



# Special Alert

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## New Decree for Enterprise Registration

Following the issuance of Law on Enterprises No. 59/2020/QH14 dated 17 June 2020 (the “**2020 Enterprise Law**”), the Government has issued Decree No. 01/2021/ND-CP on enterprise registration (“**Decree 01**”) to reinforce the spirit of reducing “unnecessary” licensing procedures and to provide specific instructions and guidelines. The decree came into force as of 4 January 2021, and replaces Decree No. 78/2015/ND-CP as amended by Decree No. 108/2018/ND-CP (“**Decree 78**”).

### General regulations

#### *Definition of the person submitting the application*

The “person submitting the application” can only be the person having the authorization to sign the application (the “**Competent Signatory**”) and a person authorized by the Competent Signatory (the “**Authorized Applicant**”). These persons are the only ones authorized to make relevant declarations while submitting a registration application to the Department of Planning and Investment (the “**DPI**”).

#### *Language of application*

The enterprise registration application must be prepared in Vietnamese. In case there are foreign language documents, the translation of such documents must be notarized and attached to the submission. In case the application is made in multiple languages, the Vietnamese version will be used for registration procedures. Though parties may agree that a foreign language version prevails as between the parties, the government will look to the registered Vietnamese version.

#### *Enterprise code number*

Decree 78 stipulated that each enterprise shall be issued with one unique code number called an

enterprise code number. This number was also the tax code of the enterprise. Decree 01 now provides for the same provision but adds that enterprise code number will also serve as the company's number for the social insurance system.

### *Commencement date of operation*

Previously, the initial date of operation was the date of issuance of the enterprise registration certificate (the “**ERC**”) unless the enterprise operated in a business line subject to investment business conditions. Decree 01 provides for the same provision but allows enterprises to start their operations on a date after the issuance date of the ERC if the enterprise so registers.

### *Legal documents of foreign entities*

Under Decree 01, the legal documents of foreign entities which are submitted to the licensing authorities must be legalized (in Vietnamese: hợp pháp hóa lãnh sự). In the past, the DPI of some provinces accepted the certified true copies of the legalized legal documents of foreign entities, but under Decree 01, enterprises are required to submit the original legalized legal documents and cannot use a certified true copy of the same.

### *Online enterprise registration by enterprise registration accounts*

Enterprises submitting the online enterprise registration by enterprise registration accounts are no longer required to submit hard-copies of documents after the online application is approved.

## Company establishment procedures

### *Details of the application dossier that must be submitted*

1. The application for enterprise establishment of a limited liability company (“**LLC**”), and a joint stock company (“**JSC**”) is required to additionally submit legal documents of their legal representative (the “**Legal Rep**”).
2. LLCs with one member are not required to submit the list of authorized representatives when applying for an application for enterprise establishment, this content will be declared in the application for business registration (in Vietnamese: Giấy đề nghị đăng ký doanh nghiệp).
3. In the case of conversion of a private enterprise (sole proprietorship) into an LLC, the application file for registration of conversion shall not include:
  - ✓ List of creditors and amounts of unpaid debts including taxes and the time-limits for payment;
  - ✓ List of current employees;
  - ✓ List of unliquidated contracts; and
  - ✓ List of members in the case of conversion into an LLC with one member.

4. In the case of conversion of an LLC into a JSC and vice versa, the application file for registration of conversion must additionally include documents certifying the capital contribution of new members or shareholders.
5. The approval for a foreign investor to contribute capital or purchase shares/capital contribution under the Law on Investment No. 61/2020/QH14 dated 17 June 2020 (the “**M&A Approval**”) is required in an application for the conversion of corporate form, and conversion from business household to an enterprise.
6. Applications for registration of operation of branches and representative offices are not required to submit the decision appointing the person who will act as head of the branch or representative office.

### *New regulations*

1. Decree 01 adds regulation for the enterprise registration procedures of:
  - ✓ social enterprises;
  - ✓ branches of foreign banks, representative offices of foreign credit institutions, other foreign institutions engaging in banking activities;
  - ✓ securities companies, securities investment fund management companies, securities investment companies, branches of foreign securities companies, and foreign fund management companies which are regulated under the Law on Securities No. 54/2019/QH14 dated 26 November 2019.
2. Decree 01 allows enterprises to register a change of legal representative concurrently with the conversion of corporate form.
3. According to the 2020 Enterprise Law, Decree 01 removes the requirement to announce the company’s seal after establishment.

### **Amendment procedures of enterprise registration information**

#### *Details of the application dossier that must be submitted include:*

1. Resolutions, decisions, and meeting minutes submitted are not required to specify an amendment in the charter.
2. Application for change of members of a partnership must include the list of members of the partnership.
3. Multiple member LLCs must submit their latest financial statements in the dossier for registering a capital decrease under Articles 68.3(a), 68.3(b) of the 2020 Enterprise Law.

4. Application for changes of founding shareholder information must additionally submit the list of the founding shareholders (not including the founding shareholders who do not pay for their registered shares).
5. Application for changes of shareholders who are foreign investors in an unlisted company are not required to submit decisions and meeting minutes of the general meeting of shareholders.

### *New regulations*

1. Notice on a change of the Legal Rep (in Vietnamese: Thông báo thay đổi người đại diện theo pháp luật) of an LLC with one member must be signed by the chairman of the members' council or company chairman and not by the individual owner.
2. Decree 01 details the application for two cases of capital decrease including: (i) a member uses the contributed capital to repay debts; and (ii) according to a decision on the division, separation, merger or consolidation of the enterprise.
3. In case the enterprise changes its method of calculating tax, it must conduct procedures with the tax authority instead of notifying the DPI.
4. Decree 01 removes the licensing procedure for changes of information about enterprise managers and procedures for a private placement of shares.
5. Decree 01 adds a procedure to change information of members being organizations of multiple member LLCs.
6. Decree 01 makes clear that after an LLC becomes a JSC and vice versa, a private enterprise becomes an LLC, JSC, partnership, then the branch(es), representative office(s) and business location(s) of such enterprise must register the change in its operation information in accordance with the general procedures applicable to branches, representative offices and business locations.
7. Decree 01 stipulates that vote counting minutes of members' councils, general meeting of shareholders or the board of management for the collection of opinions in writing can be replaced by the regular meeting minutes if the collection of opinions in writing is made in compliance with the 2020 Enterprise Law.
8. Decree 01 adds two new circumstances where the enterprises cannot change their enterprise registration contents: (i) at the request of the investigation agency, head, deputy head of an investigation agency, or (ii) the investigator in accordance with Criminal Proceedings, or (iii) the enterprise is "not active at the registered address". The enterprise in such cases can continue to change its information once the investigation authority grants written approval or the legal status of the enterprise is changed into "active".

## Temporary suspension

Under Decree 78, the duration of temporary suspension of business must not exceed one year and the total duration of continuous suspension must not exceed two years. Decree 01 removes the limit on the total period of continuous temporary suspension, though the duration of temporary suspension of business in each notification must not exceed one year. Enterprises are no longer required to submit a notification on the temporary suspension of its branch, representative office, and business location. The DPI will update such information based on the notification of temporary suspension of the enterprise.

## Dissolution

Dossiers of notification of the dissolution of enterprises except in the case of withdrawal of the ERC require the additional submission of a debt settlement plan (if any). Decree 01 provides for separate procedures to dissolve an enterprise when: (i) dissolution is due to the withdrawal of its ERC (involuntary dissolution) under Article 71 of Decree 01; and (ii) dissolution is due to other reasons (voluntary dissolution) under Article 70 of Decree 01. Moreover, Decree 01 also provides for procedures in case the enterprise cancels its intended voluntary dissolution (Article 70.7 of Decree 01).

## Seven types of legal status of companies

Decree 01 introduces definitions for the following legal statuses of enterprises which are recorded on the National Enterprise Registration Database to support the competent authorities, individuals, and organizations in researching information on an enterprise:

- ✓ Temporary suspension of business;
- ✓ No longer doing business at the registered address;
- ✓ The Enterprise Registration Certificate has been revoked due to tax administration enforcement;
- ✓ Undergoing dissolution process, separated, consolidated or merged;
- ✓ Undergoing bankruptcy process;
- ✓ Dissolved or bankrupt; and
- ✓ Active.

If you have any questions regarding these new laws, please feel free to get in touch with your contact here at Indochine Counsel or contact us through our website at <https://www.indochinecounsel.com>.

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