

**DECREE
ON
RE-REGISTRATION [AND/OR] CONVERSION AND REGISTRATION FOR
REPLACEMENT WITH INVESTMENT CERTIFICATES BY ENTERPRISES
WITH FOREIGN INVESTED CAPITAL PURSUANT TO THE LAW ON
ENTERPRISES AND THE LAW ON INVESTMENT**

The Government

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

Pursuant to the *Law on Investment* dated 29 November 2005;

Pursuant to the *Law on Enterprises* dated 29 November 2005;

On the proposal of the Minister of Planning and Investment;

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Decree regulates:

1. The re-registration [and/or] conversion in accordance with clauses 2 and 3 of article 170 of the *Law on Enterprises* by enterprises with foreign invested capital which have been issued with investment licences pursuant to the *Law on Foreign Investment in Vietnam*; and registration for replacement with Investment Certificates in accordance with clause 1 of article 88 of the *Law on Investment* by parties to business co-operation contracts which have been issued with investment licences pursuant to the *Law on Foreign Investment in Vietnam*.
2. The rights and obligations of enterprises with foreign invested capital which do not re-register pursuant to the provisions of the *Law on Enterprises* and the *Law on Investment*; and regulates amendment of investment licences of enterprises with foreign invested capital which do not re-register or which do not replace [their licences] with Investment Certificates.

Article 2 *Applicable entities*

1. Enterprises with foreign invested capital which have been issued with an investment licence pursuant to the *Law on Foreign Investment in Vietnam* prior to 1 July 2006, comprising:
 - (a) Joint venture enterprises;
 - (b) Enterprises with one hundred (100) per cent foreign owned capital;
 - (c) Shareholding companies with foreign invested capital established pursuant to Decree No. 38-2003-ND-CP of the Government dated 15 April 2003 on conversion of a number of enterprises with foreign owned capital to operation in the form of shareholding companies.
2. Investment projects in the form of business registration contracts which have been issued with an investment licence pursuant to the *Law on Foreign Investment in Vietnam*.

Article 3 *Interpretation of terms*

1. *Re-registration* means that an enterprise with foreign invested capital established pursuant to the *Law on Foreign Investment in Vietnam* conducts business registration pursuant to the provisions of the *Law on Enterprises* in order to implement an investment project pursuant to the provisions of the *Law on Investment* and for issuance of a new Investment Certificate but retains its form of enterprise pursuant to its issued investment licence; the Investment Certificate shall act concurrently as the business registration certificate.
2. *Conversion of an enterprise* means that an enterprise with foreign invested capital changes its form of enterprise pursuant to the provisions of the *Law on Enterprises* and the *Law on Investment* and is issued with a new Investment Certificate.
3. *Registration for replacement with Investment Certificate* means parties to a business co-operation contract register to replace their investment licence with an Investment Certificate.
4. *Re-registered enterprise* means an enterprise with foreign invested capital which has been issued with a new Investment Certificate pursuant to the provisions of the *Law on Enterprises* and the *Law on Investment* for replacement of its investment licence which was issued pursuant to the provisions of the *Law on Foreign Investment in Vietnam*.
5. *Converted enterprise* means an enterprise with foreign invested capital which has changed its form of enterprise pursuant to the provisions of the *Law on Enterprises* and the *Law on Investment* and has been issued with a new Investment Certificate.
6. *Enterprise which does not re-register* means an enterprise which has not re-registered within a period of two years from the date of effectiveness of the *Law on Enterprises*.

Article 4 *Right to make the decision on whether to re-register [and/or] convert*

1. Enterprises with foreign invested capital shall have the right to make a decision on whether to re-register [and/or] convert the enterprise pursuant to the provisions of the *Law on Enterprises, the Law on Investment* and this Decree.
2. Parties to business co-operation contracts shall have the right to make a decision on whether to register to replace [their investment licences] with Investment Certificates pursuant to the provisions of the *Law on Investment* and this Decree in respect of investment projects which have been issued with an investment licence.

Article 5 *Investment Certificates and authority for issuance of Investment Certificates*

1. An Investment Certificate shall be prepared on a unified form promulgated by the Ministry of Planning and Investment. The Investment Certificate shall serve concurrently as the business registration certificate.
2. Authority for issuance of Investment Certificates and State administration of re-registration and conversion shall be implemented in accordance with the Decree of the Government providing guidelines for implementation of a number of articles of the *Law on Investment*.

CHAPTER II

Re-Registration [and/or] Conversion by Enterprises with Foreign Invested Capital

Article 6 *Forms of re-registration by enterprises*

1. A joint venture enterprise and an enterprise with one hundred (100) per cent foreign owned capital with two or more owners may re-register to become a limited liability company with two or more members.
2. An enterprise with one hundred (100) per cent foreign owned capital in which one foreign organization or individual has made the investment may re-register to become a one member limited liability company.
3. A shareholding company with foreign invested capital established pursuant to Decree No. 38-2003-ND-CP of the Government dated 15 April 2003 may re-register to become a shareholding company.

Article 7 *Application file for re-registration of an enterprise*

The application file for re-registration of an enterprise shall comprise:

1. Written application for re-registration of the enterprise from the legal representative of the enterprise.
2. Charter of the enterprise as amended for consistency with the law on enterprises.

3. Valid copy of the issued investment licence and amended investment licences.

When an enterprise on re-registration has a requirement to amend items relating to business registration and the investment project, the above-mentioned application file must also contain the documents stipulated by law as required for such items to be amended.

The Investment Certificate-issuing body shall not require an enterprise to lodge any additional document other than those stipulated in this article.

Article 8 *Order and procedures for re-registration of an enterprise*

1. An enterprise requesting re-registration shall lodge a file as stipulated by this Decree with the Investment Certificate-issuing body in accordance with article 5.2 of this Decree and shall be liable for the truthfulness and accuracy of the contents of the application file for re-registration.
2. Within a time-limit of fifteen (15) working days from the date of receipt of a complete and valid application file, the Investment Certificate-issuing body shall consider and issue an Investment Certificate. In a case of refusal to issue an Investment Certificate or a request for amendment and addition, a written notice shall be sent to the enterprise specifying the reasons therefor.

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

1. A re-registered enterprise shall inherit all the lawful rights and interests of, and shall be liable for the unpaid debts, labour contracts and other obligations of the enterprise prior to re-registration.
2. A re-registered enterprise shall have the following rights:
 - (a) To operate in accordance with the items stipulated in the Investment Certificate;
 - (b) To retain its previously registered name, seal, bank accounts and tax code;
 - (c) To have other rights in accordance with the provisions of the *Law on Enterprises* and the *Law on Investment*.
3. A re-registered enterprise shall have obligations in accordance with the provisions of the *Law on Enterprises* and the *Law on Investment*.

Article 10 *Forms of conversion of an enterprise*

1. A joint venture enterprise and an enterprise with one hundred (100) per cent foreign owned capital with two or more owners may convert to become a one member limited liability company.

2. An enterprise with one hundred (100) per cent foreign owned capital in which one foreign organization or individual has made the investment may convert to become a limited liability company with two or more members.
3. An enterprise with foreign invested capital being a limited liability company may convert to become a shareholding company, and vice versa.

Article 11 *Conditions for conversion of an enterprise*

1. A converted enterprise must satisfy the general conditions stipulated by the *Law on Enterprises* as applicable to each case of conversion.
2. In the case of an enterprise converting to become a shareholding company, the owner of the enterprise with foreign invested capital must be a founding shareholder. If there are a number of owners of the enterprise then at least one of them must be a founding shareholder.

Article 12 *Application file for conversion of an enterprise*

1. The application file for conversion of the enterprise shall comprise:
 - (a) Written application for conversion of the enterprise specifying items of conversion and signed by the legal representative of the enterprise;
 - (b) Draft charter of the enterprise consistent with the provisions of the law on enterprises;
 - (c) Decision on conversion of the enterprise by the owner of an enterprise with one hundred (100) per cent foreign owned capital, by the board of management of a joint venture enterprise or by the general meeting of shareholders of a shareholding company with foreign invested capital. The decision on conversion of the enterprise shall contain the following main items: name and address of the converting enterprise and of the enterprise after conversion; period and conditions for transfer of the assets, capital contribution portion, shares and bonds of the enterprise with foreign invested capital to assets, capital contribution portion, shares and bonds of the converted enterprise; plan for employment of employees; and period for implementation of the conversion.

The decision on conversion of the enterprise must be sent to all creditors and notified to employees within the enterprise within a time-limit of fifteen (15) days from the date on which the decision is passed;
 - (d) Valid copy of the investment licence and any amended investment licences.
2. In a case where conversion of the enterprise will result in a new additional member, the above-mentioned application file shall also contain:
 - (a) If the new member is an individual, copy of people's identity card, passport or other lawful personal identification;

- (b) If the new member is a legal entity, copy decision on establishment, business registration certificate or other equivalent document of the legal entity; and decision granting power of attorney, people's identity card, passport or other lawful personal identification of the authorized representative.

With respect to a new member being a foreign legal entity, the copy business registration certificate and charter must be certified within three months before the date of submission of the application file by the body at which such legal entity registered.

3. When an enterprise on conversion has a requirement to amend items relating to business registration and the investment project, the above-mentioned application file must also contain the documents stipulated by law as required for such items to be amended.

Article 13 *Order for conversion of an enterprise*

1. Conversion of an enterprise may be conducted after the enterprise has re-registered or at the same time as re-registration.
2. An enterprise requesting conversion shall lodge an application file as stipulated by this Decree with the Investment Certificate-issuing body in accordance with article 5.2 of this Decree and shall be liable for the truthfulness and accuracy of the contents of the application file for conversion of the enterprise.
2. Within a time-limit of thirty (30) working days from the date of receipt of a complete and valid application file, the Investment Certificate-issuing body shall consider and issue an Investment Certificate. In a case of refusal or a request for amendment and addition, a written notice shall be sent to the enterprise specifying the reasons therefor.

Article 14 *Rights and obligations of converted enterprises*

1. A converted enterprise shall inherit all the lawful rights and interests of, and shall be liable for the unpaid debts, labour contracts and other obligations of the enterprise prior to conversion.
2. A converted enterprise shall operate in accordance with the items stipulated in the Investment Certificate; shall be entitled to continue to enjoy the investment incentives stipulated in the investment licence applicable to the licensed investment project if the foreign investors hold no less than thirty (30) per cent of the charter capital; and shall have other rights in accordance with the provisions of the *Law on Enterprises* and the *Law on Investment*.
3. A converted enterprise shall have obligations in accordance with the provisions of the *Law on Enterprises* and the *Law on Investment*.

Article 15 *Re-registration [and/or] conversion of an enterprise in a case where there is an undertaking to transfer [assets] without any compensation*

1. An enterprise with foreign invested capital of which the foreign investor has undertaken to transfer assets in which the investor has invested to the Government of Vietnam without any compensation after expiry of the duration of operation, may conduct re-registration [and/or] conversion in accordance with the provisions of this Decree if it satisfies the following conditions:
 - (a) It does not change the contents of the undertaking to transfer assets without compensation in respect of the project issued with an investment licence;
 - (b) It inherits and continue to implement the investment project relating to the assets for which an undertaking has been made to transfer without compensation.
2. The Prime Minister of the Government must provide approval to re-registration [and/or] conversion in accordance with the provisions of this Decree if there is a change of the items relating to transfer of assets without compensation.

CHAPTER III

Registration for Replacement with an Investment Certificate

Article 16 *Cases of registration for replacement with an Investment Certificate*

Registration for replacement with an Investment Certificate in accordance with article 88 of the *Law on Investment* shall apply to investment projects in the form of business co-operation contracts which were issued with investment licences prior to 1 July 2006.

When parties to a business co-operation contract have a requirement to re-register their investment project pursuant to the provisions of this Decree, they shall conduct procedures for registration for replacement with an Investment Certificate in accordance with the provisions of this Decree.

Article 17 *Application file for registration for replacement with an Investment Certificate*

The application file for registration for replacement with an Investment Certificate shall comprise:

1. Written application for replacement with an Investment Certificate signed by the parties to the business co-operation contract.
2. Valid copy of the investment licence and any amended investment licence.

When the parties to a business co-operation contract have a requirement to amend items relating to the investment project and the business co-operation contract, the above-mentioned application file must also contain the documents stipulated by the law on investment as required for such items to be amended.

The Investment Certificate-issuing body shall not require the parties to a business co-operation contract to lodge any additional document other than those stipulated in this article.

Article 18 *Order and procedures for registration for replacement with an Investment Certificate*

1. The parties to a business co-operation contract shall lodge an application file as stipulated by this Decree with the Investment Certificate-issuing body in accordance with article 5.2 of this Decree and shall be liable for the truthfulness and accuracy of the contents of the application file for registration for replacement with an Investment Certificate.
2. Within a time-limit of seven (7) working days from the date of receipt of a complete and valid application file, the Investment Certificate-issuing body shall consider and issue an Investment Certificate. In a case of refusal or a request for amendment and addition, a written notice shall be sent to the enterprise specifying the reasons therefor.

Article 19 *Rights and obligations of parties to a business co-operation contract:*

1. To operate in accordance with the new Investment Certificate.
2. To inherit all the rights and obligations stipulated in the issued investment licence and any amended investment licence, in the approved business co-operation contract and in the law on investment.

CHAPTER IV

Enterprises with Foreign Invested Capital Which Do Not Re-Register and Business Co-Operation Contracts Which Do Not Replace with an Investment Certificate

Article 20 *Rights and obligations of enterprises which do not re-register*

1. An enterprise which does not re-register shall have the following rights:
 - (a) To continue to operate in accordance with its issued investment licence; to be entitled to request an amendment of its investment licence in necessary cases except for an amendment of its lines of business line and operational duration;
 - (b) To retain the name of the enterprise, its seal, bank accounts and tax code already registered;
 - (c) Other rights in accordance with the provisions of the *Law on Enterprises* and the *Law on Investment* .
2. An enterprise which does not re-register shall have the following obligations:

- (a) To only operate within the scope of the lines of business and operational duration specified in its issued investment licence. The issued investment licence shall act concurrently as the business registration certificate;
- (b) To comply with the provisions of the *Law on Enterprises*, the *Law on Investment* and other relevant laws.

Article 21 *Rights and obligations of parties to a business co-operation contract which do not replace with an Investment Certificate:*

- 1. Parties to a business co-operation contract shall have the right to continue to operate in accordance with their issued investment licence and approved business co-operation contract.
- 2. Parties to a business co-operation contract shall be obliged to comply with the provisions of the *Law on Investment* and other relevant laws.

Article 22 *Amendment of investment licences of enterprises which do not re-register and of business co-operation contracts which do not replace with an Investment Certificate*

- 1. During the process of operation, an enterprise with foreign invested capital which does not re-register and parties to a business co-operation contract which do not replace with an Investment Certificate, if they have a requirement, shall be considered for amendment of their investment licences except for the sectors of lines of business and operational duration.
- 2. The Investment Certificate-issuing body shall approve a request for amendment of the investment licence of an enterprise which does not re-register or of parties to a business co-operation contract by way of issuing a Certificate of amended investment licence. The Certificate of amended investment licence shall constitute an integral part of the investment licence.
- 3. The Investment Certificate-issuing body shall issue written approval without the need to amend the investment licence in the case of the following amendments:
 - (a) Opening of transaction offices, warehouses and shops introducing products (which do not conduct manufacturing) within the same province or city under central authority where the head office of the enterprise is located;
 - (b) Change of address of head office within the same province or city under central authority.

Article 23 *Application files, order and authority for amendment of investment licences*

- 1. Depending on the items in the investment licence to be amended, an enterprise which does not re-register or parties to a business co-operation contract which do not replace with an Investment Certificate shall prepare an application file for amendment in accordance with the Decree providing guidelines for implementation of a number

of articles of the *Law on Investment* and submit it to the Investment Certificate-issuing body.

2. The order and authority to issue a Certificate of amended investment licence shall be implemented in accordance with the provisions on delegation of powers to exercise State administration of investment in the Decree providing guidelines for implementation of a number of articles of the *Law on Investment*.

CHAPTER IV

Implementing Provisions

Article 24 *Implementing provision*

1. This Decree shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette.
2. The Minister of Planning and Investment shall, based on this Decree, promulgate the sample form for an application file for re-registration [and/or] conversion of an enterprise; the sample form for a request for replacement with an Investment Certificate and the sample form for a Certificate of amended investment licence.
3. Minister, heads of ministerial equivalent bodies and Government bodies and chairmen of people's committees of provinces and cities under central authority shall be responsible for the implementation of this Decree.

On behalf of the Government
Prime Minister
NGUYEN TAN DUNG