

NEW REGULATIONS ON TRADE PROMOTION ACTIVITIES

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On October 10, 2024, the Government issued Decree 128/2024/NĐ-CP (**Decree 128**) amending and supplementing some articles of Decree 81/2018/NĐ-CP (**Decree 81**) which provides details for the Commercial Law on trade promotion activities. Decree 128 shall take effect on December 1, 2024 with some notable regulations as follows:

Firstly, amending the regulation on the maximum limit of the value of goods and services for promotion. Decree 128 clarifies the value of goods and services for promotion by changing the phrase "*not exceed 50% of the price of the promoted goods or services unit before the promotion period*" to "*not exceed 50% of the selling price right before the promotion period of the promoted goods or services unit*". This amendment aims to specify that the basis for calculating the maximum limit on the value of goods and services for promotion is the selling price right before the promotion period, limiting varied understandings regarding the basis for calculating this maximum limit.

Secondly, amending some regulations related to the registration of promotion activities, specifically:

(i) Amending cases that promotion activities must be notified. Compared to Decree 81, Decree 128 has reduced some cases that promotion activity notification procedures are not required, including:

- Organizing for customers to participate in cultural, artistic, entertainment programs and other events for promotional purposes (clause 8 Article 92 of the Commercial Law);
- Providing free samples of goods or services to customers for testing (Article 8 of Decree 81);
- Gifting goods, providing services without collecting money (Article 9 of Decree 81);
- Selling goods and providing services at prices lower than the previous selling prices of goods and service provision, applied during the notified promotion period (promotion in the form of discount) (Article 10 of Decree 81);
- Selling goods and providing services with gift vouchers for procurement or services (Article 11 of Decree 81).



(ii) Adjusting registration dossier for promotional programs. According to Decree 81, when registering for a promotional program, merchants are required to submit an uncertified copy of documents proving the quality of promotional goods as per legal requirements. In practice, such merchants as electronics supermarkets, shopping centers, general retail stores, etc. that run promotional programs for all products and goods they sell would face difficulties in submitting these documents due to the large volume and wide variety of promoted items. Therefore, Decree 128 has abolished the requirement to provide these documents when merchants submit their registration dossier for promotional programs.

(iii) Amending the Forms of notification, registration, and report on the implementation of promotion activities and the organization of trade fairs and exhibitions. According to the Forms in the Appendix issued with Decree 81 (such as the Form of Promotion Implementation Notice, Registration of Promotion), only the legal representative of a merchant has the right to sign the Forms submitted to state management authorities. This regulation has caused some difficulties for merchants when carrying out administrative procedures related to promotion activities, organization of trade fairs and exhibitions, as currently most merchants' legal representatives have authorized other representatives in their activities for convenience in production and business operation. Therefore, Decree 128 has amended the signatory on the Forms from "*Legal representative of the merchant*" to "*Representative of the merchant*".

Thirdly, amending the method of notifying promotion activities to state management authorities. Previously, under Decree 81, the methods of notifying promotion activities or notifying amendments and supplements to a Promotional Program's content include submission via "*email with an electronic signature or with a scanned copy*

of the Promotion Implementation Notice with the signature and seal of the merchant to the email address announced by Departments of Industry and Trade". The application of a scanned copy with signature and seal is not consistent with the form of electronic dossier stipulated in point c clause 1 Article 9 of Decree 45/2020/NĐ-CP on the implementation of administrative procedures in the electronic environment. At the same time, the method of submitting dossiers to an email address to perform administrative procedures is not among the submission methods prescribed in Article 16 of Decree 61/2018/NĐ-CP on implementing the one-stop shop mechanism and interlinked one-stop shop mechanism for handling administrative procedures. Therefore, Decree 128 abolishes this submission method. Besides, Decree 128 replaces the dossier submission method via "*the online public service system provided by the Department of Industry and Trade*" with "*the National Public Service Portal or the Provincial Administrative Procedure Information System*" to comply with the applicable regulations on handling administrative procedures.

COMMENTS AND RECOMMENDATIONS

Being issued to perfect the legal framework for trade promotion activities, Decree 128 has reduced and simplified some administrative procedures and processes for merchants and resolved some problems and difficulties arising during the implementation of Decree 81 related to promotion activities and the organization of trade fairs and exhibitions. In addition to some amendments related to the maximum limit on the value of goods and services for promotion, registration dossier for implementing promotional programs, and methods of notifying promotion activities, Decree 128 also revises several contents on the deadline for announcing results and awarding prizes when implementing promotional programs, adds some forms for merchants when implementing promotion activities, etc. Therefore, enterprises and individuals should update new regulations of Decree 128 to ensure compliance with the laws when implementing trade promotion activities.