



Newsletter No. 101 (EN)

**Distribution and Import/Export by Foreign
Owned Companies in Vietnam**

October 2011

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I. Introduction

In the past, Vietnam applied very strict regulations on import and distribution activities conducted by foreign owned entities.

For example until 31 December 2008, foreigners could only import goods through so-called “import companies” which then had to sell the goods on to locally licensed distributors. Foreigners were prohibited from direct distributing their imported goods to the end user or consumer.

On 1 January 2009 Vietnam implemented one of its most essential WTO Commitments by opening its market to foreign distributors. The export sector was also liberalized.

Since January 2009, foreign investors have been entitled to set up 100% foreign-owned enterprises to conduct activities related to the sale and purchase of goods including:

- (1) Import and export;
- (2) Distribution including acting as agents for purchase and sale, wholesale, retail and franchising;

This liberalization is a great opportunity for foreign investors to expand their trading activities in Vietnam.

II. Legal Framework

The sale and purchase of goods and activities directly related thereto are subject to the Commercial Law 2005 (the “Commercial Law”).

To implement the WTO Commitments in relation to trading and distribution services, a number of additional statutes have been issued:

- Decree 23/2007/ND-CP providing details on implementing the Commercial Law regarding trading and distribution activities by foreign-owned enterprises (“Decree 23”);
- Circular 09/2007/TT-BTM of the Ministry of Trade and Industry guiding and implementing Decree 23 (“Circular 09”);
- Circular 05/2008/TT-BTC of the Ministry of Trade and Industry amending and supplementing Circular 09 (“Circular 05”);
- Decision 10/2007/QD-CP, of the Ministry of Trade and Industry announcing the roadmap for the implementation of trading and distribution activities of foreign-owned enterprises (“Decision 10”).

III. Current Legal Structure

Under Circular 09 a foreign investor who wishes to conduct trading services in Vietnam must establish an enterprise which is licensed to carry out distribution services.

Distribution activities by foreign enterprises are mostly interlinked with import and export activities.

1. Export Rights

According to Circular 09, foreign-owned enterprises which have been licensed to conduct export activities are permitted:

- To export goods NOT on the list of goods the export of which is prohibited or temporarily suspended;
- To export goods on the list of goods permitted to be exported, in accordance with a schedule of international commitments;
- To only directly purchase goods from business entities which are registered to purchase and sell goods, or which are entitled to distribute goods in order to export them.

Foreign-owned enterprises are only allowed to purchase goods from enterprises that are registered local sellers.

Therefore, it is advisable to investigate the legal status of the intended local supplier before setting up an export company in order to avoid problems later on.

2. Import Rights

Foreign-owned companies can apply for an import licence under the current legislation.

Under Circular 09, foreign-owned enterprises which are licensed to import goods are permitted:

- To import goods not on the list of goods, the import of which is prohibited or temporarily suspended;
- To import goods on the list of goods permitted to be imported in accordance with a schedule of international commitments;
- To only sell imported goods to locally licensed business entities which are entitled to distribute such imported goods;
- To directly conduct customs procedures with the customs office.

It is important to note that foreign-owned enterprises licensed to import goods are not automatically allowed to distribute such goods in Vietnam.

Thus unless the company's investment certificate specifically includes distribution activities the imported goods will have to be sold to selected local distributors in order to reach the end user.

IV. Conditions for Distributing Goods in Vietnam

Distribution is defined under Decree 23 as "*activities of wholesaling, retailing, agency for purchase and sale of goods and franchising in accordance with the law of Vietnam*". The right to distribute is defined as "*the right to undertake directly activities of distribution*".

Under Circular 09 foreign invested enterprises which have been licensed to conduct distribution activities shall be permitted:

- To conduct wholesaling, retailing, franchising and agency for trading goods manufactured in Vietnam and goods imported into Vietnam, except for goods on the list of goods not permitted to be distributed.
- To distribute goods on the list of goods permitted to be distributed pursuant to a schedule of international commitments.

Further, foreign invested enterprises whose investment certificate includes a distribution business line are automatically permitted to set up a single retail outlet in order to sell their goods. If the said entity wishes to open additional retail outlets, then they must make a separate application to the competent authorities (please see V.3 below).

V. Application Process

If a foreign-invested company wishes to apply for export/import or distribution rights, it has to submit the below listed documentation to the competent authorities:

1. Export/Import Rights

The application file should include the following:

- Request for issuance of an investment certificate in accordance with the investment law;
- Explanatory statement detailing the satisfaction of the applicable conditions regarding the nationality of the legal entity, the investment form and the intended business services and operational scope;
- Proposed business content of the export/import of goods and of the activities directly related to the import/export of goods to be conducted by the enterprise.

The competent authority will consider the application in light of the provisions in Decision 10. It is not necessary to obtain the approval of the Ministry of Trade and Industry.

2. Trading Activities/Distribution

The application file should include the following:

- Request for the issuance of an investment certificate in accordance with the investment law;
- Explanatory statement detailing the satisfaction of the applicable conditions regarding the nationality of the legal entity, the intended investment form and the business services and operational scope;

- Proposed business content of the trading of goods and of the activities directly related to the trading of goods to be conducted by the enterprise.

Although not stipulated in the law, the authorities usually conduct an “economic needs test” (“ENT”) before granting an investment certificate with these business lines. Under the ENT the authorities will consider applications on a case by case basis, taking into account market stability, population density in the area where the company is to be located and the consistency of the investment project with the master plan of the said area. The ENT is a SUBJECTIVE TEST. Thus even if all the other requirements set out by the law satisfy the ENT, sometimes the license application can be rejected.

For these business lines the competent authority must obtain the approval of the Ministry of Trade and Industry before issuing the investment certificate.

3. Additional Sales Outlets

As noted above if a foreign invested enterprise wishes to set up multiple retail outlets they must obtain an additional retail sales license for each outlet.

The application file should include the following:

- Request for the issuance of a licence to set up an additional retail sales outlet; and
- Copy of the investment certificate which was granted for the first retail sales outlet.

Before an additional license will be granted the applicant must satisfy the ENT. It should be noted that the competent authorities will become progressively stricter in their scrutiny of the ENT for each addi-

tional retail license application. This should be taken into account when drafting the application.

The competent authority must obtain the approval of the Ministry of Trade and Industry before issuing each retail sales outlet license.

VI. Conclusion

Over the past five years new legislation has created greater opportunities for foreign investment in distribution activities in Vietnam. Numerous foreign invested distribution companies have already been licensed, which proves Vietnam's determination to comply with its WTO Commitments. However, the licensing process can be slow and sometimes frustrating. This is mainly due to two reasons. First, most distribution applica-

tions require the approval of the Ministry of Trade and Industry. Second, the subjective application of the ENT makes the licensing procedure unpredictable. Further guidelines on the ENT requirement are promised and these will hopefully make the licensing process clearer and more predictable.

For the time being, however, it is crucial for investors to understand and be prepared for the ENT requirement. We recommend the collection of market data for inclusion in the application file in order to increase the likelihood of a positive ENT evaluation.

Further, in order to carry out distribution activities in Vietnam, it is very important for investors to periodically check the most recent list of permitted goods and to keep up to date on new legislation in this area.

*We hope that the information provided in this brochure was helpful for you.
If you have any further questions please do not hesitate to contact us.*

Lorenz & Partners (Vietnam) Co., Ltd.

Floor 3 Viconship Building
6-8 Doan Van Bo Street, District 4
Ho Chi Minh City, Vietnam
Tel: +848 (0) 626 182 31
E-Mail: vietnam@lorenz-partners.com