

THE GOVERNMENT

No. 194/2013/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

Hanoi, January 21, 2013

DECREE

ON THE RE-REGISTRATION, TRANSFORMATION OF FOREIGN-INVESTED ENTERPRISES AND RENEWAL OF INVESTMENT LICENSE OF INVESTMENT PROJECTS IN THE FORM OF BUSINESS COOPERATION CONTRACT

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

Pursuant to the November 29, 2005 Law on investment;

Pursuant to the November 29, 2005 Law on enterprises;

Pursuant to the June 20, 2013 Law No. 37/2013/QH13 amending and supplementing Article 170 of Law on enterprises;

At the proposal of Minister of Planning and Investment,

The Government promulgates the Decree on the re-registration, transformation of foreign-invested enterprises and renewal of investment license of investment projects in the form of business cooperation contract.

Chapter 1.

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree prescribes:

1. The re-registration, transformation of foreign-invested enterprises which have been granted investment licenses before July 01, 2006.
2. The renewal of investment licenses or business licenses of investment projects in the form of business cooperation contract which have been granted before July 01, 2006.
3. Rights and obligations of foreign-invested enterprises which are granted investment licenses before July 01, 2006 and already re-registered or not yet re-registered, parties to business cooperation contracts which have not yet change investment licenses or business licenses in accordance with provisions of Law on enterprises and Law on investment.

4. Adjustment of investment licenses for foreign-invested enterprises which are granted investment licenses before July 01, 2006 and not yet re-registered, or parties to business cooperation contracts which have not yet change investment licenses or business licenses.

5. If foreign-invested enterprises are established and operate as prescribed by specialized laws, the re-registration of such enterprises shall comply with provisions of specialized laws.

Article 2. Subjects of application

1. Foreign-invested enterprises which have been granted investment license before July 01, 2006, including:

a) Joint venture enterprises;

b) Enterprises with 100% foreign capital;

c) Foreign-invested joint-stock companies set up under the Government's Decree No. 38/2003/ND-CP of April 15, 2003, on transformation of a number of foreign-invested enterprises into joint-stock companies.

2. Parties to business cooperation contracts which have been granted investment licenses or business licenses before July 01, 2006.

3. State management agencies which are responsible for execution of re-registration, registration for transformation of foreign-invested enterprises and renewal of investment licenses or business licenses.

Article 3. Interpretation of terms

1. "Re-registration" means registration of enterprises defined in Article 2 of this Decree for operation as prescribed by Law on enterprises.

2. "Transformation of enterprise" means transformation of enterprise form of enterprises defined in Article 2 of this Decree in accordance with Law on enterprises.

3. "The renewal of investment license" means implementation of procedures by parties to business cooperation contracts for converting investment license or business license which has been granted before July 01, 2006 into investment certificate.

4. "The re-registered enterprise" means enterprises defined in Article 2 of this Decree which has performed re-registration and been granted investment certificate.

5. "Transformed enterprise" means an enterprise defined in Article 2 of this Decree which has been changed its form under the Enterprise Law.

6. “Enterprise which has not yet re-registered” means an enterprise defined in Article 2 of this Decree which has not yet make re-registration as prescribed of Law on enterprises and this Decree.

Article 4. Right to decide on re-registration, transformation of enterprises and renewal of investment licenses

1. A foreign-invested enterprise already granted investment license before July 01, 2006, may decide on its re-registration, transformation of enterprises and management and operational organization in accordance with the provisions of the enterprise law, the investment law and this Decree.

A foreign-invested enterprise established before July 01, 2006, of which operational duration has been expired as prescribed in investment license after July 01, 2006, not yet do procedures for dissolution of enterprises and has request to be entitled to continue operation must re-register before February 01, 2014.

2. The parties to business cooperation contracts may register for new investment licenses in order to be granted certificates of investment and operate in accordance with Law on investment.

Article 5. Re-registration, transformation of enterprises enclosed with commitment to transfer assets without indemnification

1. Foreign-invested enterprises whose foreign investors have committed or made agreement and been stated in investment license to transfer without indemnification the invested assets under initial commitment and agreement at the end of the operation duration to the State of Vietnam or Vietnamese Government or Vietnamese party may be re-registered or transformed enterprise if satisfying the following conditions:

a) Not changing the commitment to transfer their assets without indemnification. Taking over and continuing to execute investment projects related to commitment on transfer of their assets without indemnification;

b) Do not extend the duration of implementing the investment project.

2. In case of changes in the contents related to the transfer without indemnification stated in investment license, the re-registration and transformation of enterprise under the provisions of this Decree must be approved by the Prime Minister.

Article 6. Re-registration for foreign-invested enterprises which have been granted investment license before July 01, 2006, and of which operational duration have been expired after July 01, 2006, but not yet dissolved and have request to be entitled to continue operation

1. Foreign-invested enterprises of which operational duration have been expired under investment license after July 01, 2006, but not yet dissolved and have request to be entitled to continue operation may re-register if satisfying the following conditions:

a) The business lines of enterprises do not fall in trades banned business. If business lines of enterprises are conditional trades, enterprises must satisfy conditions as prescribed by law at time of re-registration;

b) Projects must be consistent to planning of: Urban infrastructure, planning of land use, planning of construction, planning of exploration, exploitation and processing of minerals and other natural resources;

c) Commit to self-take responsibilities for obligations and transactions performed from time of operation expiry to time of re-registration;

d) Commit to perform full financial obligations with State;

dd) If enterprises still have equity capital; or have no equity capital, they must commit to increase equity capital at least equal to charter capital within 3 years after re-registration.

2. Application of investment incentives and application of obligations for foreign-invested enterprises of which operational duration have been expired after July 01, 2006, but not yet dissolved and have request for re-registration in order to continue operation.

a) Apply legislations corresponding to each period from the operation expiry stated in investment licenses to time of re-registration; and

b) From time of re-registration, apply the existing legislations at time of re-registration.

3. Certificates of investment granted for enterprises shall be valid from the operation expiry as stated in investment licenses.

4. Enterprises must do re-registration before February 01, 2014. Upon expiry of time limit mentioned above, enterprises which fail to do re-registration must do procedures for dissolution, operational termination as prescribed by law.

Chapter 2.

RE-REGISTRATION AND TRANSFORMATION OF FOREIGN-INVESTED ENTERPRISES

Article 7. Forms of re-registration of enterprises

1. An enterprise with 100% foreign capital with an investor shall be re-registered into a one-member limited liability company.

2. A joint-venture enterprise or an enterprise with 100% foreign capital with two or more investors shall be re-registered into a limited liability company with two or more members.
3. A foreign-invested joint-stock company shall be re-registered into a joint-stock company.

Article 8. Dossiers of re-registration of enterprises

1. Dossier of re-registration includes:

- a) A written application for re-registration of the enterprise, signed by the representative at law of the enterprise, enclosed with list of members of limited liability company with two or more members or list of founding shareholders of joint-stock company of the post-reregistered enterprise;
- b) Valid copies of the investment license, the modified licenses and certificates of modification of investment license (if any);
- c) The draft charter of the enterprise, which has been amended to comply with the provisions of enterprise law;
- d) A written record of meeting of Board of Directors for joint-venture enterprise; A written record of meeting of Board of Directors or a unified written of foreign investors (for case of having many foreign investors) or of investor for enterprise with 100% foreign capital; written record of General Meeting of Shareholders for joint-stock company regarding consent for re-registration of enterprise and approval of the enterprise charter (amended);
- dd) Decision of the owner or owners of enterprise or Board of Directors of enterprise with 100% foreign capital or decision of General Meeting of Shareholders of foreign-invested joint-stock company regarding re-registration of enterprise and approval of the enterprise charter (amended);
- e) Certified papers of individuals and legal entities being members of enterprise after re-registration and of the representative at law of enterprise after re-registration;
- g) Financial statements of two adjacent years at time of re-registration;
- h) Documents as prescribed by law involving the modified content.

2. For enterprises defined in Article 6 of this Decree, in addition to dossiers defined in Clause 1 this Article, enterprises shall submit additionally the following dossiers:

- a) A written commitment to self-take responsibilities for obligations and transactions performed from time of operational expiry to time of re-registration and a written commitment to fulfill financial obligations with State;
- b) Report on production and business operation of year prior to year of expiry of investment license until time of re-registration (Form No. 04-CS/SXKD) as prescribed in Circular No.

04/2011/TT-BKHDT dated March 31, 2011 of the Ministry of Planning and Investment, providing for the basic statistical reporting regime applicable to the state-owned enterprises, enterprises and projects with foreign direct investment.

3. If, when making re-registration, the enterprise requests the modification of the contents related to business registration and the investment project, in addition to dossiers defined in Clauses 1 and 2 of this Article, it needs supplement documents corresponding to the modified contents in accordance with law on investment and enterprise.

4. Dossier of re-registration is made into 03 sets, in which have at least 01 original set. In case of having contents of verification which need to be consulted Ministries, sectors or must be submitted to the Prime Minister, dossier shall be made into 10 sets, in which have at least 01 set of original dossier.

Article 9. The orders of and procedures for re-registration of enterprises

1. The enterprise applying for re-registration shall submit a dossier specified in this Decree to the investment certificate-granting agency.

2. Case not required consulting Ministries and sectors, within 15 working days, after receiving full and valid dossier, the investment certificate-granting agency shall consider and grant investment certificate.

3. Case required consulting Ministries and sectors, time for consideration and grant of investment certificate does not exceed 45 working days, after receiving full and valid dossier. Agencies consulted shall have opinions in writing within 15 working days after receiving dossier.

4. If refusing to grant a certificate, or requesting modification of the dossier, the investment certificate-granting agency shall clearly notify in writing the enterprise of the reasons thereof.

5. The investment certificate-granting agency shall write on the investment license the contents defining rights, obligations, investment incentives and commitments or conditions (if any) of investment license and the modified licenses or certificates of modification of investment license (if any).

6. The re-registered enterprises must return originals of granted investment license, the modified licenses and certificates of modification of investment license (if any) to the investment certificate-granting agency when receiving investment certificate.

Article 10. Rights and obligations of the re-registered enterprises

1. The re-registered enterprises shall take over all legitimate rights and interests, and be responsible for unpaid debts, labor contracts and other obligations of pre-reregistered enterprises.

2. A re-registered enterprise has the following rights:

- a) To operate under the investment certificate
- b) To be continued recognizing and enjoying investment incentives during operation according to conditions stated in investment license;
- c) To retain its registered name, seal, account and tax identification number, unless the concerned information has been changed due to re-registration; or it is forced to change for conformity with legislations on enterprises, investment law and other relevant regulations; or because investor wishes to change for conformity with law;
- d) Other rights provided for in law.

3. The re-registered enterprises have the following obligations:

- a) To continue performing commitments or conditions (if any) stated in investment license;
- b) To take responsibilities for the truthfulness and accuracy of content of the re-registration dossier;
- c) To abide by legislations on enterprises, investment and relevant law.

Article 11. Dossiers of transformation of enterprises

1. Case of transformation of enterprise together with the re-registration, dossier comprises:

- a) A written application for re-registration and transformation of the enterprise, signed by the representative at law of the enterprise, enclosed with list of members of limited liability company with two or more members or partnership or list of founding shareholders of the post-reregistered enterprise;
- b) The draft charter of the enterprise, which has been amended to comply with the provisions of enterprise law;
- c) Decision on re-registration and transformation of enterprise of the owner or owners of enterprise or of Board of Directors of enterprise with 100% foreign capital, Board of Directors of joint-venture enterprise or General Meeting of Shareholders of joint-stock company.

Decision on re-registration and transformation of enterprise must contain the principal content of: names and addresses of the head offices of the pre-transformed enterprise and transformed enterprise; time limit and conditions for the transfer of property, contributed capital amounts, shares or bonds of the foreign-invested enterprise to the transformed enterprise; plan on employment of laborers; and time limit for transformation;

- d) Valid copies of the investment license, the modified licenses or certificates of modification of investment license (if any);

dd) Financial statements of two adjacent years at time of transformation;

e) Documents as prescribed by law involving the modified content.

2. Dossier of transformation of enterprise together with the re-registration as prescribed at Clause 1 this Article in case of addition of new members or shareholders, in addition to papers mentioned above, dossier also comprise:

a) For a new member being an individual: a copy of the identity card, passport or other lawful personal identification paper in accordance with the current regulations;

b) For a new member being a legal person: a copy of the establishment decision, business registration certificate or other paper of equivalent validity of the legal person; the authorization decision in case of representative under authorization (in which must contain content, scope and duration of authorization), identity card, passport or other lawful personal identification paper of the authorized representative.

For a new member being a foreign legal person, the copies of the business registration certificate and charter or other paper of equivalent validity must be consul legalized in accordance with current regulations within 3 months before the date of submission of the dossier.

3. In case of transformation of enterprises after enterprises have re-registered, the transformation dossier shall comply with the respective provisions of enterprise Law, investment Law and documents guiding implementation.

4. Dossier of transformation of enterprise is made into 05 sets, in which have at least 01 original set. In case of having contents which must be submitted to the Prime Minister or be consulted by Ministries, sectors, dossier shall be made into 10 sets, in which have at least 01 set of original dossier.

Article 12. The orders of and procedures for transformation of enterprises

1. Case of transformation of enterprise together with re-registration, enterprise may submit dossier as prescribed at Clause 1 Article 11 of this Decree at the investment certificate-granting agency.

2. Decision on re-registration and transformation of enterprise must be sent to all debt owners and be notified employees in enterprise within 15 days, after decision is approved.

3. Case not required consulting Ministries and sectors, within 15 working days, after receiving a full and valid dossier, the investment certificate-granting agency shall consider and grant investment certificate.

4. Case required consulting Ministries and sectors, time for consideration and grant of investment certificate does not exceed 45 working days, after receiving full and valid dossier.

Agencies consulted shall have opinions in writing within 15 working days after receiving dossier.

5. If refusing to grant a certificate, or requesting modification of the dossier, the investment certificate-granting agency shall clearly notify in writing the enterprise of the reasons thereof.

6. The investment certificate-granting agency shall write on the investment license the contents defining rights, obligations, investment incentives and commitments or conditions (if any) of investment license and the modified licenses or certificates of modification of investment license (if any).

7. The transformed enterprises must return originals of granted investment license, the modified licenses and certificates of modification of investment license (if any) to the investment certificate-granting agency when receiving investment certificate.

Article 13. Rights and obligations of the transformed enterprises

1. Enterprises are entitled to do transformation of enterprise together with the re-registration of enterprise.

2. The transformed enterprises shall take over all legitimate rights and interests, and be responsible for unpaid debts, labor contracts and other obligations of pre-transformed enterprises.

3. The transformed enterprises are entitled to further enjoy investment incentives and perform commitments and conditions stated in investment license for investment project already been licensed.

4. The transformed enterprises must satisfy conditions as prescribed by concerned law for each case of transformation.

5. Enterprises shall take responsibilities for the truthfulness and accuracy of content of the transformation dossier.

6. The transformed enterprises have other rights and obligations as prescribed by law.

Chapter 3.

REGISTRATION FOR CONVERTING INVESTMENT LICENSE FOR BUSINESS COOPERATION CONTRACT

Article 14. Dossier of registration for converting investment license for business cooperation contract

1. Dossier of registration for converting investment license comprises:

a) A written application for converting investment license, signed by the parties to the business cooperation contract;

b) The modified business cooperation contract (if having the modified content);

c) Valid copies of the investment license or business license, the modified licenses (if any).

2. When the parties to a business cooperation contract request modification of the contents related to the investment project and business cooperation contract, the above dossier must also comprise documents required by law corresponding to the contents requested for modification.

3. Dossier of converting investment license is made into 03 sets, in which have at least 01 original set. In case of having contents which must be submitted to the Prime Minister or be consulted by Ministries, sectors, dossier shall be made into 10 sets, in which have at least 01 set of original dossier.

Article 15. The order of and procedures for registration for converting investment license for business cooperation contract

1. The parties to business cooperation contracts may submit dossier as prescribed in this Decree at the investment certificate-granting agency.

2. Within 07 working days, after receiving a full and valid dossier, the investment certificate-granting agency shall consider and grant investment certificate.

3. Case required consulting the relevant Ministries and sectors, time for consideration and grant of investment certificate does not exceed 45 working days, after receiving full and valid dossier. Agencies consulted shall have opinions in writing within 15 working days after receiving dossier.

4. If refusing to grant a certificate, or requesting modification of the dossier, the investment certificate-granting agency shall clearly notify in writing the parties to business cooperation contract of the reasons thereof.

5. The investment certificate-granting agency shall write on the investment license the contents defining rights, obligations, investment incentives and commitments or conditions (if any) of investment license or business license or/and the modified licenses (if any).

6. The parties to business cooperation contract must return originals of granted investment license or business license and the modified licenses (if any) to the investment certificate granting agency when receiving investment certificate.

Article 16. Rights and obligations of parties to business cooperation contract in case of converting investment license

1. To take over the rights and obligations specified in the investment licenses or business licenses and modified licenses (if any), the signed business cooperation contracts.
2. To take responsibilities for the truthfulness and accuracy of content of dossier of registration for converting investment license.
3. Other rights and obligations provided for in investment Law.

Chapter 4.

ENTERPRISES WHICH HAVE NOT YET RE-REGISTERED AND THE PARTIES TO BUSINESS COOPERATION CONTRACTS WHICH HAVE NOT YET CONVERTED THE INVESTMENT LICENSE

Article 17. Rights and obligations of the enterprise which has not yet re-registered

1. To continue to organize and operate under the granted investment license and enterprise charter. For contents not stated in investment license and enterprise charter, enterprise may comply with enterprise Law, investment Law and relevant law, specified as follows:

- a) Enterprises with 100% foreign capital with one investor shall apply regulations corresponding to regulations for one-member limited liability companies.
- b) Enterprises with 100% foreign capital with two or more investors and joint-venture enterprises shall apply regulations corresponding to regulations for limited liability companies with two or more members;
- c) Joint-stock companies specified in point c Clause 1 Article 2 of this Decree shall apply regulations corresponding to regulations applicable to Joint-stock companies.

2. To request for modification of enterprise charter, modification of investment license except for modification of operational duration and modification of trades that change the operational duration stated in investment license.

3. To retain its registered name, seal, account and tax identification number unless investor wishes to change for conformity with law.

4. To perform new investment project as prescribed by investment law. The operational duration of new investment project is consistent to its operational duration stated in investment license.

5. Other rights and obligations as prescribed by enterprise law, investment law and concerned law.

Article 18. Rights and obligations of parties to business cooperation contracts which have not yet converted investment licenses or business licenses

1. The parties to a business cooperation contract may continue to operate under the granted investment license or business license and the modified licenses (if any) and the signed business cooperation contract.
2. The parties to a business cooperation contract are obliged to observe the provisions of the Investment Law and relevant laws.
3. In the course of operation, the parties to a business cooperation contract not yet converted investment license or business license have right to request for consideration and modification of investment license or business license.

Article 19. Modification of investment licenses for enterprises which have not yet re-registered and modification of investment licenses or business licenses of business cooperation contracts which have not yet converted investment licenses or business licenses

1. The investment certificate-granting agency shall consider the request of modification of investment license of enterprises which have not yet re-registered or modification of investment licenses or business licenses of business cooperation contracts which have not yet converted investment licenses or business licenses in accordance with law; approve for modification of investment licenses or business licenses in the form of certificates of modification of investment licenses or certificates of modification of business licenses. If an investor requests, the investment certificate-granting agency shall grant investment certificate to replace the licenses granted previously and write full contents of previous licenses on certificate of investment.
2. Conditions for investment, investment incentives and other conditions of content of modification and addition shall comply with legislations at time of modification and addition.
3. For contents not being modified and added, enterprises or parties to business cooperation contract continue comply with provisions in the granted investment licenses or business licenses.
4. For enterprises which have not yet re-registered, the investment certificate-granting agency shall issue written acceptance without modification of investment license in the following cases:
 - a) The enterprise opens a transaction office, goods store or shop for display of products (other than a production unit) in the province or centrally run city where the enterprise is headquartered;
 - b) The enterprise moves its head office within the province or centrally run city, except for case of moving location between inside and outside of industrial parks, economic zones, and hi-tech parks.

In case where an enterprise wishes to modify investment license for contents specified at points a, b Clause 4 this Article, the investment certificate-granting agency shall modify investment license in accordance with regulations.

Article 20. The orders and procedures for modification of investment licenses for enterprises which have not yet re-registered and modification of investment licenses or business licenses of business cooperation contracts which have not yet converted investment licenses or business licenses

1. Enterprises which have not yet re-registered and parties to business cooperation contract which have not yet converted investment licenses or business licenses, upon request modification, shall submit dossier as prescribed in Decree guiding implementation of a number of Articles of investment law to the investment certificate-granting agency for being considered and modified. Enterprises and parties to business cooperation contract shall take responsibilities for the truthfulness and accuracy of content of the modification dossier.
2. Dossiers, orders of and procedures for grant of certificates of modification of investment license or certificates of modification of business license shall comply with the investment law, enterprise Law and documents guiding implementation.
3. Within 15 working days, after receiving full and valid dossier, the investment certificate-granting agency shall consider and grant certificate of modification of investment license or certificate of modification of business license.
4. Case required consulting the relevant Ministries and sectors, time for consideration and grant of investment certificate does not exceed 45 working days, after receiving full and valid dossier. Agencies consulted shall have opinions in writing within 15 working days after receiving dossier.
5. If refusing to grant a certificate, or requesting modification of the dossier, the investment certificate-granting agency shall clearly notify in writing the investors of the reasons thereof.

Chapter 5.

IMPLEMENTATION PROVISIONS

Article 21. Implementation provisions

1. This Decree takes effect on January 15, 2014, except for provision in Clause 2 of this Article.
2. Content of re-registration for foreign-invested enterprises which have been granted investment license before July 01, 2006, and of which operational duration have been expired after July 01, 2006, but not yet dissolved and have request to be entitled to continue operation defined in Article 6 of this Decree shall execute from January 01, 2014.
3. This Decree replaces Government's Decree No. 101/2006/ND-CP dated September 21, 2006, providing for the re-registration, transformation, and registration for new investment certificates of foreign-invested enterprises under the provisions of the enterprise law and the investment law and Government's Decree No. 38/2003/ND-CP dated April 15, 2003, on equitization of foreign-invested enterprises.

4. The Ministers, Heads of ministerial-level agencies, Heads of Governmental agencies, chairmen of People's Committees of provinces and central-affiliated cities shall implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung