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VIETNAM'S NEW TRADING DECREE: SIMPLIFYING RETAIL MARKET ENTRY

As Vietnam actively integrates into the global economy through new-generation free trade agreements, the country is under continuous pressure to dismantle non-tariff barriers and foster a more open commercial environment. To sustain its appeal to multinational brands, the Government has prioritized cutting administrative red tape and easing market entry barriers that have historically burdened international distributors.

To drive this administrative reform, the Ministry of Industry and Trade is finalizing a landmark draft Decree to replace Decree No. 09/2018/ND-CP ("**Decree 09**") which governs the goods trading and directly related activities of foreign investors and foreign-owned enterprises ("**FOE**") in Vietnam ("**Draft Decree**"). This landmark Draft Decree is expected to significantly reduce compliance costs, accelerate market entry, and provide a clearer legal environment for retail expansion.

The following analysis addresses the key questions regarding these upcoming reforms.

OVERVIEW

In general, foreign investment in the retail sector is welcomed, and foreign investors are permitted to engage in retail activities and establish multiple retail outlets in Vietnam. Retail outlets may take various forms, including convenience stores, mini supermarkets, general supermarkets, or shopping centres.

The main sub-licenses applicable to foreign investment in the retail sector include obtaining a Business License ("**BL**") and, where applicable, a Retail Outlet Establishment License ("**ROL**") for the establishment of each retail outlet. The nationality of foreign investors will determine the licensing procedures and the conditions for obtaining BL and ROLs.

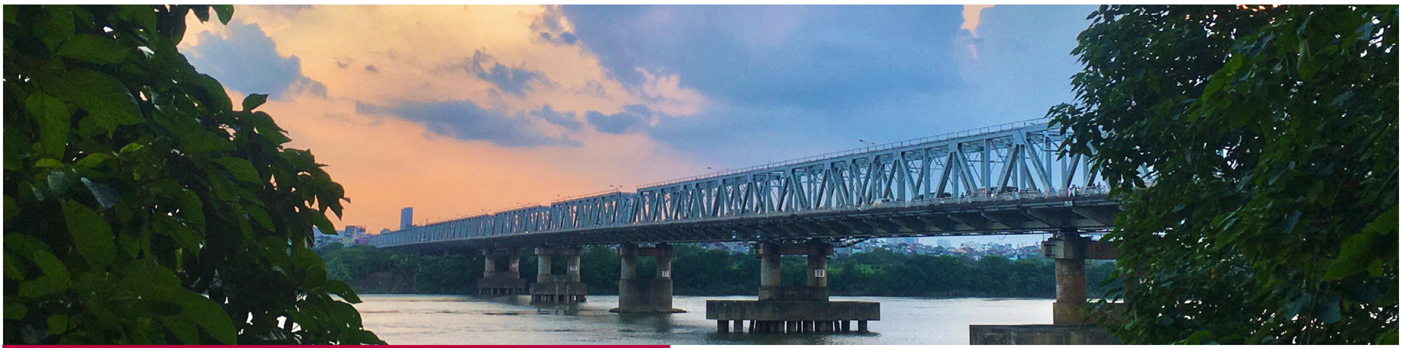
WHO WILL APPLY FOR BL AND ROL?

1. An economic organization of which 50% or less of the charter capital is held by foreign investors.

2. An economic organization of which more than 50% of the charter capital is held by foreign investors.

3. An economic organization of which more than 50% of the charter capital is held by an economic organization specified in Point (2).

4. An economic organization of which more than 50% of the charter capital is jointly held by foreign investors and the economic organization specified in Point (2).



BL LICENSING REQUIREMENTS - INVESTORS FROM TREATY vs NON-TREATY COUNTRIES

The Draft Decree introduces a clearer and more transparent framework of conditions for issuance of BL to investors from:

(1) countries that have entered into relevant international treaties on market access for retail services to which Vietnam is also a party (“**Treaty Country Investor**”); and

(2) countries that are not parties to such treaties (“**Non-treaty Country Investor**”).

	Treaty Country Investors	Non-Treaty Country Investors
Conditions for issuance of BL	(a) To satisfy the market access commitments under the relevant international treaty	(a) Not applicable
	(b) To ensure that there are no outstanding tax liabilities in case of operating in Vietnam for at least 1 year	(b) To ensure that there are no outstanding tax liabilities in case of operating in Vietnam for at least 1 year
		(c) To be commensurate with - the relevant regulations; - the competitiveness of domestic enterprises operating in the same industries during the one-year period preceding the date of the application
		(d) To ensure compliance with Vietnam’s WTO commitments on the goods permitted for trading and other commitments
		(e) To adopt and comply with a labour recruitment plan depending on foreign shareholding ratio. For example, where foreign ownership is from 50%, the company must employ at least 100 Vietnamese employees; where foreign ownership is 100%, the company must employ at least 300 Vietnamese employees.

ROL LICENSING REQUIREMENTS - EASING THE ECONOMIC NEEDS TEST (ENT)

The licensing procedures for issuance of ROL involve, among other things, a review of compliance with applicable master plans; regulations on constructions, firefighting and fire prevention, transportation, environment; and, if applicable, satisfaction of ENT which is evaluated in line with the socio-economic aspects within the relevant geographic market area[1] . In practice, the ENT has been considered a significant barrier to the expansion of foreign-invested retailers due to its qualitative assessment criteria and the uncertainty involved in the approval process.

In line with Vietnam's commitments under relevant international treaties such as CPTPP[2] and EVFTA[3] , the Draft Decree clarifies the circumstances in which the ENT may **be exempted**:

1. foreign investors from countries that are **parties to international treaties** on the removal of the ENT to which Vietnam is also a party;

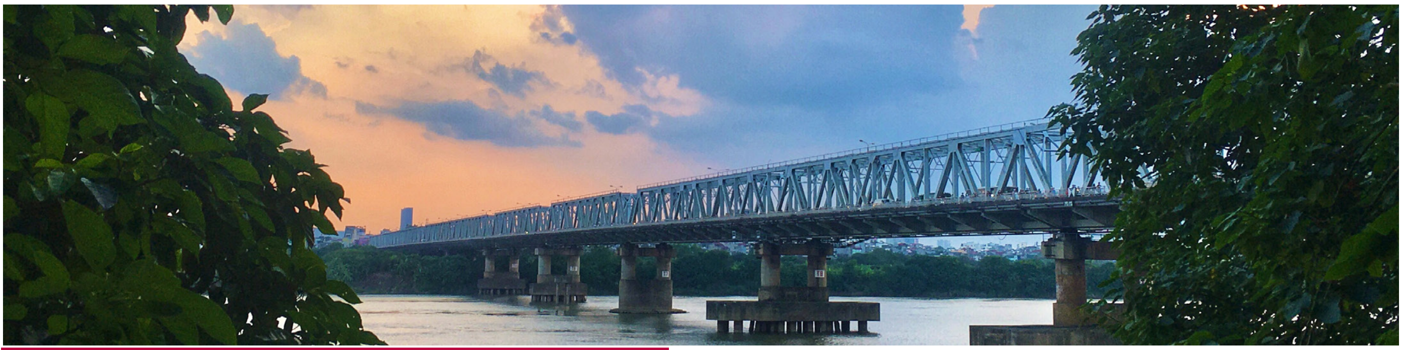
2. foreign investors from countries that are **not parties** to the aforesaid international treaties establishing the **first retail outlet**;

3. foreign investors from countries that are **not parties** to the aforesaid international treaties establishing **the second retail outlet onwards**, and such retail outlet has an **area of less than 500 m^2, is established within a shopping centre, and is not convenience store or mini supermarket**.

Correspondingly, the ROL licensing requirements are as follows:

Retail outlets	ROL Licensing Requirements	
1st retail outlet	**ENT will NOT apply.**	
	(a) Having no overdue tax liabilities, in cases where the enterprise has been established in Vietnam for one year or more.	
	(b) The location must satisfy all applicable requirements on land, planning, investment, construction, fire prevention and firefighting, traffic safety, and environmental hygiene.	
2nd retail outlet onwards	In case where ENT is exempted:	In case where ENT is NOT exempted:
	Satisfying Items (a) and (b) above	Satisfying Items (a) and (b) above; and
		Satisfying ENT test which assesses the following areas: (c) The impact on market stability, the business operations of existing retail outlets and traditional markets within the affected geographic market area (d) The assessment of demand within the geographic market area and the capacity to satisfy such demand, thereby demonstrating the necessity of establishing the proposed retail outlet. (e) The potential contribution to the socio-economic development of the affected geographic market area, in terms of the development and modernisation of the retail sector and the improvement of living conditions of residents.

[1] For a retail outlet with an area of **up to 5,000 m^2**: the affected geographic market area shall be considered at the **commune-level** administrative unit or equivalent.
For a retail outlet with an area **exceeding 5,000 m^2**: the affected geographic market area shall be considered at the **provincial-level** administrative unit or centrally affiliated city.
[2] The Comprehensive and Progressive Agreement for Trans-Pacific Partnership
[3] The European Union-Vietnam Free Trade Agreement



NATIONAL SECURITY CONSULTATION

The licensing procedures for BL and ROL may involve consultation with the Ministry of Public Security and the Ministry of National Defense in certain cases such as:

(1) Non-treaty Country Investors;

(2) Foreign investors applying for ROLs for existing retail outlets:

- (a) 100 existing retail outlets with area less than 500 m^2; and/or
- (b) 50 existing retail outlets with area from 500 to 5,000 m^2; and/or
- (c) 30 existing retail outlets with area more than 5,000 m^2.

(3) Foreign investors applying for ROLs for new retail outlets when already owning:

- (a) 100 retail outlets with area less than 500 m^2; and/or
- (b) 50 retail outlets with area from 500 to 5,000 m^2; and/or
- (c) 30 retail outlets with area more than 5,000 m^2.

NEW 12-MONTH TIMELINE FOR BL & ROL COMPLIANCE AFTER FOREIGN INVESTMENT

Well-established and profitable retail businesses are often attractive acquisition targets for foreign investors looking to enter or expand in Vietnam's retail market.

When a foreign investor acquires a Vietnamese target company, the target may become an FOE, bringing its entire retail network within the scope of the foreign investment regulatory regime. As a result, the target may generally be required to obtain BL and ROLs to continue operating its retail business.

In practice, obtaining BL and ROLs can be a lengthy process. Under the current framework, it is implied that retail operations may need to be suspended pending issuance of the licenses, potentially causing significant disruption to the business and undermining the commercial objectives of the investment.

The Draft Decree, however, addresses this long-standing practical issue by introducing a ***12-month transition period*** *following the competent authorities confirming the eligibility for acquisition*. During this transition period, the newly converted FOE may continue operating its retail business while applying for the required BL and ROLs.

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