Vietnam Draft Decree Detailing the Law on Commerce regarding Commercial Promotion Activities

Recent developments

The Government recently released a draft decree on sale promotion activities ("Draft Decree") to replace the static rules under Decree No. 37/2006/ND-CP detailing the Law on Commerce regarding Commercial Promotion Activities ("Decree 37") 1.

The Draft Decree proposes a number of positive measures allowing enterprises to conduct their sale promotions more liberally. However, it retains restrictions and requirements which limit the ability of businesses to conduct sale promotion activities. The Draft Decree is being circulated for comments from the public. Accordingly, enterprises and business associations alike should seize this opportunity to raise their concerns and share practical experiences to help improve the final regulation.

We set out some key proposed amendments under the Draft Decree below.

1. Value cap on promotion goods

The 50% restriction on the unit price and the 50% restriction on the total promotion value will still apply to several of the most common sale promotions, such as gift giving, price discounts and contest cards. Based on this draft, it appears that the value restrictions are here to stay.

However, the Draft Decree does provide limited circumstances where the value restrictions will not apply. Specifically, value restrictions will not apply to targeted sales promotion campaigns organized by the central or provincial Governments or mandated by the Prime Minister. Celebration sales promotion campaigns prior to major public holidays (such as Tet and National Day) are also exempted from value restrictions.

2. Time period cap on price discount

Currently, price discounts are subject to strict restrictions in terms of discount value and time period. The Draft Decree increases the total price discount time period from 90 days per year to 120 days per year.

3. Sales of perishable goods

The Draft Decree provides that no value restriction would be applicable to sales promotions of:

a. Goods and services when implementing the price stabilization policy of the State;

b. Fresh/raw products;

---

1 Decree No. 37/2006/ND-CP dated 04 April 2006 of the Government detailing the Law on Commerce regarding Commercial Promotion Activities ("Decree No. 37").
c. Goods and services sold in cases of bankruptcy, dissolution or change of production or business location.

Currently many business associations have requested that inventory, seasonal goods, and liquidated/clearance goods also be included in the perishable goods exemption category. This would be compliant with the Pricing Law in terms of the types of goods whose price can be solely managed by enterprises.

4. Administrative procedures for notification and registration of promotions

Currently sale promotion campaigns must be registered with the Department of Industry and Trade where the sale promotion will be conducted. Although the regulation only requires advance notification, in practice the procedure is a request for approval. Enterprises can only legitimately conduct their proposed sale promotion when they have received approval by email or in writing from the relevant authorities. This poses a significant challenge and cost to enterprises, especially for nation-wide promotions where they will be required to follow up with authorities in 63 provinces and 5 central cities.

The registration requirement is preserved in the Draft Decree, although it is proposed that the advance notice period be shortened from 7 working days to 3 working days, and that the authorities' period of review be shortened from 7 working days to 5 working days for registration dossiers.

The Draft Decree recognizes the current exception from the registration requirement for promotional goods whose total value of promotional goods is less than VND 100 million, or where traders only sell goods and conduct sales promotions through e-commerce platforms and online promotional websites.

* * *

A copy of the Draft Decree can be found here. The Ministry of Industry and Trade aims to adopt the Draft Decree this calendar year.