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# KEY UPDATES ON FOREIGN INVESTORS' RETAIL BUSINESS ACTIVITIES UNDER DECREE NO. 342/2026/ND-CP



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## INTRODUCTION:

On September 3, 2026, the Government promulgated Decree No. 342/2026/ND-CP detailing the Law on Commerce and the Law on Foreign Trade Management on goods trading activities and activities directly related to goods trading of foreign investors and foreign-invested economic organizations in Vietnam ("**Decree 342**"). Decree 342 takes effect on October 18, 2026 and replaces Decree No. 09/2018/ND-CP ("**Decree 09**"), establishing a new legal framework for the commercial activities of foreign investors in Vietnam.

One of the most notable changes is the narrowed scope of application of the Economic Needs Test ("**ENT**") for the establishment of retail outlets other than the first retail outlet. In addition, Decree 342 introduces national security appraisal requirements for certain licensing cases and provides for procedures for the issuance of a Retail Outlet Establishment License in cases where a foreign investor acquires a Vietnamese enterprise that is operating a retail outlet.

## 1. CHANGES TO THE ENT AND APPLICATION FOR ESTABLISHING RETAIL OUTLETS

### 1.1 Narrowing the scope of ENT application to new retail outlets

Under Decree 09, foreign investors establishing retail outlets other than the first retail outlet are, in principle, required to undergo the ENT, unless exempted under applicable regulations. Specifically, an exemption applies to retail outlets with an area of less than

500 $m^2$, located within a commercial center, and not operating as convenience stores or mini supermarkets.[1]

Decree 342 has introduced a significant change to this approach. Specifically, Decree 342 introduces an additional exemption from the ENT requirement for foreign investors from countries or territories that are parties to international treaties to which Vietnam is a party and under which Vietnam has committed to abolishing the ENT (e.g., the EVFTA and CPTPP), when establishing retail outlets other than the first retail outlet.[2]

Accordingly, the determination of whether the ENT is required no longer depends solely on the order and characteristics of the retail outlet, but also on the international treaties applicable to the foreign investor. Foreign investors from countries or territories that are parties to international treaties to which Vietnam is a party and under which Vietnam has committed to abolishing the ENT may benefit from more favorable conditions when expanding their retail networks in Vietnam.

However, exemption from the ENT should be distinguished from automatic eligibility for a Retail Outlet Establishment License. Even where the ENT is not required, foreign investors must still satisfy the applicable conditions, criteria and grounds for the issuance of a Retail Outlet Establishment License.[3]

For foreign investors who remain subject to the ENT, the assessment criteria continue to include the size of the geographical market area affected, the impact on market stability and the business operations of existing retail outlets and traditional markets, and the potential contribution to socio-economic development. Unlike Decree 09, Decree 342 no longer requires the ENT assessment to take into account the number of existing retail outlets, impacts on traffic density, environmental hygiene and fire prevention and fighting, or job creation and contributions to the state budget. In addition, Decree 342 provides that the geographical market area affected shall be determined based on the size of the retail outlet as follows: at the ward/commune level or equivalent for retail outlets with an area of less than 5,000 $m^2$, and at the provincial or centrally governed city level for retail outlets with an area of 5,000 $m^2$ or more.

[1] Decree 09, Article 23.1
[2] Decree 342, Article 22.1
[3] Decree 342, Article 21

**Comment:** This change may significantly reduce the procedural burden for foreign investors eligible for the ENT exemption. Accordingly, before planning to establish additional retail outlets, enterprises should carefully identify the international treaties and market access conditions applicable to their respective foreign investors in order to formulate an implementation plan in compliance with the prevailing laws and regulations.

### 1.2 Conditions and application for the issuance of a Retail Outlet Establishment License

In addition to the changes concerning the ENT, Decree 342 provides more specific requirements regarding the proposed location for establishing a retail outlet. Specifically, while Decree 09 only requires the location of a retail outlet to be consistent with the relevant planning of the geographical market area,[4] Decree 342 revises this requirement by stipulating that the location must comply with the laws on land management, planning, investment, construction, fire prevention and fighting, traffic safety, and environmental sanitation.[5]

In addition to the general documents applicable to all retail outlets under Decree 09, Decree 342 introduces additional document requirements corresponding to the area of each retail outlet, specifically as follows:[6]

- For retail outlets with an area of less than 500 $m^2$: The enterprise must provide either a Branch Operation Registration Certificate **or** a Business Location Registration Certificate at which the retail outlet is established;

- For retail outlets with an area of 500 $m^2$ or more: The enterprise must provide a Branch Operation Registration Certificate **and** an Investment Registration Certificate for the project establishing the retail outlet. Accordingly, a Business Location Registration Certificate can no longer be used as a substitute for an Investment Registration Certificate for this category of retail outlets. This is a new requirement that enterprises should take into consideration when preparing their dossiers.

[4] Decree 09, Article 22.1(c)
[5] Decree 342, Article 21.1(b)
[6] Decree 342, Article 25.4

Depending on the legal status and characteristics of the proposed location, enterprises should review and prepare supporting documents evidencing compliance with the relevant conditions, such as documents evidencing the right to use or lease the premises, legal documents relating to the construction works, land use purposes, and documents relating to planning, traffic connection, fire prevention and fighting, and environmental protection. For retail outlets with an area of 500 $m^2$ or more, enterprises must also carry out the procedures to obtain an Investment Registration Certificate for the project establishing the retail outlet in accordance with applicable laws.

**Comment:** Although the scope of ENT application has been narrowed, enterprises should remain mindful of the requirements concerning the conditions and supporting documents for the proposed retail outlet location. The preparation of the dossier may require enterprises to coordinate with project developers, premises lessors, and specialized consultants to collect relevant documents. Accordingly, enterprises should conduct a legal review of the proposed location before entering into a memorandum of understanding or lease agreement for establishing a retail outlet to ensure that the location satisfies the statutory requirements.

## 2. NATIONAL SECURITY APPRAISAL

Decree 342, for the first time, specifically sets out the cases in which the licensing authority is required to seek opinions from the Ministry of Public Security and the Ministry of National Defence on national security matters, as follows:[7]

(i) Foreign investors that are not from countries or territories that are parties to international treaties to which Vietnam is a party; or where the services or goods to be traded are not subject to market access commitments under international treaties to which Vietnam is a party.[8]

(ii) Foreign investors that control economic organizations acting as operators of intermediary e-commerce platforms, social networks conducting e-commerce activities, or integrated e-commerce platforms classified as large-scale digital platforms under the laws on consumer protection and e-commerce.

[7] Decree 342, Article 8.3
[8] Decree 342, Articles 9.2, 9.3(b) and 9.4

(iii) Foreign investors applying for a Retail Outlet Establishment License to permit retail outlets to continue operating or to license new retail outlets when they own or participate in the ownership of the following number of retail outlets in Vietnam:

- 100 retail outlets, each having a sales area of less than 500 $m^2$; and/or
- 50 retail outlets, each having a sales area of 500 $m^2$ or more but less than 3,000 $m^2$; and/or
- 30 retail outlets, each having a sales area of 3,000 $m^2$ or more.

**Comment:** Foreign investors and foreign-invested enterprises should take into account both the investor's nationality and the market access commitments under Vietnam's international treaties, as well as the operational scale and expansion plans of their retail chains or e-commerce platforms. Early assessment of these factors will help enterprises determine whether their cases fall within the scope requiring opinions from the Ministry of Public Security and the Ministry of National Defence, thereby allowing them to proactively allocate time for the licensing process and minimize potential impacts on their business implementation timelines.

## 3. ACQUISITION OF VIETNAMESE ENTERPRISES OPERATING RETAIL OUTLETS

Decree 342 introduces several notable changes concerning cases where foreign investors contribute capital to, purchase shares in, or acquire capital contributions in Vietnamese enterprises operating retail outlets.

First, if, following such transaction, the enterprise becomes a foreign-invested economic organization and falls within the cases requiring a Retail Outlet Establishment License, the enterprise must submit the dossier within 30 days from the date on which the foreign investor is confirmed as satisfying the conditions for capital contribution, share purchase, or acquisition of capital contributions.[9] This changes the deadline calculation compared to Decree 09, under which the 30-day period was calculated from the date on which the Enterprise Registration Certificate recorded the relevant changes.[10]

[9] Decree 342, Article 36
[10] Decree 09, Article 38

Second, while the application is being processed, existing retail outlets falling within this case may continue their operations, but for no more than 12 months from the date stated in the legal documents or written confirmation issued by the competent authority confirming that the foreign investor satisfies the conditions for capital contribution, share purchase, or acquisition of capital contributions. Meanwhile, Decree 09 does not provide a mechanism for determining this matter. However, it should be noted that permission to continue operating during this period does not replace the obligation to obtain the required license in accordance with applicable regulations.

**Comment:** For M&A transactions involving retail business operations, enterprises and foreign investors should take into account the licensing deadline when drafting the condition precedent and condition subsequent provisions in the transaction documents.

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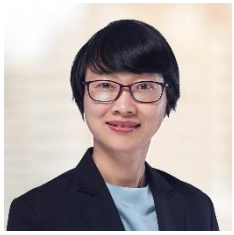


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Tất cả các quyền, bao gồm cả quyền sở hữu, quyền tác giả, quyền liên quan và các quyền sở hữu công nghiệp đối với nội dung thông tin, thiết kế, trình bày mỹ thuật của bản tin này thuộc chúng tôi và được bảo vệ theo Luật Sở hữu Trí tuệ Việt nam, các hiệp định, hiệp ước quốc tế mà Việt nam đã ký kết.

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