

No.09/2007/TT-BTM

*Hanoi, July 17, 2007*

## CIRCULAR

**Guiding the implementation of the Government's Decree No.  
23/2007/ND-CP dated February 12, 2007, which details the  
Commercial Law regarding goods trading and directly related  
activities of foreign-invested enterprises in Vietnam**

Pursuant to the Government's Decree No. 29/2004/ND-CP dated January 16, 2004 on the functions, tasks, powers and organizational structure of the Ministry of Trade;

Pursuant to the Government's Decree No. 23/2007/ND-CP dated February 12, 2007, detailing the Commercial Law regarding goods trading and directly related activities of foreign-invested enterprises in Vietnam;

Pursuant to the Government's Decree No. 35/2007/ND-CP dated March 31, 2006, detailing the implementation of the Commercial Law regarding commercial franchise;

Pursuant to the Governments Decree No. 12/2006/ND-CP dated January 23, 2006, detailing the implementation of the Commercial Law regarding international goods purchase and sale and goods purchase and sale agency, processing and transit with foreign countries,

Pursuant to the Government's Decree No. 108/2006/ND-CP dated September 22, 2006, detailing and guiding the implementation of a number of Articles of the Investment Law;

The Ministry of Trade guides a number of contents specified in Decree No. 23/2007/ND-CP dated February 12, 2007, as follows:

### **I. GENERAL GUIDANCE**

#### **1. Investment in goods trading and directly related activities**

Foreign investors or foreign-invested enterprises in Vietnam that meet the conditions specified at Point a, Clause 1, Article 4 of Decree No. 23/2007/ND-CP may invest in goods trading and directly related activities in the forms and according to the roadmaps provided for in Appendix 01 to the Trade Minister's Decision No. 10/2007/QD-BTM dated May 21, 2007, publicizing roadmaps for goods trading and directly related activities (below referred to as Decision No. 10/2007/QD-BTM for short).

## **2. Exercise of the right to export**

2.1. Vietnam-based foreign-invested enterprises already licensed to exercise the right to export may:

- a) Export goods which are not the list of those banned from export (Section I of Appendix 01 to Decree No.12/2006/ND-CP), the list of those suspended from export (if any) or the list of those of which the right to export is not granted (Clause A, Section II of Appendix 02 to Decision No. 10/2007/QD-BTM)
- b) Export according to the set roadmaps goods on the list of those for export according to roadmaps (Clause B, Section II of Appendix 02 to Decision No.10/2007/QD-BTM)
- c) Directly purchase goods from traders that have registered the trading of, or have the right to distributed those goods for export.
- d) Directly carry out goods export procedures at customs offices in accordance with Vietnamese law.

2.2. Foreign-invested enterprises already licensed to exercise the right to export may not set up establishments for the procurement of exported goods.

## **3. Exercise of the right to import**

3.1. Foreign-invested enterprises already licensed to exercise the right to import may:

- a) Import goods which are not the list of those banned from import (Section II of Appendix 01 to Decree No. 12/2006/ND-CP), the list of those suspended from import (if any) or the list of those of which the right to import is not granted (Clause A, Section II of Appendix 03 to Decision No. 10/2007/QD-BTM).
- b) Import according to the set roadmaps goods on the list of those for import according to roadmaps (Clause B, Section II of Appendix 03 to Decision No. 10/2007/QD-BTM).
- c) Directly carry out goods import procedures at customs offices in accordance with Vietnamese law.
- d) Sell imported goods of a category to a trader that has registered the trading of, or has the right to distribute, goods of that category. That trader shall be selected and registered by the foreign-invested enterprise with a competent licensing agency. Each goods category comprises goods in a chapter of the Import Tariff.

3.2. Foreign-invested enterprise already licensed to exercise the right to import may not set up establishments for the distribution of imported goods.

## **4. Exercise of the right to distribution**

4.1. Foreign-invested enterprises already licensed to exercise the right to distribution may:

a) Wholesale, retail, conduct commercial franchise or act as agencies for the trading of, goods produced in Vietnam and goods imported into Vietnam, except goods on the list of those of which the right to distribution is not granted (Clause A, Section II of Appendix 04 to Decision No. 10/2007/QD-BTM).

b) Wholesale, retail, conduct commercial franchise or act as goods trading agencies according to the set roadmaps for, goods on the list of those for distribution according to roadmaps (Clause B, Section II of Appendix 04 to Decision No. 10/2007/QD-BTM).

4.2. Foreign-invested enterprises possessing wholesale or retail licenses may wholesale or retail goods in accordance with Clauses 7 and 8, Article 1 of Decree No. 23/2007/ND-CP. Foreign-invested enterprises already licensed to set up retail establishments (including the first retail establishments) may not retail goods outside the licensed retail establishments.

4.3. Setting up of retail establishments in addition to the first retail establishments

a) The setting up of retail establishments in addition to the first retail establishments shall be considered on a case-by-case basis, depending on the number of retail establishments, market stability and population density in provinces or cities where the retail establishments are located as well as investment projects' compliance with the plannings of those provinces or cities.

b) Foreign-invested enterprises possessing investment licenses or investment certificates that provide for the setting up of retail establishments in addition to the first retail establishments but not yet granted licenses for setting up retail establishments under Decree No. 23/2007/ND-CP shall carry out procedures for the grant of licenses for setting up retail establishments under the guidance at Point d, Clause 4, Section II of this Circular.

## **II. GRANT OF LICENSES FOR GOODS TRADING AND DIRECTLY RELATED ACTIVITIES**

### **1. When investment is made only for the exercise of the right to import or export but not the right to distribution or activities directly related to goods trading**

a) Foreign investors investing for the first time in Vietnam in order to exercise the right to import or export only shall carry out procedures for the grant of investment certificates. Foreign-invested enterprises operating in Vietnam which only apply for the addition of the right to import or export shall carry out procedures for the modification of investment certificates.

A dossier comprises:

An application for grant or modification of the investment certificate under the provisions of the investment law;

- A written explanation about the satisfaction of business conditions in terms of legal person nationality, investment form, business services and operation scope;
  - A written registration for the exercise of the right to import or export.
- b) Competent licensing agencies shall, based on the provisions of Decision No. 10/2007/QĐ-BTM, grant or modify investment certificates without having to obtain approval of the Trade Ministry.

## **2. When investment is made for the first time in goods trading and directly related activities.**

a) Foreign investors investing for the first time in Vietnam that invest in goods trading and directly related activities shall carry out procedures for the grant of investment certificates.

A dossier comprises:

- An application for an investment certificate under the provisions of the investment law;
- A written explanation about the satisfaction of business conditions in terms of legal person nationality, investment form, business services and operation scope;
- A written registration of goods trading and directly related activities.

b) Competent licensing agencies shall grant investment certificates after obtaining the Trade Ministry's approval.

## **3. Addition of goods trading and directly related activities.**

Foreign-invested enterprises possessing investment certificates or investment licenses, which apply for the addition of goods trading and directly related activities shall carry out procedures for the grant of business licenses.

a) Grant of a business license

- A dossier comprises:

- + An application for a business license, made according to a set form;
- + A written explanation about the satisfaction of business conditions in terms of legal person nationality, investment form, business services and operation scope;
- + A written registration of goods trading and directly related activities.

- Competent licensing agencies shall grant business licenses, made according to a set form, after obtaining the Trade Ministry's approval.

b) Modification of a business license

- A dossier comprises:

- + An application for modification of a business license according to a set form;
- + A copy of the granted business license.

- A competent licensing agency shall grant a new business license with modified contents and, at the same time, revoke the old one. When the modification of a business license is related to goods trading and directly related activities, the competent licensing agency shall modify that license after obtaining the Trade Ministry's approval.

c) Re-grant of a business license

- A dossier comprises:

- + An application for re-grant of a business license, made according to a set form;

- + The public security agency's written certification of the declaration of loss of the business license or a written explanation why the license is torn, rumpled, burnt or otherwise destroyed.

- Competent licensing agency shall re-grant a new business license with the same contents as those of the granted one.

#### **4. Setting up of retail establishments in addition to the first retail establishments**

Foreign-invested enterprises setting up retail establishments in addition to the first retail establishments shall carry out procedures for grant of licenses for setting up retail establishments.

a) Grant of a license for setting up a retail establishment

- A dossier comprises:

- + An application for a license for setting up a retail establishment, made according to a set form;

- + A copy of the investment certificate or business license related to the setting up of the first retail establishment.

- A competent licensing agency shall grant a license for setting up a retail establishment, made according to a set form, after obtaining the Trade Ministry's approval.

b) Modification of a license for setting up a retail establishment

- A dossier comprises:

- + An application for modification of the license for setting up a retail establishment, made according to a set form;

- + A copy of the license to be modified.

- A competent licensing agency shall grant a modified license for setting up a retail establishment and, at the same time, revoke the granted license. When the modification of a license for setting up a retail establishment is related to the contents of the establishment's activities, the competent licensing agency shall modify the license after obtaining the Trade Ministry's approval.

c) Re-grant of licenses for setting up retail establishments

The re-grant of licenses for setting up retail establishments complies with regulations on the re-grant of business licenses guided at Point c, Clause 3, Section II of this Circular.

d) Grant of a license for setting up a retail establishment in addition to the first retail establishment which has already been set up under law but not yet granted a license under Decree No. 23/2007/ND-CP.

- A dossier comprises:

- + An application for a license for setting up a retail establishment, made according to a set form;
- + A report on the investment and operation situation of the retail establishment applying for a license for setting up a retail establishment;
- + A copy of the investment license or investment certificate.

A competent licensing agency shall grant a license for setting up a retail establishment, made according to a set form.

### **III. REVOCATION OF BUSINESS LICENSES OR LICENSES FOR SETTING UP RETAIL ESTABLISHMENTS**

A competent licensing agency shall revoke a business license or a license for setting up a retail establishment in the following cases:

1. Foreign-invested enterprises engaged in goods trading and directly related activities commit violations of law, which are subject to revocation of business licenses or licenses for setting up retail establishments.
2. Investment projects on goods trading and directly related activities terminate operation under the provisions of the investment law.
3. Competent licensing agencies revoke investment licenses or investment certificates.

### **IV. REPORTING REGIME**

1. Foreign-invested enterprises engaged in goods trading and directly related activities shall implement financial and statistical reporting regimes in accordance with Vietnamese law.
2. Quarterly, by the 15<sup>th</sup> day of the first month of the subsequent quarter, competent licensing agencies shall review and report to the Ministry of Trade on the grant, re-grant, modification or revocation of licensed already granted to investment projects on goods trading and directly related activities and their recommendations and proposals according to a set form.

### **V. ORGANIZATION OF IMPLEMENTATION**

1. This Circular takes effect 15 days after its publication in CONG BAO.
2. Concerned organizations and individuals should promptly report problems arising in the course of implementation of this Circular to the Ministry of Trade for timely solution.

**FOR THE MINISTER OF TRADE**

**VICE MINISTER**

*(Signed and sealed)*

**Le Danh Vinh**

*(This translation is for reference only)*