

New regulations on trade promotions

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On 10 October 2024, the Government issued Decree No. 128/2024/ND-CP (“**Decree 128**”), amending a number of articles of Decree No. 81/2018/ND-CP dated 22 May 2018, detailing Commercial Law on trade promotion activities (“**Decree 81**”). Decree 128 shall take effect on 1 December 2024.

In this article, we will summarize some notable new contents of Decree 128 as follows.

1. Maximum limit on the value of goods and services used for promotion

Decree 128 clarifies further

- (a) The material value used for promotion for a unit of promoted goods and services must not exceed 50% of **the selling price immediately before the promotion period** of that unit of promoted goods and services (*Decree 81 only stipulates that it must not exceed 50% of the price of that unit of promoted goods and services before the promotion period*), except for the following forms of promotion: Organizing customers to participate in cultural, artistic, entertainment programs and other events for promotional purposes; Other forms of promotion if approved by the State management agency of commerce; Selling goods and providing services with competitive entry forms reserved for customers to select winners according to the announced rules and prizes (or other equivalent forms of organizing competition and awarding prizes); Selling goods and providing services together with participation in lucky programs, which is linked to the purchase of goods and services and winning prizes depends on the luck of the participant according to the announced rules and prizes (lucky promotional programs); Organizing loyalty programs, whereby rewards are given to customers based on the quantity or value of goods and services purchased by the customer, expressed in the form of customer cards, vouchers recording the purchase of goods and services or other forms; and
- (b) The total value of goods and services used for promotion in a promotion program must not exceed 50% of the total value of promoted goods and services, except for promotions in the following forms: Organizing customers to participate in cultural, artistic, entertainment programs and other events for promotional purposes; Other forms of promotion if approved by the State management agency of commerce; Providing customers with sample goods and services for free trial; Offering goods and providing services on free of charge basis without accompanied purchase of goods or provision of services.

Thus, according to the new Decree, other forms of promotion if approved by the State management agency of commerce are also exempted from the maximum limit on the value of promoted goods and services.

2. Notification of promotional activities

According to Decree 128, traders carrying out promotional programs in the following forms:

- (a) Organizing customers to participate in cultural, artistic, entertainment programs and other events for promotional purposes; Providing customers with sample goods and services for free trial; Offering goods and providing services on free of charge basis; Selling goods and providing services at prices lower than the previous selling prices and service prices, applied during the announced promotional period (promotion in the form of discounts); Selling goods and providing services with purchase vouchers and service vouchers); and

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- (b) Selling goods or providing services with contest entry forms reserved for customers to select prize winners according to the announced rules and prizes (or other equivalent forms of organizing contests and awarding prizes; Organizing loyalty programs, whereby the awarding of prizes to customers is based on the quantity or value of goods and services purchased by customers, expressed in the form of customer cards and vouchers recording the purchase of goods and services or other forms) that: (i) have a total value of prizes and gifts of less than VND 100 million; or (ii) for goods and services sold and provided through not only e-commerce trading floors and online promotion websites as provided in Decree 81 but also e-commerce trading floor applications and online promotion applications;

will not have to carry out administrative procedures to notify promotional activities to all Departments of Industry and Trade of localities where the promotion is organized (in the areas where the promotion is implemented) before implementing the promotion program.

3. Method of Notifying promotional activities and Notifying amendments to the promotion program contents

Decree 128

- (a) still allows traders to choose one of the following notification methods to notify promotional activities and notify amendments to the promotional program contents:
- (i) Submitting 1 notification file via postal service to the Departments of Industry and Trade of the localities where the promotion is organized;
 - (ii) Submit 1 notification file directly at the headquarters of the Departments of Industry and Trade of the localities where the promotion is organized;

but abolish the method of submitting 1 notification file via email with an electronic signature or a scanned copy of the Promotion Implementation Notification with the trader's signature and seal to the email address announced by the Departments of Industry and Trade in accordance with Decree 81; and

- (b) replaces the method of using the online public service system provided by the Department of Industry and Trade with the method of submitting 1 notification file via the National Public Service Portal or the Provincial Administrative Procedure Handling Information System.

4. Registration of promotional activities

Similar to the notification of promotional activities and notification of amendments to the promotional program contents, in the registration of promotional activities and registration of amendments to the promotional program contents, Decree 128 has replaced the method of using the online public service system provided by the competent State management agency with submitting 1 registration dossier via the Ministry of Industry and Trade's Administrative Procedures Handling Information System (in case of implementation in two or more provinces or centrally-run cities) or the Provincial Administrative Procedures Handling Information System (in case of implementation in one province or centrally-run city).

Furthermore, the new Decree no longer requires 1 uncertified copy of the documents on the quality of promoted goods as prescribed by law in the application for implementing the promotion program.

5. Announcement of results, awarding of prizes and reporting on results of implementing the promotion program

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Decree 128 retains the provisions of Decree 81, under which in case of implementing promotional programs in the following forms: Selling goods and providing services with contest entry forms reserved for customers to select winners according to the announced rules and prizes (or other equivalent forms of organizing contests and awarding prizes); Selling goods and providing services with participation in lucky programs, which is linked to the purchase of goods and services and winning prizes is based on the luck of the participants according to the announced rules and prizes (lucky promotional programs); and other forms of promotion if approved by the State management agency of commerce; the time-limit for announcing the winning results and awarding prizes of the program must not exceed 45 days from the end date of the promotion period; but allows exceptions “except for cases of force majeure as prescribed by law”.

The new Decree additionally stipulates that traders who conduct promotional programs in the form of selling goods and providing services with contest entry forms reserved for customers to select winners according to the announced rules and prizes (or other equivalent forms of organizing contests and awarding prizes) are not required to report the results of promotional programs.

Decree 128 also cancels the responsibility of traders under Decree 81 to send a written report according to Form No. 09 as the Appendix to this Decree to the State management agency that issues the decision on collection and payment within 10 days from the date of payment to the State budget; but adds a new responsibility of traders to store and be responsible before the laws to serve the inspection, examination and supervision of accounting source documents and materials not only related to reporting the results of promotional programs as prescribed in Decree 81 but also related to the implementation of promotional programs.

6. Registration of trade fares and exhibitions

Similar to registration for promotional activities, Decree 128 no longer requires 1 uncertified copy of Enterprise Registration Certificate, Investment Registration Certificate, Decision on Establishment or other decisions of equivalent legal value as prescribed by law; in the Registration application for organizing trade fairs and exhibitions.

7. Templates

Finally, Decree 128:

- (a) adds Form No. 06a “Registration of amendments to promotional program contents” and Form No. 15 “Report on the state management of trade promotion”; and
- (b) replaces Forms No. 01, 02, 03, 06, 07, 08, 10, 13 and 14./.

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