



Special Alert

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New Decree for Trading and Distribution Rights of Foreign Invested Companies in Vietnam

On 15 January 2018, the Government has promulgated Decree No. 09/2018/ND-CP detailing the Commercial Law and the Law on Foreign Trade Management on the purchase of goods and related activities of foreign investors and foreign invested companies in Vietnam (“**Decree 09**”). This new decree took effect from the date of promulgation and replaced Decree No. 23/2007/ND-CP dated 12 February 2007 (“**Decree 23**”).

Business license requirement is lifted for certain import and distribution rights

Except for cases of implementing import rights and wholesale rights of lubricating oils and greases as stipulated in point b, clause 4, Article 9 of Decree 09, foreign invested economic organizations or foreign invested enterprises (the “**FIEOs**”) are not obligated to obtain Business Licenses when implementing the export right, the import right and the wholesale right.

Expanding scope of organizations which must apply for the Business License and license for setting up a retail outlet

Decree 09 expands the scope of organizations which may apply for Business Licenses to include foreign investors not belonging to countries, territories participating in international treaties to which Vietnam is a member; and expands the scope of goods and services subject to Business License to include the ones on which Vietnam has no commitments. The foreign investors must satisfy certain conditions corresponding to each of the aforesaid circumstances. Business duration for these cases is five (5) years.

The economic organizations having retail outlets in Vietnam, which become FIEOs or economic organizations stipulated in points b and c, clause 1, Article 23 of the 2014 Investment Law as a result of capital contribution or acquisition, must apply for a Business License and license for setting up a

retail outlet (the “**Retail Outlet License**”).

New restrictions of Decree 09

- Many business activities and sectors which were used to be exempt from the Business License requirements under Decree 23 are now subject to Business License requirements. These business activities and sectors include: (i) logistics services, except for certain logistics services for which Vietnam has committed to open market under an international trade agreement to which Vietnam is a party, (ii) leasing of goods, excluding finance leasing and leasing for construction equipment with operator, (iii) commercial promotion services, excluding advertising service, (iv) commercial intermediary services, (v) e-commerce activities, and (vi) service of organizations of bidding.
- Only FIEOs which have been licensed to operate retail outlets in the form of supermarkets or convenience stores may be granted the retail right for rice, sugar, video recordings, books and magazines (for retailing in those licensed retail outlets).
- To obtain a Business License, an FIEO which has operated in Vietnam for one (1) year or longer must obtain a confirmation from the relevant tax authority that it has no outstanding tax obligations.
- Under the repealed Decree 23, an FIEO was not required to obtain a Retail Outlet License for the first retail outlet, Decree 09 now stipulates that even for the first retail outlet, the FIEO must apply for the Retail Outlet License and satisfy certain conditions. If the first retail outlet is in the same province/city with the head office, the company is entitled to apply for the Business License and the Retail Outlet License at the same time.
- For the outlets in addition to the first one, if satisfying the following conditions, these outlets shall not be subject to the economic needs test (ENT): Having an area of less than 500m², being in shopping centers, and not being in the form of convenience stores or mini supermarkets. The definition of “additional retail outlet” also has been changed to include retail outlet(s) under the same brand operated by another FIEO. This means that if an FIEO establishes a retail outlet, which is the first one owned by such FIEO but operated under the same brand as a retail outlet owned by another FIEO, such retail outlet is still treated as an “additional retail outlet” and therefore subject to ENT requirements.
- According to Decree 09, the licensing authority is now the Department of Industry and Trade (DOIT) instead of the Provincial People’s Committees as stipulated in Decree 23. For some cases of granting the Business License, DOIT must consult the Ministry of Industry and Trade (MOIT) and other relevant ministries in advance.

About Indochine Counsel

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