

## LEGAL UPDATES

### TRADING AND COMMERCE

#### **Decree No. 163/2017/ND-CP regarding logistics services**

Effective date: 20 February 2018

This Decree provides for

- 1) conditions for supplying logistics services, such as compliance with e-commercial regulations (if applicable), form of foreign investment, limitation of foreign ownership and foreign workers; and
- 2) limitations of liability of logistics services providers, i.e. the maximum damages to be paid by a logistics services provider to its customers; such amount may be agreed between the parties unless otherwise provided by laws.

#### **Decree No. 09/2018/ND-CP guiding trading and trading-related activities of foreign investors and foreign owned enterprises in Vietnam under Law on Commerce and Law on Foreign Trade Management**

Effective date: 15 January 2018

Decree No. 09/2018/ND-CP replaces Decree No. 23/2007/ND-CP.

- 1) Trading and trading-related activities include export, import, distribution (including wholesale, retail, etc.), commercial assessment, logistics, lease of goods (except for finance leasing), commercial promotion (save for advertisement), commercial intermediary services, e-commerce, and goods/services auction.
- 2) Foreign owned enterprises (“**FOEs**”) may set up outlets for retail services. Retail outlets also include convenient stores and mini-supermarkets.
- 3) A FOE shall obtain (a) a license to do trading and trading-related activities (“**Business License**”) and/or (b) a license to set up a retail outlet (“**Retail Outlet License**”), unless otherwise provided by laws.
- 4) **Business License**
  - a) Foreign investors are required to
    - i) meet conditions under WTO Commitments;
    - ii) have proper financial plans; and
    - iii) ensure that there is no outstanding tax obligation (if the relevant FOE has been operating in Vietnam for one year or more).
  - b) Additional conditions may apply in case
    - i) foreign investors are not from WTO members;

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- ii) business activities do not come within WTO Commitments; or
- iii) goods are excluded from WTO Commitments.

Those additional conditions include compliance with relevant local laws, competition capacity of local enterprises, contributions to the State budget and recruitment of local workers.

- c) As for goods excluded from WTO Commitments
  - i) *Lubricant*. Licenses for import and wholesale may be issued to FOEs engaging in related manufacturing industries.
  - ii) *Rice, sugar, video records, books, newspapers and magazines*. Licenses for retail may be issued to FOEs which own supermarkets, mini supermarkets or convenient stores. Goods shall be sold only at those places.

### 5) Retail Outlet License

- a) *The first retail outlet*. FOEs shall
  - i) have proper financial plans;
  - ii) ensure that there is no outstanding tax obligation (if the relevant FOE has been operating in Vietnam for one year or more); and
  - iii) comply with master plan.
- b) *Outlets beyond the first one*. The establishment of outlets for retail services (beyond the first one) may be allowed on the basis of an Economic Needs Test (ENT). The main criteria of the ENT include regional market, the number of existing retail outlets in the region, impact on traditional market and stores, transportation, environment, firefighting and fire prevention, recruitment of local workers and contributions to the State.

The ENT may be exempted if

- i) the area is less than 500 m<sup>2</sup>;
- ii) the retail outlet is set up in commercial center; and
- iii) the retail outlet is not a convenient store or mini supermarket.

- 6) **Reporting**. FOEs are required to submit annual reports on trading and trading-related activities to the authority prior to 31 January.

### 7) Withdrawal of licenses

Business Licenses and Retail Outlet Licenses may be withdrawn in case where

- a) enterprises registration certificates, investment registration certificates or equivalent documents are withdrawn or not issued;
- b) information declared in the applications is untrue;
- c) FOEs have stopped its trading business for more than 12 months without reporting to the licensing authority;
- d) FOEs fail to submit annual reports or supporting documents within the prescribed time-limit.

- 8) FOEs, which have obtained enterprise registration certificates, investment registration certificates or equivalent documents for trading and trading-related activities, are not required to obtain Business Licenses and/or Retail Outlet Licenses under this Decree.

**TAX****Decree No. 146/2017/ND-CP amending Decree No. 12/2015/ND-CP and Decree No. 100/2016/ND-CP regarding taxation**

Effective date: 1 February 2018

The decree revises certain provisions on (1) goods subject to value added tax (VAT) (including natural resources, minerals and products made from natural resources and minerals), (2) VAT refund and (3) deduction of expenses from corporate income tax amounts (such as contributions to voluntary retirement fund, retirement insurance, life insurance, etc.).

**Circular No. 146/2017/TT-BTC regarding management of tax collection at casinos**

Effective date: 12 February 2018

Companies engaging in casino business shall

- 1) enact the internal management regulations on money management and independence between casino vaults, casino cages and casino tables;
- 2) record all transactions regarding cash and tokens and submit reports to the authority; and
- 3) facilitate the supervision by the tax authorities.

**ADMINISTRATIVE SANCTIONS****Decree No. 142/2017/ND-CP regarding sanctions for administrative violations on marine regulations**

Effective date: 1 February 2018

The sanctions include warning, fines, withdrawal of licenses, suspension of operation from one to 24 months, and confiscation of exhibits. The specific sanctions will vary depending on the nature, seriousness and circumstances of a violation.

Time-bar for imposing sanctions is two years in case of violations on regulations on construction of harbours, marine constructions and environment protection. For other administrative violations, the time-bar is one year.

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**BANKING AND FINANCE****Circular No. 24/2017/TT-NHNN regarding procedures for withdrawal of licenses and liquidation of assets of credit institutions, branches of foreign banks, representative offices of foreign credit institutions and other foreign banking organizations**

Effective date: 26 February 2018

Licenses of the Vietnamese banking organizations may be withdrawn in case of (1) non-compliance with the laws or dissolution/bankruptcy of the parent organizations, (2) insolvency (and subject to special supervision by the State Bank of Vietnam), or (3) dissolution.

The State Bank of Vietnam will approve the dissolution of a banking organization only when it can secure payment of debts and other property obligations. Otherwise, the banking organization may be put into bankruptcy. The banking organizations and its relevant employees are prohibited to enter into transactions against the properties and debts of the banking organizations such as dispersing assets, converting unsecured debts into secured debts, remitting money abroad. The banking organizations shall pay obligations in the order as required by laws and comply with regulations on procedures, time-limit and dossiers during the process.

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