

February 2024



[Freepik](#)

ECONOMIC NEEDS TEST – INSIGHTS INTO SIGNIFICANT CHANGES IN BARRIERS FOR FOREIGN ENTRY IN RETAIL SECTOR UNDER FREE TRADE AGREEMENTS

Economic Needs Test (ENT) under WTO Commitments and Vietnamese Laws

The ENT was first introduced in the Schedule of Specific Commitments in Services of Vietnam upon its accession to the WTO in 2007 (“**WTO Commitments**”). Under WTO Commitments, *the establishment of retail outlets (beyond the first one) shall be allowed on the basis of an ENT and the main criteria of the ENT include the number of existing service suppliers in a particular geographic area, the stability of market, and geographic scale.*

The ENT requirements have thereafter been detailed in Circular No. 08/2013/TT-BCT (expired on 15 January 2018) and then Decree No. 09/2018/ND-CP effective from 15 January 2018 (“**Decree 09**”).

Under the current Decree 09, *the establishment of the second retail outlet onwards by foreign owned enterprises shall*

satisfy:

(a) *the general conditions, including:*

- *having a financial plan in order to establish the relevant retail outlet;*
- *not having any overdue tax liabilities if the applicant has been established in Vietnam for one year and above;*
- *the location of the relevant retail outlet complying with the State’s master plan on the geographical market area.*

(b) *the ENT criteria, including:*

- *the effect of the retail outlet on the scale of the geographical area;*
- *number of retail outlets operating in the geographical market area;*
- *impact of the retail outlet on the market stability and operation of*

other retail outlets and traditional markets in the geographical area;

- *impact on traffic, environmental sanitation and fire prevention in the geographical market area;*
- *contributions of the retail outlet to the region's socio-economic development in creating local jobs, development of the region's retail sector, improvement of environment and living conditions for local people, and contributions to the State budget.*

The ENT may be exempted in case where the retail outlet (other than the first retail outlet) has an area of less than 500 m² in a shopping center and is not a convenience store or mini supermarket.

The ENT assessment is carried out by the ENT Council comprising of representatives from the Provincial Peoples' Committee, the Department of Industry and Trade, the Department of Planning and Investment and other relevant authorities.

Removal of ENT under certain Free Trade Agreements

Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"). 14 January 2024 has not only marked the 5-year journey since Vietnam made the successful accession to the CPTPP, but also has

delivered a major influence on retail sector in Vietnam through removal of the ENT. It was committed under the CPTPP that *the establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of an ENT; however, five years after the date of entry into force of this Agreement for Vietnam (i.e. on 14 January 2024), the ENT shall be removed.*

European Union-Vietnam Free Trade Agreement (EVFTA). It is worth mentioning that similar commitments on ENT are also mentioned in the EVFTA which may be removed after five years since the respective entry on 1 August 2020.

However, to note that, although it may not be required to go through the ENT under the relevant Free Trade Agreements, the establishment of the second retail outlet onwards may still satisfy the aforesaid general conditions, especially the compliance with the State's master plan on the geographical market area.

Vietnam has been proved to be an attractive retail market for foreign investment. Lifting administrative barriers in general, and ENT procedures in particular, may help lure more FDI inflows for Vietnam, but concurrently create more intensifying competition in the local market. The Government is likely to be under pressure to look to suitable protectionism in order to support the domestic industries but still comply with the international treaties.

About the Authors



Benjamin Yap (Mr.)

Senior Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448

benjamin.yap@rhtlaw.com.vn



Dang Thi Tuong Vi (Ms.)

Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448

vi.dang@rhtlaw.com.vn

About RHTLaw Vietnam

>

RHTLaw Vietnam

Suite 1101, 11th Floor, Sofitel Central
Plaza 17 Le Duan Boulevard, District 1,
Ho Chi Minh City Vietnam

Tel: +84 28 38206 448

>

RHTLaw Vietnam – Hanoi Branch

Unit 1501B, 15th Floor, Charmvit Tower
117 Tran Duy Hung Street, Cau Giay District,
Hanoi Vietnam

Tel: + 84 24 3974 8881

RHTLaw Vietnam is a Vietnam law practice registered as a limited liability company in Vietnam (the "LLC").

It works in collaboration with the Singapore law practice RHTLaw Asia LLP. The LLC is a distinct legal entity in Vietnam.

Our model is driven by the focus on helping clients succeed, which translates to clear and precise solutions with high-level legal and commercial insights. We proactively grow our practice in tandem with regional and international fast-growing industries and areas like Banking & Finance, Capital Market, M&As, Inward & Outward Investment, Intellectual Property, Trading & Commerce, Real Estate & Construction, Telecommunications, Employment and Litigation

Find out more about us at www.rhtlaw.com.vn