

Legal *News*

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New regulations on foreign investment conditions in logistics services



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On 30 December 2017, the Vietnamese Government issued the Decree No. 163/2017/ND-CP (“**Decree 163**”) replacing the Decree No. 140/2007/ND-CP (“**Decree 140**”) on the logistics service. Decree 163 shall take effect from 20 February 2018.

1. Classification of logistics service

Previously, Decree 140 classified logistics services into three groups with a range of services. Under Decree 163, logistics services are divided into 17 service categories with clearer and more consistent regulations comparing to Vietnam's commitments in the Schedule of Specific Commitments in Services of Vietnam when access to the World Trade Organization (WTO). Such classification does

not limit the form of logistics service since it recognizes “*Other services agreed by logistics service providers and customers which are in compliance with the basic principles of Law on Commerce*”.

2. Conditions of foreign investors for investment in logistics service business

In comparison with Decree 140, Decree 163 does not provide the conditions of foreign investors for investment in logistics service businesses which are already allowed 100% market access such as: Warehouse services; Transportation agency services but regulates the conditions of foreign investors for investment in other logistics service business pursuant to the Schedule of Specific Commitments in Services of Vietnam to WTO. Accordingly, the maximum foreign ownership in some logistics services are regulated as follows:

- For cargo transport services classified as sea transport services (except for inland transport) (excluding sea transport company), cargo transport services classified as inland waterway transport services or cargo transport services classified as rail transport services (does not exceed 49%);
- For container handling services classified as auxiliary services for sea transport and multimodal transport, except for services provided at airports (does not exceed 50%);
- For cargo transport services classified as road transport services (does not exceed 51%);
- For customs clearance services classified as auxiliary services for sea transport and for other services (does not exceed 100%);
- For technical inspection and analysis services which are provided in order to exercise authority of the Government (does not exceed 100% after three years or 100% after five years, as from the date on which the private enterprise is permitted to conduct business in such services)

Noteworthy, Decree 163 acknowledges foreign investment by way of capital contribution and share purchase and business cooperation contract beside the establishment of enterprises as prescribed in Decree 140.

Moreover, foreign invested organizations providing the unbound logistic services must obtain the business license under regulations of Decree No. 09/2018/ND-CP.

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On January 15th, 2018, the Government issued Decree No. 08/2018/ND-CP amending certain decrees related to business investment conditions under the State management scope of the Ministry of Industry and Trade (“MOIT”) (“Decree 08”). According to this Decree, the Government has eliminated a total of 675 conditions among 1216 business conditions managed by MOIT. Accordingly, the following areas are mainly focused:

1. PETROL AND OIL

Decree 08 completely repeals Article 5 on the master plans on development of the petrol and oil trading system and Article 10 on the conditions for petroleum production. The planning conditions related to production location, production scale has been reduced to facilitate the enterprises in freely selecting suitable petroleum production and business models.

Decree 08 abolishes the conditions related to the storage system, transport vehicles. Accordingly, a petrol and oil trader is no longer required to own or co-own (with a capital contribution of at least 51%) regarding the storage system and to be able to satisfy at least one-third of the trader’s reserve demand. This article also applies to the local petrol transport vehicles having capacity of 3,000m³ after being granted the Business License for import and export of petrol and oil.

In addition, Decree 08 abrogates the conditions for scale expansion by requiring petrol and oil traders to own or co-own at least four (04) retail stations each year until they reach at least one hundred (100) petrol retail stations belonging to the distribution network of the trader after being granted the Business license for import and export of petrol and oil.

However, this abrogation may lead to the situation of disorder, inappropriate distribution of petrol stations, only focus on urban areas, large roads, not satisfy the demand of people in rural and remote areas.

2. FRANCHISING

The only condition applied to franchisor is the business system intended for franchising has been operating for at least one (01) year. Although it is not explicitly stated yet, it may be construed that the removal conditions applicable to both the original franchisor and the sub-franchisor. In addition, the conditions for the franchisee and the goods and services allowed to be franchised have also been abolished.

3. E-COMMERCE

Decree 08 abolishes unclear regulations related to conditions of individuals, organizations when they want to set up sales e-commerce websites, e-commerce service provision websites and credit rating of e-commerce websites.

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In particular, in relation to evaluation and certification of protection of private information policy in e-commerce activity, Decree 08 annuls the conditions on having business registration or establishment decision specifying the field of operation as evaluation and certification of protection of private information policy in e-commerce; independence in organization and finance from traders, organizations and individuals who are assessed and certified for their privacy policy; having detailed activity plan approved by the MOIT; having criteria and procedures for assessing privacy policies in compliance with the regulations of the MOIT.

Moreover, Decree 08 also eliminates the conditions related to valid domain name or request for financial and technical evidence in the certification of e-contracts.

4. CHEMICALS

Decree 08 abolishes the conditions of locations, workshops, machinery, equipment, technological processes, warehouses and conditions for testing and analyzing chemicals related to Table 1 chemical production conditions.

This relaxation seems to be a bold move as the production of chemicals is highly dangerous while safety conditions are minimized. However, if based on the provisions of Decree 113/2017/ND-CP detailing and guiding the implementation of certain articles of the Chemicals Law dated October 9th, 2017 ("Decree 113"), the abolition of these regulations is only formalistic when more stringent conditions are already stipulated in Decree 113.

5. FOOD BUSINESS UNDER THE MANAGEMENT OF THE MOIT

Decree 08 amends, supplements a number of articles and clauses of Decree No. 77/2016/ND-CP dated July 1st, 2016 of the Government on amendment and supplementation of certain regulations on investment and trading conditions on international trade in goods, chemicals, industrial explosive material, fertilizer, gas business and food business under the state management of MOIT. In particular, the Decree 08 focuses on reducing regulations related to general conditions to ensure food safety for food production and trading establishments. There are remarkable points including the abolition of conditions on business registration certificates, household business registration certificates or equivalent documents. In addition, the regulations related to production facilities, business facilities and equipment for production and business activities are also reduced, such as the conditions of ventilation, lighting, water supply systems; warehouse conditions such as full nameplate, having temperature and humidity monitoring equipment, and warehouse conditions monitoring records, etc.; unclear conditions of the conformity of equipment; conditions for the prevention of animals, insects and harmful microorganisms are also more appropriately regulated.

In addition, Decree 08 also abolishes some conditions related to production facilities, equipment and tools for processed milk, beer and vegetable oil production. Particularly, all provisions related to food safety conditions specifically provided for small food production and retail facilities were abolished.

Aside from the above-mentioned areas, Decree 08 also reduces the business conditions in the areas of tobacco, electricity, industrial explosive material. This Decree takes effect from the signing date.



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