

More restrictions on multi-level marketing in Vietnam

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On May 14th, 2014 the Government issued Decree No. 42/2014/ND-CP on the management of multi-level marketing activities (Decree 42) to replace the previous Decree No. 110/2005/ND-CP, dated August 24th, 2005, governing the same matter (Decree 110).

It has been almost nine years since the introduction of Decree 110, which was expected to control multi-level marketing (MLM) activities in Vietnam. However, during the period of implementation, Decree 110 showed its limits in governing MLM enterprises. In several instances the MLM enterprises took advantage of or defrauded participants to form organised networks that adversely impacted consumers. Decree 42 is therefore promulgated as a remedy for such limits.

Below are four significant changes in Decree 42.

First, pyramid schemes are now the prohibited business activities. According to Decree 42, pyramid schemes are defined as “conducting activities on the multi-level basis, in which the participant’s income derives mainly from the recruitment of new participants; the extension of term of the participants’ contracts and their fees, deposits or investments in the network”. These schemes operate in such a way as the earliest members derive profits from sales by those who join late. They are now considered pyramid schemes and are prohibited.

Second, more financial obligations are required for MLM enterprises. In particular, Decree 42 requires an MLM enterprise to have a legal capital of at least VND10 billion (approximately US\$470,000), and an escrow deposit equal to 5 percent of its charter capital, but not less than VND5 billion (approximately US\$235,000).

Third, services are not allowed to be provided in the form of an MLM model. According to Decree 42, only the sale and purchase of goods are allowed to be provided in the form of an MLM model, while services are not allowed. Decree 42 also lists the goods that an MLM enterprise is prohibited to market and sell, including:

- (i) goods in the list of goods banned or restricted from circulation, and goods to be withdrawn from the market temporarily; and
- (ii) drugs; medical equipment; veterinary compositions, plant protection compositions; chemicals, insecticides, disinfectants in the sectors of household and health; dangerous chemicals and products containing dangerous chemicals as prescribed by the laws.

Fourth, requirements for the issuance of a registration certificate for MLM operation (MLM License) are more complicated and limited. Decree 42 provides that the licensing authority for MLM Licensing is now the Ministry of Industry and Trade, which is considered to be very strict in evaluations for the issuance of MLM Licenses. Also, the term of an MLM License as stipulated in Decree 42 is now only 5 years and can be renewed.

In addition, Decree 42 provides stricter limits where an MLM License may be revoked:

- (i) where the MLM enterprise fails to implement its MLM activities for 12 consecutive months from the date of issuance of the MLM License; and
- (ii) where the MLM enterprise suspends its MLM activities for more than 12 consecutive months.

Decree 42 took effect from July 1st, 2014.

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