

THE GOVERNMENT

THE SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No. 108/2018/ND-CP

Hanoi, August 23, 2018

DECREE

ON AMENDMENTS TO SOME ARTICLES OF THE GOVERNMENT’S DECREE NO. 78/2015/ND-CP DATED SEPTEMBER 14, 2015 ON ENTERPRISE REGISTRATION

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

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

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

Pursuant to the Law on Provision of Assistance for Small and Medium-Sized Enterprises dated June 12, 2017;

Pursuant to the Law on Tax Administration dated November 29, 2006;

Pursuant to the Law on Amendments to some Articles of the Law on Tax Administration dated November 20, 2012;

At the request of the Minister of Planning and Investment;

The Government hereby promulgates a Decree to amend some Articles of the Government’s Decree No. 78/2015/ND-CP dated September 14, 2015 on enterprise registration.

Article 1. Amendments to some Articles of the Government’s Decree No. 78/2015/ND-CP dated September 14, 2015 on enterprise registration

1. Clause 4 is added to Article 4 as follows:

“4. The enterprise is not required to append a seal on the application form for enterprise registration, notification of changes of enterprise registration, resolutions, decisions and minutes of meeting in the application for enterprise registration”.

2. Article 11 is amended as follows:

“Article 11. Authorization of enterprise registration

In case the person that has the power to sign the application form for enterprise registration authorizes another organization or individual to follow enterprise registration procedures, the

authorized person must submit one of the personal identification papers prescribed in Article 10 of this Decree (hereinafter referred to as “ID papers”) together with:

1. A legitimate copy of the service contract between the enterprise registration agent, and a letter of introduction; or

2. The letter of attorney as prescribed by law. The letter is not required to be notarized or certified”.

3. Point d of Clause 1 is amended and Clause 3 of Article 16 is repealed as follows:

“d) Instruct Business Registration Offices to digitize applications, standardize data and update local enterprise registration data on National Enterprise Registration Database”.

4. Clause 4 of Article 23 is amended as follows:

“4. Legitimate copies of:

a) One of the ID papers of the company’s owner if the company is owned by is an individual;

b) The decision on establishment or certificate of enterprise registration or an equivalent document of the company’s owner if the company’s owner is an organization (except for the State);

c) The certificate of investment registration if the enterprise is founded by foreign investors or foreign-invested business organizations according to the Law on Investment and its instructional documents.”.

5. Clause 6 is added to Article 25 as follows:

“6. The enterprise may register conversion of an enterprise and register changes of enterprise registration information or notification of other enterprise registration information, except registration of change of the legal representative.

In this case, the application for registration of conversion shall comply with Clauses 1, 2, 3 and 4 of this Article”.

6. Article 25a below is added after Article 25:

“Article 25a. Registering establishment of an enterprise on the basis of conversion from a business household

1. The establishment of an enterprise on the basis of conversion from a business household shall be registered at Business Registration Office of the area where the enterprise’s headquarters is located.

2. The application for registration of enterprise establishment on the basis of conversion from a business household includes an original of the certificate of business household registration, legitimate copy of the tax registration certificate and documents specified in Articles 21, 22 and 23 of this Decree that vary according to the type of business.

3. Within 02 working days from the issuance date of the certificate of enterprise registration, Business Registration Office shall send a copy of the certificate of enterprise registration and original certificate of business household registration to the business registration authority of the district where the business household is located to shut down the business household's operation".

7. Clause 3 of Article 28 is amended as follows:

"3. After the aforementioned deadline, if the certificate of enterprise registration or certificate of change of enterprise registration information is not issued or enterprise registration information on National Enterprise Registration Database is not changed, or no notification of necessary revisions and supplementation to the application for enterprise registration is received, the enterprise or its founder is entitled to lodge a complaint or denunciation as prescribed by regulations of law on complaints and denunciation".

8. Clause 2 of Article 29 is amended as follows:

"2. Every enterprise may submit the application for enterprise registration and receive the certificate of enterprise registration or certificate of change of enterprise registration information directly at Business Registration Office or pay a charge to receive it by post".

9. Clause 2 of Article 33 is amended as follows:

"2. Notification of establishment of business location:

The business location of an enterprise may be located outside its headquarters. Within 10 working days from the date of establishment of business location, the enterprise shall send a notification to Business Registration Office of the area where the business location is located. The notification shall contain:

a) The enterprise ID number;

b) Name and address of the enterprise's headquarters or branch (if the business location is located in a province where the enterprise's branch is located);

c) Name and address of the business location;

d) Business lines of the business location;

dd) Full name, residence, ID number/passport number or number of another ID paper of the head of the business location;

e) Full name and signature of the legal representative of the enterprise if the business location is affiliated to the enterprise; full name, signature of the head of the branch if the business location is affiliated to the branch”.

10. Clause 5 is amended and Clause 6 is added to Article 34 as follows:

“5. When an enterprise or its branch/representative office receives a notification that its seal design has been posted on the National Business Registration Portal, the previous notifications are no longer valid.

6. If the procedures for notifying seal design are followed electronically, the enterprise is not required submit physical documents about the seal design to Business Registration Office”.

11. Clause 3 is amended and Clause 4 is added to Article 36 as follows:

“3. Online applications for enterprise registration must be authenticated with public digital signatures or business registration accounts of one of the following entities:

a) An individual that has the power to sign the application form for enterprise registration as prescribed;

b) A person authorized by the individual specified in Point a Clause 3 of this Article to follow enterprise registration procedures. In this case, the online application for enterprise registration must be submitted together with the documents specified in Article 11 of this Decree.

4. The revision and supplementation to the online application for enterprise registration shall be made within 60 days from the date on which Business Registration Office gives a notification of necessary revisions and supplementation to the application. After the aforementioned deadline, if Business Registration Office does not receive the supplemented application, it will cancel the application for enterprise registration in accordance with the procedures on the National Enterprise Registration Information System”.

12. Article 37 is amended as follows:

“Article 37. Procedures for online enterprise registration using public digital signatures

1. The individual specified in Clause 3 Article 36 of this Decree shall enter information, download electronic documents, append the digital signature on the electronic registration application, and pay fees online according to the procedures on National Business Registration Portal.

2. After the application is sent, the individual specified in Clause 3 Article 36 of this Decree will receive a confirmation slip.

3. If the application is satisfactory, Business Registration Office shall send information to the tax authority to automatically generate an enterprise ID number. After receiving the enterprise ID

number from the tax authority, Business Registration Office shall issue the certificate of enterprise registration and notify the applicant. If the application is not satisfactory, Business Registration Office shall send an electronic notification to the applicant for revision or supplementation of the application.

4. Procedures for online enterprise registration are also applied to registration of the enterprise's branches, representative offices, and business locations”.

13. Article 38 is amended as follows:

“Article 38. Procedures for online enterprise registration using business registration account

1. The individual specified in Clause 3 Article 36 of this Decree shall enter information on National Business Registration Portal in order to be issued with a business registration account.

2. The individual specified in Clause 3 Article 36 of this Decree shall use the business registration account to enter information, download electronic documents, and authenticate the online application for enterprise registration according to the procedures on National Business Registration Portal.

3. After the application is sent, the individual specified in Clause 3 Article 36 of this Decree will receive a confirmation slip.

4. Business Registration Office shall examine the application and send an electronic notification to the applicant for revision or supplementation of the application if it is not satisfactory. If the application is satisfactory, Business Registration Office shall send information to the tax authority to generate an enterprise ID number. After receiving the enterprise ID number from the tax authority, Business Registration Office shall notify the applicant of the issuance of the certificate of enterprise registration.

5. After receiving the notification of issuance of the certificate of enterprise registration, the individual specified in Clause 3 Article 36 of this Decree shall submit a physical application for enterprise registration enclosed with the confirmation slip to Business Registration Office. The individual specified in Clause 3 Article 36 of this Decree may submit a physical application for enterprise registration enclosed with the confirmation slip to Business Registration Office, whether directly or by post.

6. After receiving the physical application, Business Registration Office shall compare documents therein with the documents submitted online and issue the certificate of enterprise registration if they are consistent.

If they are inconsistent, Business Registration Office shall request the applicant to complete the application.

If Business Registration Office does not receive the physical application within 30 days from the date on which the notification of issuance of the certificate of enterprise registration is sent, the online application is no longer valid.

7. The person that has the power to sign the application form for enterprise registration is responsible for the completeness and accuracy of the physical application compared to the online application. In case the physical application is not consistent with the online application but the applicant fails to notify Business Registration Office, it will be considered fraudulent and dealt with as prescribed in Clause 1 Article 63 of this Decree.

8. Procedures for online enterprise registration are also applied to registration of the enterprise's branches, representative offices, and business locations".

14. Article 44 is amended as follows:

“Article 44. Registration of change of charter capital or capital contribution (stake) ratio

1. In case of change of ratio of capital contributions by members of a multi-member limited liability company, of general partners of a partnership, the enterprise shall send a notification to Business Registration Office where the enterprise was registered.

The notification shall contain:

- a) Name, enterprise ID number, TIN, or number of certificate of business registration (in case the enterprise has not had an enterprise ID number or TIN);
- b) Full name, address, nationality, ID number/passport number or number of another ID paper, or number of decision on establishment, enterprise ID number of each member/general partner.
- c) The ratio of capital contribution of each member/general partner;
- d) Registered charter capital and new level of charter capital; time and method of increasing/decreasing capital;
- dd) Full name, nationality, ID number/passport number or number of another ID paper, permanent residence, and signature of the enterprise's legal representative or authorized general partner.

2. In case of change of charter capital, the notification prescribed in Clause 1 of this Article must be enclosed with the decision and legitimate copy of the minutes of meeting of the Board of Members (if the enterprise is a multi-member limited liability company), the General Meeting of Shareholders (if the enterprise is a joint-stock company), or decision of the company's owner (if the enterprise is a single-member limited liability company) on change of charter capital; a written approval for capital contribution, purchase of shares/stakes by foreign investors given by the Department of Planning and Investment of the province in the case mentioned in Clause 1 Article 26 of the Law on Investment.

The decision and minutes of meeting must specify the changes in the company's charter.

3. If the General Meeting of Shareholders ratifies offering of shares to increase charter capital and assigns the Board of Directors to complete procedures for registration of charter capital after the end of each offering, the notification prescribed in Clause 1 of this Article and application for permission to increase charter capital must be enclosed with:

a) A decision and legitimate copy of the minutes of meeting of the General Meeting of Shareholders on offering of shares to increase charter capital, which specifies the quantity of shares offered and that the Board of Directors will complete procedures for registration of charter capital after each offering;

b) A decision and legitimate copy of minutes of meeting of the Board of Directors of the joint-stock company on registration of increase of charter capital after each offering.

4. In case charter capital is decreased, the company must promise to settle all debts and other liabilities after capital decrease.

5. In case the resolution or decision on change of charter capital has been legally approved as prescribed by the Law on Enterprise but a member or shareholder is dead, lost or absent in residence, kept in temporary detention, sentenced to imprisonment, incapacitated or has limited legal capacity or refuses to sign the list of members, list of founding shareholders and list of foreign shareholders, the aforementioned lists are not required to bear the signature of such member or shareholder.

6. When receiving the notification, Business Registration Office shall give a confirmation slip, examine the validity of documents, and issue the certificate of enterprise registration”.

15. Clause 1 of Article 45 is amended as follows:

“1. In case the admission of new members results in increase of charter capital, the company shall send a notification to Business Registration Office where the company was registered. The notification shall contain:

a) Name, enterprise ID number, TIN, or number of certificate of business registration (in case the enterprise has not had an enterprise ID number or TIN);

b) Names, enterprise ID numbers, addresses of headquarters of members being organizations; full names, nationalities, ID numbers/passport numbers or numbers of other ID papers of members being individuals; value of capital contribution, time of capital contribution, type of assets contributed as capital, quantity and value of each type of assets contributed as capital by the new members;

c) Capital contributions that are changed after admission of new members;

d) Charter capital of the company after admission of new members;

dd) Full name and signature of the legal representative of the company.

The notification must be enclosed with:

- A decision and legitimate copy of minutes of meeting of the Board of Members on admission of new members and increase of charter capital. The decision and minutes of meeting must specify the changes in the company's charter.
- Certifications of new members' capital contribution;
- A legitimate copy of the decision on establishment or certificate of enterprise registration or an equivalent document, a legitimate copy of one of the ID papers of the authorized representative and letter of attorney of each member being an organization, legitimate copy of one of the ID papers of each member being an individual;
- A written approval for capital contribution, purchase of shares/stakes by foreign investors given by Department of Planning and Investment of the province in the case mentioned in Clause 1 Article 26 of the Law on Investment.

When receiving the notification, Business Registration Office shall give a confirmation slip, examine the validity of documents, and issue the certificate of enterprise registration”.

16. Article 51 is amended as follows:

“Article 51. Notification of change of information about founding shareholders of joint-stock companies

1. The founding shareholders prescribed in Clause 2 Article 4 of the Law on Enterprises shall be enumerated on the list of founding shareholders which is submitted to Business Registration Office upon registration of the enterprise establishment.
2. A notification of changes of information about founding shareholders shall be only sent to Business Registration Office in case the founding shareholders have not paid or have partly paid for the shares they register according to Clause 1 Article 112 of the Law on Enterprises. Founding shareholders who have not paid for the shares they register are indisputably no longer shareholders of the company according to Point a Clause 3 Article 112 of the Law on Enterprises and shall be removed from the list of founding shareholders of the company.
3. The company has the responsibility to notify the change of its foreign shareholders within 30 days from the deadline for sufficiently paying for the shares they register according to Clause 1 Article 112 of the Law on Enterprises. Otherwise, it will incur penalties in accordance with penalties for administrative violations against regulations on planning and investment.
4. In case of change of information about founding shareholders, the company shall send a notification to Business Registration Office where the company was registered. The notification shall contain:

a) Name, enterprise ID number, TIN, or number of certificate of business registration (in case the enterprise has not had an enterprise ID number or TIN);

b) Name, address of the headquarters, number of decision on establishment of each founding shareholder being an organization or full name, ID number/passport number or number of another ID paper of each founding shareholder being an individual;

dd) Full name, ID number/passport number or number of another ID paper of the company's and signature of the company's legal representative.

When receiving the notification, Business Registration Office shall give a confirmation slip, examine the validity of documents, change information about the company's founding shareholders on National Enterprise Registration Database. Business Registration Office shall provide confirmation of change of enterprise registration information at the request of the enterprise.

5. If documents about change of information about founding shareholders of a joint-stock company are not satisfactory, Business Registration Office shall request the company to complete the documents within 03 working days”.

17. Article 55 is amended as follows:

“Article 55. Publishing of enterprise registration information

1. The request for publishing of enterprise registration information shall be made at the time the enterprise submits the application for enterprise registration.

2. Enterprise registration information shall be published on National Business Registration Portal”.

18. Clause 3 of Article 58 is amended as follows:

“3. In case information in the application for enterprise registration is not truthful or not accurate, Business Registration Office shall notify a competent authority to handle the case as prescribed by law soft and request the enterprise to remake the application in order to be reissued with the certificate of enterprise registration. The certificate of enterprise registration shall be reissued within 03 working days from the receipt of satisfactory application”.

19. Article 62 is amended as follows:

“Article 62. Detecting false information in application for enterprise registration

1. If there are grounds to detect that information in the application for enterprise registration is false, the organization or individual has the right to request Business Registration Office to revoke the certificate of business registration and has the responsibility to provide one of the necessary documents specified in Clause 2 of this Article to Business Registration Office.

2. Documents certifying information in application for enterprise registration is false include:

a) A legitimate copy of document provided by a competent authority that the documents granted by the applicant are forged; or

b) A legitimate copy of the conclusion given by a police authority that the information in the application for enterprise registration is false;

3. In case the act of falsifying information in the application for enterprise registration needs to be investigated as the basis for revocation of the certificate of enterprise registration as prescribed in Point a Clause 1 Article 211 of the Law on Enterprises, Business Registration Office shall send a written request for investigation enclosed with the application for enterprise registration to the authorities specified in Points a and b Clause 2 of this Article. Such authorities shall give a written response to Business Registration Office within 30 working days from receipt of the written request. If documents in the application for enterprise registration are forged according to the conclusion given by the aforementioned authorities, Business Registration Office shall revoke the certificate of enterprise registration under the procedures in Clause 1 Article 63 of this Decree.

20. Article 63 is amended as follows:

“Article 63. Procedures for revocation of certificate of enterprise registration

1. In case the application for enterprise registration is fraudulent:

If the application for registration of a new enterprise is found fraudulent, Business Registration Office shall issue a notice of violations and a decision to revoke the certificate of enterprise registration.

In case information in the application for change of enterprise registration information or notification of enterprise registration information is found fraudulent, Business Registration Office shall issue a notice of violations and cancel the changes that are made according to fraudulent information, restore the certificate of enterprise registration according to the latest valid documents, and notify a competent authority.

2. In case an enterprise is established by an individual or organization banned from establishing enterprises as prescribed in Clause 2 Article 18 of the Law on Enterprises:

a) If the enterprise is a private enterprise or single-member limited liability company owned by an individual: Business Registration Office where the enterprise was registered shall issue a notice of violations and a decision to revoke the certificate of enterprise registration.

b) If the enterprise is a multi-member limited liability company, single-member limited liability company owned by an organization, joint-stock company, or partnership: Business Registration Office where the enterprise was registered shall request the enterprise in writing to replace the member(s) or shareholder(s) banned from establishing enterprises within 30 days from the date

of request impossible failure alike. If such member(s) or shareholder(s) is/are not replaced by the aforementioned deadline, Business Registration Office shall issue a notice of violations and a decision to revoke the certificate of enterprise registration.

3. In case an enterprise violates Point c Clause 1 Article 211 of the Law on Enterprises, Business Registration Office shall issue a notice of violations and request the legal representative of the enterprise to explain at Business Registration Office. If the legal representative of the enterprise does not explain within 10 working days from the date written in the notice or the explanation is not approved, Business Registration Office shall issue a decision to revoke the certificate of enterprise registration.

4. In case an enterprise fails to send reports as prescribed in Point c Clause 1 Article 209 of the Law on Enterprises, within 10 working days from the deadline prescribed in Point d Clause 1 Article 211 of the Law on Enterprises, Business Registration Office shall issue a notice of violations and request the legal representative of the enterprise to explain at Business Registration Office. If the legal representative of the enterprise does not explain or the explanation is not approved within 10 working days from the date written in the notice, impossible failure revoke Business Registration Office shall issue a decision to revoke the certificate of enterprise registration.

5. In case of enforcement of a tax decision as prescribed in Clause 26 Article 1 of the Law on the amendments to the Law on Tax administration, within 10 working days from the receipt of the request for revocation of the certificate of enterprise registration issued by the head of the tax authority as prescribed in Clause 31 Article 1 of the Law on the amendments to the Law on Tax administration, Business Registration Office shall revoke the certificate of enterprise registration in accordance with the procedures in Clause 4 of this Article.

6. Business Registration Office shall cooperate with relevant regulatory authorities in considering the explanation as prescribed Clauses 3, 4 and 5 of this Article.

7. After receiving the decision to revoke the certificate of enterprise registration, the enterprise shall initiate procedures for dissolution as prescribed in Article 203 of the Law on Enterprises.

8. Information about revocation of the certificate of enterprise registration shall be entered into National Enterprise Registration Information System and sent to the tax authority.

9. If a court issues a decision to revoke the certificate of enterprise registration, Business Registration Office shall issue a decision to revoke the certificate of enterprise registration under the court's decision".

21. Article 65 is amended as follows:

“Article 65. Following procedures for registering enterprise dissolution under a decision issued by a court or commercial arbitration center

1. The application for change of enterprise registration information or other information related to enterprise registration under a court's decision shall be sent to Business Registration Office within 15 working days from the effective date of a decision issued by a court or commercial arbitration center.

2. The applicants for registration of change of enterprise registration information or other information related to enterprise registration prescribed in Clause 1 of this Article are:

a) Individuals or organizations appointed to apply for registration under a decision issued by a court or commercial arbitration center;

b) Enterprises;

c) Judgment enforcement authorities.

3. An application for change of enterprise registration information includes:

a) An application form for change of enterprise registration information;

b) A legitimate copy of the effective decision or judgment issued by a court or commercial arbitration center”.

Article 2. Implementation clause

This Decree comes into force from October 10, 2018.

Article 3. Responsibility for implementation

1. The Ministry of Planning and Investment shall provide guidelines for the implementation of this Decree.

2. Ministers, heads of ministerial agencies, heads of Governmental agencies and Presidents of People's Committees of provinces and central-affiliated cities are responsible for the implementation of this Decree./.

**ON BEHALF OF THE GOVERNMENT
THE PRIME MINISTER**

Nguyen Xuan Phuc