Indochine Counsel
Business Law Practitioners

MEMORANDUM

TO Clients & Associates

FROM To Xuan Tinh & Pham Thi Thanh Lan

DATE 20 October 2008

RE **Logistic Services for Foreign Companies in Vietnam**

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LEGISLATION

Currently all foreign invested projects and establishment of foreign invested enterprises in Vietnam are governed by the following main legal regulations:

1. Commercial Law No. 36/2005/QH11 passed by the National Assembly of Vietnam on 14 June 2005, effective from 01 January 2006 ("CL");

2. Law on Investment 59/2005/QH11 passed by the National Assembly of Vietnam on 29 November 2005, effective from 01 July 2006 ("LOI");

3. Law on Enterprises 60/2005/QH11 passed by the National Assembly of Vietnam on 29 November 2005, effective from 01 July 2006 ("LOE");

4. Decree No. 88/ND-CP dated 29 August 2006 of the Government on business registration ("Decree 88");

5. Decree No. 108/2006/ND-CP dated 22 September 2006 of the Government providing guidelines for implementation of a number of articles of the LOI ("Decree 108");

6. Decree No. 139/2007/ND-CP dated 05 September 2007 of the Government guiding the implementation of a number of articles of the LOE ("Decree 139");

7. Decree No. 140/2007/ND-CP dated 05 September 2007 of the Government providing detailed regulations on the commercial law regarding conditions for

engaging in logistic services business, and limitations on liability of logistic services business entities ("Decree 140"); and

8. The commitments of Vietnam to the WTO, effective from 11 January 2007.

CLASSIFICATION OF LOGISTIC SERVICES AND CONDITIONS FOR ENGAGING IN LOGISTIC SERVICES BUSINESS

Classification of Logistic Services

Pursuant to Decree 140, logistic services shall be classified into three groups as follows:

[1] **Principal logistic services**, including:

(i) Services of loading and unloading of goods, comprising of loading and unloading of containers;
(ii) Goods warehousing and storage services, including the business of containers warehousing and storage for processing raw materials and equipment storage;
(iii) Transportation agency services, comprising of agency activities of conducting customs procedures and preparing plans for loading and unloading goods; and
(iv) Subsidiary services, including activities of receiving, storing and managing information relating to transportation and storage of goods throughout the entire logistic chain; reprocessing activities of goods which are returned by clients, in stock and out of date, and redistribution of such goods; and containers leasing activities as well as containers hire-purchase activities.

[2] **Logistic services relating to transportation**, including:

(i) Marine transportation services;
(ii) Internal waterways transportation services;
(iii) Aviation transportation services;
(iv) Rail transportation services;
(v) Road transportation services; and
(vi) Pipeline transportation services.

[3] **Other related logistic services**, including:

(i) Technical testing and analysis services;
(ii) Post services;
(iii) Wholesale trading services;
(iv) Retail trading services, including activities on managing storing goods; collecting goods from various sources; assembling and classifying goods; and redistributing and delivering goods; and
(v) Other subsidiary transportation services.

Conditions for Engaging in Logistic Services Business

According to the Commitments of Vietnam to WTO and Decree 140, a foreign invested enterprise (the "FIE") shall only be permitted to engage in logistic services if it satisfies with certain requirements including, among others, requirement on percentage of capital contribution of the foreign investors / parties, particularly as follows:

[1] **Conditions for engaging in principal logistic services**:

(a) For services of loading and unloading of goods, the required capital contribution percentage of the foreign investors is under or equal to 50% of the charter capital.

(b) For goods warehousing and storage services, the required capital contribution percentage of the foreign investors is under or equal to 51% of the charter capital; this restriction shall terminate in year 2014.

(c) For transportation agency services, the required capital contribution percentage of the foreign investors is under or equal to 51% of the charter capital, and as from year 2014 the establishment of a joint venture company shall not be restricted in terms of the capital contribution percentage of the foreign investor.

(d) For other subsidiary services, the required capital contribution percentage of the foreign investors is under or equal to 49% of the charter capital; this restriction shall be 51% as from year 2010 and shall terminate in year 2014.

[2] **Conditions for engaging in logistic services relating to transportation**:

(a) For maritime transportation services:

(i) With respect to business in management and operation of a vessels fleet: (1) the required capital contribution percentage of the foreign investors is under or equal to 49% of the charter capital; and (2) the FIE shall only permitted to establish as from 01 January 2009;

(ii) With respect to business in supplying international sea transportation services: the required capital contribution percentage of the foreign investors is under or equal to 51% of the charter capital.

These restrictions will terminate in year 2012.

(b) For Internal waterways transportation services, the required capital contribution percentage of the foreign investors is under or equal to 49% of the charter capital.

(c) For aviation transportation services, conditions shall be applied in accordance with the Law on Civil Aviation of Vietnam.

(d) For rail transportation services, the required capital contribution percentage of the foreign investors is under or equal to 49% of the charter capital.

(e) For road transportation services, the required capital contribution percentage of the foreign investors is under or equal to 49% of the charter capital; this restriction shall be 51% as from year 2010.

(f) For pipeline transportation services, the FIE shall not be permitted to provide pipeline transportation services, except where an international treaty of which the Socialist Republic of Vietnam is a member contains some other provision.

[3] **Conditions for engaging in other relevant logistic services**:

(a) For technical testing and analysis services, the FIE shall not be permitted to provide such services.

(b) For post services, wholesale trading services and retail trading services, conditions shall be applied in accordance with specific regulations of the Government.

(c) For other subsidiary transportation services, the FIE shall not be permitted to provide such services, except where an international treaty of which the Socialist Republic of Vietnam is a member contains some other provision.

Conclusion

From the above, for the time being, to engage in the logistic activities (exclusive of unpermitted services as above mentioned), foreign investors must take the conditional form of a **joint venture company** with a Vietnamese partner(s) only, with the respective foreign ownership limit as above mentioned.

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