

## **Businesses now get complete control over their seals**

On September 14, 2015, the Government of Vietnam issued Decree No. 78/2015/ND-CP (Decree No. 78) guiding the implementation of the 2014 Law on Enterprises regarding business registration. Decree No. 78 will take effect on November 1, 2015, and supersede Decree No. 43/2010/ND-CP issued on April 14, 2010 (as amended and supplemented by Decree No. 05/2013/ND-CP issued on January 9, 2013).

Decree No. 78 has several new contents which are quite important to enterprises.

### **Corporate seal**

Under current regulations, enterprises may only own one seal which is made and controlled by the public security agency, but now, under Decree No. 78, they may determine the form, content and quantity of their corporate seals, provided that before using, changing, cancelling a seal, they notify the business registration authorities for the latter to post a notice of the seal specimen on the National Business Registration Portal.

Upon receipt of the notice of an enterprise's seal specimen, the business registration authorities will issue a receipt to the enterprise and post such seal specimen on the National Business Registration Portal. As such, by the provisions of Decree No. 78, enterprises now have complete control over the use and management of their seals.

### **Company code**

Currently, domestic enterprises operate in accordance with their business registration certificate and company code which also serves as their tax code. Foreign-invested enterprises operate in accordance with their investment certificate and tax registration certificate, with their investment code and tax code being two different codes. Now, as per the new provisions in Decree No. 78, tax registration certificates will no longer be issued to foreign-invested enterprises newly established in Vietnam, instead they will be issued with business registration certificates and investment registration certificates, and their company code is also their tax code. Decree No. 78 further annuls the provision that "company codes of private enterprises must comply with tax laws." As such, with the new provisions in Decree No. 78, company codes of enterprises of different types will be issued in the same way.



### **Business registration**

The time limit for issuance of incorporation certificates and certificates of change in business registration contents will be three days as stipulated in Decree No. 78, considerably shorter than the

current five days. One application file for incorporation will **apply** to all types of enterprises, including domestic-invested and foreign-invested ones.

Under current regulations, with respect to conditional business lines (e.g., those requiring legal capital or professional practice certificate), investors must include a document from a competent authority certifying their legal capital and a lawful copy of professional practice certificate in their application file for business registration. Now, under Decree No. 78, the above documents are not required. Article 7 of Decree No. 78 provides that enterprises may operate in conditional investment or business lines when they satisfy the conditions stipulated by relevant laws and, at the same time, must guarantee that they will continue to satisfy such conditions throughout their operation. Specialized authorities will perform the state management of investment and business lines and inspection of enterprises' satisfaction of business conditions. Business registration authorities, upon receiving a competent authority's document on an enterprise operating in a conditional investment or business line failing to satisfy the required conditions, may either issue a notice requesting such enterprise to suspend its operation or revoke its business registration certificate, as applicable.

Another new point in Decree No. 78 is that it contains provisions on dossiers and procedures for establishment of credit institutions, pursuant to which, the dossiers, order and procedures for business registration applicable to credit institutions will be as stipulated in the Decree, and the dossiers must be accompanied by a lawful copy of the license granted by, or the written approval from, the State Bank of Vietnam permitting the establishment of such credit institution.

### **Notice of change in foreign shareholders in unlisted joint stock companies**

Under current regulations, unlisted joint stock companies (both domestic-invested and foreign-invested ones) are only required to notify the business registration authorities of change in shareholders holding at least five percent of their total share volumes, and the business registration authorities will not issue any document acknowledging change which happens three years after the incorporation of an unlisted joint stock company. Under Decree No. 78, an unlisted joint stock company must notify the business registration authority within 10 working days from the date of occurrence of any change in its foreign shareholders. Upon receipt of the notice, the business registration authority will issue a receipt, verify the properness of the dossier, and change the information on the foreign investors in the national business registration database. At an enterprise's request, the business registration authority will issue a certificate of change in business registration contents to the enterprise. As such, compared with the current regulations, provisions in Decree No. 78 are stricter in relation to the monitoring of foreign holdings in enterprises.

### **Notice of change in information in certain cases**

Compared with current regulations, Decree No. 78 makes strict regulations on cases of change in information requiring enterprises to send notices to business registration authorities. This creates favorable conditions for the management and monitoring by business registration authorities and helps providing transparent, accurate information to third parties looking for information on enterprises. Below are cases where changes must be notified to business registration authorities:

(a) Change in information on name, contact address, nationality, number of citizen identity card, identity card or other lawful identification paper of a manager, a member of the supervisory committee

or a controller of the enterprise. Enterprises must give notice within five working days from the date of such change.

(b) Change in information on name, nationality, number of passport, permanent residence address, volumes of shares and types of shares owned by a foreign individual shareholder; name, company code, head office address, volumes and types of shares and name, nationality, number of passport, permanent residence address of the authorized representative of a foreign institutional shareholder. Enterprises must give notice within three working days from the date of such change.

(c) Change due to shares placement. Enterprises must give notice within 10 working days from the date of issuance of the decision on shares placement.

(d) Change due to lease out of private enterprise. The owner of the private enterprise must give notice within three working days from the effective date of the enterprise lease contract.

(e) Change in information on the authorized representative of the owner of a single-member limited liability company. The enterprise must give notice within 10 working days from the date of such change.

### **Cases where registration of change in business registration contents is not allowed**

Under Decree No. 78, registration of change in business registration contents is not allowed in the following cases:

(a) The business registration authority has given notice of the enterprise's violation which might be subject to revocation of business registration certificate, or a decision has been issued revoking the enterprise's business registration certificate (unless the enterprise has remedied its breach and the remedying measures have been approved by the business registration authority);

(b) A request has been made by a court, law enforcement body or public security office (unless the enterprise has implemented the decision of the court or the law enforcement body, and the court or the law enforcement body has given its opinion approving such implementation);

(c) The enterprise is in the course of dissolution pursuant to its dissolution decision (save for registration of change for carrying out the dissolution process).

The above contents first appearing in a legal document guiding the implementation by enterprises will serve as a legal basis for enterprises' compliance and help protect the lawful interests of the parties related to the enterprises in the above cases.

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