

Enterprises & Investment

New Decree guiding enterprise registration

On 04 January 2021, the Government promulgated Decree No. 01/2021/ND-CP guiding the Law on Enterprise 2021 with respect to enterprise registration (“**Decree 01**”), replacing Decree No. 78/2015/ND-CP and its relevant amendments (“**Decree 78**”). Highlighted below are some notable provisions in Decree 01.

1. General Regulations

Social insurance participation code of enterprises: Decree 01 provides that the enterprise code issued to an enterprise will be used as both the tax code and social insurance participation code of such enterprise.

Tax code of dependent units: Under Decree 01, a dependent unit code issued for a branch/representative office is also its tax code.

Authorised organisations for enterprise registration: Decree 01 introduces two additional organisations that can be authorised to carry out enterprise registration procedures, namely (i) public postal service providers and (ii) non-public postal service providers.

Commencement date of enterprises’ operation: Under Decree 78, the issuance date of an enterprise registration certificate (“**ERC**”) was the commencement date of non-conditional business operations. Decree 01 provides an additional option for an enterprise to freely register another commencement date of its non-conditional business operations other than the ERC issuance date.

Enterprise Registration via the National Business Registration Portal (“NBRP**”):** Under Decree 01, enterprises submitting application dossiers via the National Business Registration Portal shall no longer be required to supplement the hard copies of such dossiers to the Business Registration Division upon approval of online registration. Instead, online registration must be authenticated by using e-signatures or business registration accounts of the competent signatory or an authorised person. In addition, enterprises will only have 60 days to supplement or amend online applications upon being requested to do so before the application is cancelled by the Business Registration Division.

2. Application Dossiers Requirements

Submission of legal documents of legal representatives: Decree 01 requires submission of legal documents of the legal representative when establishing a limited liability company or joint stock company.

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3. Enterprise registration of entities in securities sector

Aligning with regulations under the Law on Enterprises 2020, Decree 01 further supplements procedures for registration of securities companies, securities investment fund management companies, securities investment companies, branches in Vietnam of foreign securities companies, and foreign fund management companies.

The application for such registration shall be subject to the specific enterprise forms of such entities but must include the license or approval issued by the State Securities Commission.

4. Enterprise Names

Under Decree 78, DPI had the ultimate authority to approve or reject proposed enterprise names. However, Decree 01 additionally grants enterprises the right to initiate an administrative lawsuit to oppose such rejection.

5. Temporary Suspension of Business Operations

Under Decree 01, there is no limitation to the total continuous period of a temporary suspension of an enterprise's business operation, as opposed to the maximum two-year period under Decree 78.

Further, Decree 01 also provides that if an enterprise registers its temporary suspension, the Business Registration Division shall be responsible for updating the suspension status of all branches, representative offices, and business locations of such enterprises. The enterprise will not need to submit separate dossiers for suspension of these dependent units.

6. Supplementation of Legal Status of an Enterprise

Under Decree 01, the legal status of an enterprise includes:

- (a) Being temporarily suspended;
- (b) No longer operating at the registered address;
- (c) ERC being revoked due to enforcement of tax administration;
- (d) Undergoing a dissolution process or being divided, consolidated, or merged;
- (e) Undergoing bankruptcy process;
- (f) Being already dissolved, bankrupted, or ceasing to exist; or
- (g) Operating.

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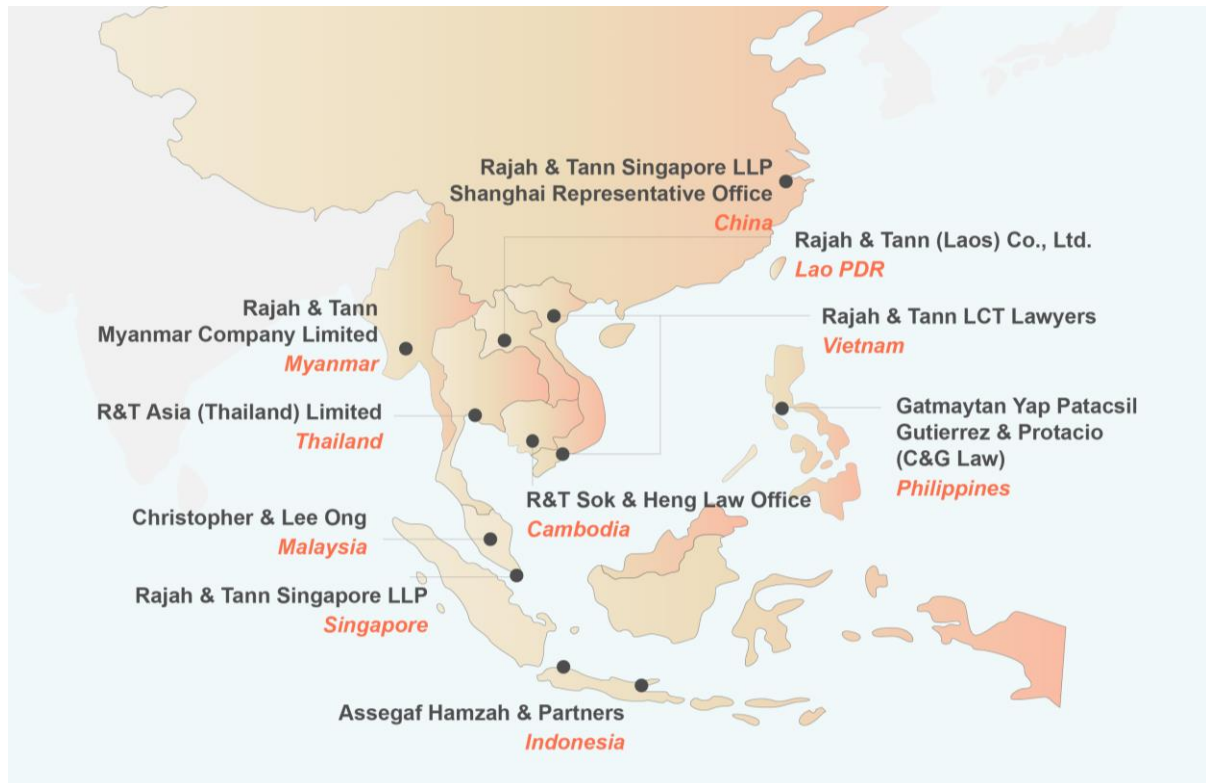
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