR SEAPORT OPERATIONS

Article 10. Procedures for applying for the Certificate of eligibility for seaport operations

1. In order to be issued the Certificate of eligibility for seaport operations (hereinafter referred to as “the Certificate”), the port-operating enterprise (hereinafter referred to as “the applicant”) shall submit 01 set of application to the Vietnam Maritime Department directly or in any other appropriate manner. The application for the Certificate includes:

- a) A completed application form according to the Specimen No. 1 in the Appendix of this Decree;
- b) The Enterprise Registration Certificate: A certified copy or a copy attached to the original for comparison;
- c) A list of titles and labor contracts enclosed with a certified copy or a copy attached to the original for comparing with the degrees and certificates of such titles as stipulated in Clause 2 Article 6 of this Decree;
- d) The applicant’s plan for seaport operations.

2. The Vietnam Maritime Department shall receive the application; if the application is invalid, within 02 working days from the day on which the application is received, the Vietnam Maritime Department shall instruct the applicant to complete their application under provisions stated herein; if the application is valid, the applicant will be given a note of receipt.

3. Within 10 working days from the day on which the valid application is received, the Vietnam Maritime Department shall verify it, issue the Certificate and give it directly or send it by post to the applicant; if the application is rejected, the Vietnam Maritime Department shall send a notice stated clearly the explanation to the applicant.

4. The specimen of the Certificate is provided in the Appendix of this Decree (Specimen No. 2).

Article 11. Procedures for the reissuance of the Certificate

1. The Certificate will be reissued if it is changed, lost or damaged.

2. The applicant shall submit 01 set of application for the reissuance of the Certificate to the Vietnam Maritime Department directly or in another appropriate manner. Such application includes a completed application form according to the Specimen No. 1 in the Appendix of this Decree and other documents related to the change of the Certificate (if any).

3. The Vietnam Maritime Department shall receive the application; if the application is invalid, within 02 working days from the day on which the application is received, the Vietnam Maritime

Department shall instruct the applicant to complete their application under provisions stated herein; if the application is valid, the applicant will be given a note of receipt.

4. Within 05 working days from the day on which the valid application is received, the Vietnam Maritime Department shall verify it, reissue the Certificate and give it directly or send it by post to the applicant; if the application is rejected, the Vietnam Maritime Department shall send a notice stated clearly the explanation to the applicant.

5. Upon the reissuance, the Vietnam Maritime Department shall specify the invalidation of the old Certificate in the new one.

Article 12. Revocation of the Certificate

1. The Certificate shall be revoked in the following cases:

a) The port-operating enterprise fails to meet any of the requirements for seaport operations as prescribed or the revocation is requested by a competent authority if there is evidence that the port-operating enterprise commits a violation that results in revocation of the Certificate;

b) A port-operating enterprise provides wrong information on purpose while following the procedures for issuance of the Certificate;

c) Other cases as prescribed in regulations of law.

2. The Vietnam Maritime Department shall issue the decision on revocation of the Certificate, inform relevant authorities of the revocation of and post the information about the port-operating enterprise whose certificate is revoked on the Vietnam Maritime Department Portal.

Chapter IV

IMPLEMENTATION CLAUSES

Article 13. Responsibilities of relevant authorities and port-operating enterprises

1. The Ministry of Transport shall:

a) Set up unanimous state managing system for seaport operations in Vietnam;

b) Apply the information technology to the management, assessment and recognition of the seaport as well as requirements for seaport operations and relevant data;

c) Inspect, verify and handle violations of regulations on operations and requirements for seaport operations as prescribed herein and other relevant regulations of law;

d) Create, amend, supplement and issue national technical standards related to seaports in order to meet the technology development level at home and abroad.

2. The Ministry of Natural Resources and Environment is responsible for directing and cooperating with the Ministry of Transport on guiding in details the environmental safety plan at the seaport in accordance with regulations of law.
3. The Ministry of Public Security and the Ministry of National Defense are responsible for cooperating closely with the Ministry of Transport on guiding in details the fire safety plans as well as the seaport security plan at the seaport in accordance with regulations of law.
4. The People's Committees of provinces shall ex officio perform the state management for seaports operating in local areas as prescribed in regulations of law.
5. Port-operating enterprises shall meet all requirements for seaport operations prescribed in this Decree and other relevant provisions of law; maintain the fulfillment of such requirements during its operation.

Article 14. Effect

This Decree comes into force from July 01, 2017.

Article 15. Transition clause

A port-operating enterprise which has been running operations in seaports before the effective date of this Decree is entitled to continue its operation providing that it fully meets the requirements stated herein from July 01, 2020.

Article 16. Implementation

1. The Ministry of Transport is responsible for directing and cooperating with relevant ministries, authorities and People's Committee of provinces in the implementation of this Decree.
2. The Ministers, Heads of ministerial-authorities, Heads of governmental-authorities, Chairpersons of People's Committees of provinces and relevant organizations and individuals are responsible for the implementation of this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Xuan Phuc