

LEGAL ALERT

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Vietnam Introduces New Decree on Multi-Level Marketing

Multi-level marketing (“MLM”) means business activities using a network of participants with many levels and many branches, in which the participants are entitled to receive commission, bonuses and other economic benefits as a result of their own business and the business of other people in the network. MLMs are more popularly known as pyramid selling, and MLM companies are companies that build and manage their business activities using MLM models to sell their products.

While MLM business structures have been in the Vietnamese market for a little over a decade now, the risks associated with MLM, including unfair business, non-fulfilment of tax obligations and low quality product trading still exist. As a measure to counter such risks and improve the existing MLM business environment, the Government of Vietnam recently introduced a new law to manage MLM business activities. This new law is known as Decree No. 40/2018/ND-CP dated 12 March 2018 (“Decree No. 40”) and it replaces its predecessor, Decree No. 42/2014/ND-CP dated 14 May 2014 (“Decree No. 42”). Decree No. 40 came into effect on 2 May 2018.

Decree No. 40 retains a few notable provisions of Decree No. 42, including:

- a. that MLM activities must be registered in accordance with the relevant laws;
- b. that the organization registering the MLM activities must be an enterprise established in accordance with Vietnamese law and its charter capital must be at least VND 10 billion;
- c. that the organization registering the MLM activities must open an escrow account at a commercial bank operating in Vietnam; and
- d. that the MLM registration certificate is effective for a period of 5 years from the issuance date (subject to extension).

Besides the above provisions, Decree No. 40 also introduces a few changes, including changes related to the escrow amount and the conditions applicable to MLM participants.

We have summarised the key changes in the table below:

Changes to Vietnam’s MLM Laws: Differences between Decree No. 40 and Decree No. 42

| Matters | Decree No. 42 | Decree No. 40 | Notes |
|---------------|--|--|---|
| Escrow amount | The MLM company must have a charter capital of at least VND10 billion and make an escrow deposit that is equivalent to 5% of its charter capital but not less than VND5 billion. | The MLM company must have a charter capital of at least VND 10 billion and make an escrow deposit that is equivalent to 5% of its charter capital but not less than VND10 billion. | The escrow bank must provide a written confirmation on the escrow amount. |

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| <p>Conditions applicable to MLM participants</p> | <p>MLM participants must be individuals with full civil capacity.</p> <p>An individual is not allowed to participate in MLM in the following cases:</p> <p>(a) where such individual is serving a sentence of imprisonment or has previous convictions for the production and trading of counterfeit goods, deceitful advertising, illegal business, tax evasion, deceit to clients, swindling for appropriation of assets, abuse of trust for appropriation of assets, or illegal seizure of assets.</p> <p>(b) where such individual is a foreigner who does not possess a working permit issued by the relevant Vietnamese authorities.</p> | <p>MLM participants must be individuals with full civil capacity in accordance with the laws of Vietnam.</p> <p>An individual is not allowed to participate in MLM in the following cases:</p> <p>(a) where such individual is serving a sentence of imprisonment or has previous convictions for the production and trading of counterfeit goods, prohibited goods, deceitful advertising, deceit to clients, swindling for appropriation of assets, abuse of trust for appropriation of assets, illegal seizure of assets or crimes in MLM.</p> <p>(b) where such individual is a foreigner who does not possess a working permit issued by the relevant Vietnamese authorities, except in cases exempted by Vietnamese law.</p> <p>(c) where administrative fines have been imposed on an individual for committing any prohibited MLM action and the time for penalising such violation has not expired.</p> <p>(d) where such individual has characteristics prescribed under Article 7.1(c) of Decree No. 40 (see Notes column).</p> <p>(e) where such individual is a state employee as prescribed under Vietnamese law.</p> | <p>Article 7.1(c) provides that partners (for partnerships), owners (for private enterprises or single member limited liability companies (“LLCs”)), members (for multi-member LLCs), the founding shareholders (for joint stock companies), and the legal representative(s) of an MLM company cannot include any organisation or individual who held a position in an MLM company which had its certificate of MLM operation registration revoked under Decree No. 42 and Decree No. 40.</p> |
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