

VIETNAM

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Vietnam adopts new postal law



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On 17 June 2010, the Vietnam Parliament adopted the *Law on Posts (No. 49/2010/QH12)* (the Law), which becomes effective as of 1 January 2011 and replaces the *Ordinance on Posts and Telecommunication (No. 43/2002/PL/UBTVQH10)*.

Clearer definition of postal activities

"Postal activities" are defined under the Law, and include activities of investment, business, supply and utility of postal services, public postal services, and postal stamps. "Postal services", as defined, include receipt, transport and delivery of parcels by different means between a sender's address and a recipient's address through postal networks. This does not include electronic communications.

The Law distinguishes between "public postal services" and "postal services" as well as "public postal networks" and "postal networks".

A public postal network is defined as one invested in by the State and entrusted to designated enterprises for management and commercial exploitation. The public postal service is supplied at the request of the State, and includes universalised postal services and postal services serving national defense/security and other specific tasks.

The Law does not specifically refer to private postal services or private postal networks. "Designated enterprises" mean enterprises which are designated by the State to provide public postal services, international postal services and other services as stipulated in the Universal Postal Union and other international postal treaties to which Vietnam is signatory.

Foreign investment in Vietnam's postal business sector

The Law provides very general stipulations in respect of investment and business of the postal service by the private sector, including that undertaken by foreign investors. Any enterprise engaging in postal services shall have to obtain a postal service licence. Conditions for postal service licences are summarised hereunder:

- Being granted an Investment Certificate (applicable to foreign investors) or a Business Registration (applicable to domestic investors) in postal service

- Postal service business plan
- Good financial ability and personnel in conformity with such a business plan
- Measures of protection concerning information and safety in relation to people, postal parcels and the postal network.

Under Vietnam's Schedule of Commitment in Specific Services to the World Trade Organisation, foreign ownership in a postal service enterprise in Vietnam is limited to 51% of the charter capital of the enterprise, and the form of foreign investment is a joint venture enterprise with Vietnamese partners.

The procedure for foreign investors to set up postal service enterprises in Vietnam is governed by the Law on Investment and the Law on Enterprises.

The Law does not provide conditions and procedures for foreign investors to set up their representative offices or company branches engaging in postal activities and postal services in Vietnam. It is very unclear as to whether establishment of a foreign trader's representative office or branch in this business sector in Vietnam would be permitted, and if so under which laws and procedures.

Abolishment of certain licence requirements

Under the prevailing *Ordinance on Post and Telecommunication*, a Trial Licence of Mail Delivery Service Business (Trial Licence) and licences of other service business concerning the public postal network are required. Such licences have a maximum term of one year, and may be renewed at the request of the service providers once certain conditions are satisfied.

Under the Law, a Trial Licence and licences for other service business are no longer required, which creates more favourable conditions for enterprises wishing to engage in this business sector.

Conclusion

As the Law only provides very general regulations, we advise that foreign investors should wait for further guidance from the Government of Vietnam before making any decisions on investment. Please regularly check the Country Update in Asian-Counsel or contact us for updated information on this issue.

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