

New trading guidelines for foreign investors

By Nguyen Dang Viet

Before Vietnam's accession to the World Trade Organisation (WTO) foreign investment in trading services (including import, export and distribution services) was limited by an absence of laws. There was no publicised governing regulation. Vietnamese authorities therefore considered each foreign investors' market entry on a case-by-case basis.

Commitments

Things are now changing. Since late 2006 Vietnam has committed to open up its market in distribution services to foreign investment. Accordingly, joint ventures with a Vietnamese partner or partners will be allowed but foreign capital ownership may not exceed 49 percent. This capital limitation shall be abolished from the beginning of 2008. There will be no limitation on foreign shareholding as of January 1, 2009.

In addition, categories of commodities allowed for trade shall be gradually expanded. Upon WTO accession, foreign-invested companies will be permitted to engage in the commission agents' wholesale and retail business of all legally imported and domestically produced products except for: cement and cement clinkers; tyres; paper; tractors; motor vehicles; cars and motorcycles; iron and steel; audiovisual devices; wines and spirits; and fertilizers. Trading in tractors; motor vehicles; cars and motorcycles shall be opened as of January 1, 2009. Within three years of Vietnam's accession, product limitations will be totally abolished. The establishment of outlets for retail services (beyond the first) shall be allowed on the basis of an economic needs test.

New decree and conditions

In line with the above commitments, on February 12, 2007 the Government issued the long-awaited Decree 23/2007/ND-CP to, for the first time, provide guidelines for licensing foreign-invested companies to engage in trading services. Both new foreign investors and licensed companies can apply carry out import, export and distribution services in Vietnam. The main conditions include: (i) foreign investors must come from the jurisdictions that signed agreements with Vietnam on opening market access in sale and purchase of goods; (ii) forms of investment must be in line with the aforesaid committed schedule; and (iii) goods and services in distribution and scope of operation must be in compli-

ance with the mentioned commitments. This Decree however does not provide any criteria for an economic needs test with respect to the establishment of outlets (beyond the first one) for retail services.

Licensing authorities

The licensing authority for existing foreign-invested companies is different from that for newly-incorporated entities. The former wishing to engage in distribution services shall submit an application and get a separate licence from the provincial people's committees. The later shall submit the application for incorporation with distribution service function to an 'investment management body' like other common business sectors. Although the Decree does not define what an investment management body is, it can be understood from other regulations that the provincial departments of planning and investment, or the management boards of industrial zones, export processing zones, and high tech zones (if companies are to be located in such zones) shall receive the applications and issue licences or organise the appraisal with superior bodies for licensing. Applicable to both, the Ministry of Trade's acceptance shall be always required during the consideration process, except for companies applying for import / export services without engaging in distribution services or in direct sale and purchase of goods.

Practices

Foreign investors should note that in reality practices may differ from the aforementioned commitments. Before issuance of the Decree, the authority issued a licence for a 100 percent foreign owned company from Japan to engage in import, export and wholesale distribution services but with certain limitations on the kinds of buyers it could engage with.

The question remains as to whether practices will still differ once the Government's Decree has been issued.

bizconsult law firm

20 Tran Hung Dao

Hanoi, Vietnam

Tel: (84 4) 933 2129

Fax: (84 4) 933 2130

Email: viet.nd@bizconsult-vietnam.com

www.bizconsult-vietnam.com