

VIETNAM

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Foreign investment in retail sector – a knotty issue



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Vietnam's retail market has been ranked as the sixth most attractive in the world in terms of potential growth owing to increasing demand for consumer goods and rising disposable incomes, and many foreign investors express interest in joining the market. The Government still, however, retains a tight control over the entrance of new foreign players by adopting the Economic Needs Test (ENT).

Pursuant to Vietnam's commitments to the WTO, the ENT shall be considered for every subsequent retail outlet after the establishment of an initial outlet. Each new outlet will be appraised separately using various criteria such as the number of existing service suppliers in a particular geographic area, and the stability of the market and geographic scale. Other supplemental criteria stipulated by domestic law are also considered, including the number of retail sales outlets and population density of the province or city where the outlet is to be located, and consistency of the proposed project with that location's planning. Support from various relevant local authorities must be obtained for such outlets, however this is usually gathered at the appraisal rather than the pre-submission stage. Therefore, it is very uncertain whether a location is proper for licensing purposes despite appearing commercially sensible. Many provinces or cities do not even have such industry specific retail planning available to the public.

Recently, the Ministry of Industry and Trade issued the Official Letter No.6656/BCT-KH dated 13 July 2009, which sets forth guidelines to appraise foreign invested distribution projects. Accordingly, apart from information pertaining to the nationality of the investor, the form of investment and list of goods to be distributed, investors should have to satisfy the authorities as to other such issues including modes of importing goods to distribute in Vietnam (specifying procedures from arrival of the goods until customs clearance), a complete distribution process (specifying circulation of goods from customs clearance to delivery to

end-customers), target market and customers, a storing and caring plan for the goods (specifying environmental and safety issues and solutions), and other relevant matters under the authority of line ministries. In our experience, the authorities tend to be reluctant to approve distribution projects initiated by newly established corporate investors or individual investors, and place emphasis on investors' financial capability and experience in the relevant business.

The retail industry in Vietnam has developed to such a level that goods can be marketed to end-customers without the need for a sales outlet. Furthermore, many projects concerning industrial goods target companies as their customers for the goods, which are not usually sold at a specific location but rather delivered to the buyer's premises. The recent move however indicates that authorities consider that a retail project cannot be without a sales outlet (the outlet can be any unit where goods are sold to end-customers, including a shop, head office or warehouse where goods are stored), and that a sales retail outlet is also required for industrial goods. Together with the implications of the ENT, this approach causes even more delay to, or even bars the approval of, many new projects as well as the expansion of current projects. It is also concerning that authorities may apply the ENT to the first outlet when considering the establishment of a foreign invested company, and even retrospectively to existing outlets of a domestic invested company upon selling its shares to foreign investors.

We expect that the authorities will promptly issue official guidelines on this particular commercial sector that would substantially deal with the above mentioned issues raised by foreign investors.

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