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LEGAL UPDATE

DECREE 18 ON CHANGES FOR
MULTILEVEL MARKETING BUSINESS ACTIVITIES



On 28 April 2023, Decree No. 18/2023/ND-CP was issued. It amends and supplements several articles of Decree No. 40/2018/ND-CP dated 12 March 2018 (**Decree 40**) regarding the management of multilevel marketing business (**Decree 18**). Decree 18 came into force on 20 June 2023.

In this update, we set out some notable points of Decree 18.

1. Conditions for Registration

1.1 New Conditions

Decree 18 adds conditions enterprises owned by foreign investors or foreign-invested economic organisations (**FIEs**) need to meet when registering a multi-level marketing (**MLM**) business. All foreign investors or foreign-invested business organisations being the owners or shareholders of the FIE registering MLM business need to have operated an MLM business for at least three years continuously. This requirement intends to reduce the risk of large-scale fraud. It also allows screening foreign investors with experience in MLM business before they can enter the Vietnamese market.

1.2 Transition Period

MLM enterprises that have been granted MLM registration certificates before the effective date of

Decree 18 may continue to operate until the expiration of their certificates. When applying for renewal of the MLM registration certificates, MLM enterprises must satisfy the requirements for registration of MLM activities as specified in Decree 18.

1.3 Business License

In addition, FIEs conducting MLM activities must also obtain a business license in accordance with Decree No. 09/2018/ND-CP¹ which provides guidelines on goods trading of foreign investors and foreign-invested business entities in Vietnam. This means that a business license that allows retail distribution including retailing through MLM needs to be obtained before the application for an MLM registration certificate can be submitted.

2. Notification on Conferences, Seminars and Training on MLM

2.1 Notification Procedure

If a conference, meeting or training program is being organised with an intended attendance of at least 30 persons or 10 participants in the MLM network, under Decree 40, the MLM enterprise is required to inform the provincial Department of Industry and Trade (DOIT) beforehand. To reduce unnecessary administrative procedures, Decree 18 has excluded internal meetings and events from the notification requirement.

¹ Decree 09/2018/ND-CP on Guidelines for the Law on Commerce and the Law on Foreign Trade Management Regarding Goods Trading and Other Activities Directly Related to the Sale of Goods of Foreign Investors and Foreign-Invested Business Entities in Vietnam.



DOIT needs to examine the notification application within seven working days from the date of receiving the notification. It was five working days under Decree 40.

2.2 Competent Authority

Decree 18 also clarifies the competent authority receiving the notification on online conferences, seminars and training on MLM. If the participants only perform MLM in one province or city under the central government, the enterprise shall send a notification to DOIT of that province or city. If the participants perform MLM in several provinces or cities under the central government, the enterprise shall send a notification to DOIT where the enterprise's head office is located.

3. Responsibilities of MLM Enterprises

Decree 18 adds some responsibilities for an MLM enterprise. An MLM enterprise:

- Needs to ensure that at least 20% of the revenue from MLM activities in a fiscal year is revenue from customers who do not participate in MLM activities of such enterprise;
- Must not provide information about food using images, equipment, costumes, names, or letters of medical units or facilities, doctors, pharmacists, or medical staff, thank-you letters, thank-you notes from patients, articles written by doctors, pharmacists, medical staff; and

- Must not provide information about food with contents posted, quoted, or commented on by patients that describe such foods have therapeutic effects.

The first responsibility aims to promote multi-level selling activities to develop in accordance with the nature of retail distribution activities which is goods distribution to consumers instead of consumption within the system of participants. The second and last one also apply to MLM participants.

4. Use of Escrow Fund of MLM Enterprises

There might be practical difficulties related to the use of an escrow fund by those who have had effective judgments/decisions on disputes with MLM enterprises. Therefore, Decree 18 defines which obligations are related to MLM activities, and which are not because this impacts the possibility to use an escrow fund. The obligations related to MLM activities include the obligations

- to pay the bonus according to the bonus plan;
- to re-purchase the goods in the event of returns by the participants; and
- to return the money in the event of a failure in goods delivery or receipt.

This new provision also helps MLM participants who have disputes with MLM enterprises to easily determine whether their disputes fall within the cases eligible to use escrow fund and decide to make a lawsuit to claim their benefits.

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