



New rules on foreign investment in trading and retail activities in Vietnam

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FEBRUARY 2018

➤ New rules on trading and retail activities

- New rules
 - Decree 09/2018/ND-CP on trading and trade-related activities of foreign invested enterprises dated 15 January 2018 (*Decree 09*).
 - Effective as of 15 January 2018.
- Objectives
 - To align with the current general foreign investment framework.
 - To create a more transparent framework to facilitate foreign investment in the trading and retail sector.
- General observations
 - Improvements to the current legal framework and processes.
 - However, the trading and retail sector remains heavily-regulated and various administrative burdens are still imposed on foreign investors.



➤ Scope of application of Decree 09

Decree 09 applies to ‘trading activities’ and ‘trade related activities’

- Trade related activities:

- commercial assessment services;
- logistics services;
- goods leasing but excluding financial leasing;
- trade promotion services excluding advertising services;
- trade intermediation services;
- e-commerce services; and
- services of arranging tendering/bidding for goods and services.

- Trading activities:

- import/export
- distribution (retail and wholesale).



➤ Business license requirement

- Business license is required for a foreign-invested enterprise (*FIEs*) to conduct the following activities:
 - retail distribution;
 - import and wholesale of oil and lubricants;
 - logistics services, except those as committed in applicable international treaties;
 - goods leasing (financial leasing not included), except leasing of construction equipment with operators;
 - trade promotion services, except advertising services;
 - trade intermediation services;
 - e-commerce services; and
 - bidding organising services for goods/services.
- No business license is required for FIEs to conduct import, export and wholesale activities, unless trading of prohibited goods for foreign investment.



➤ Retail licence and ENT

- FIEs must obtain a retail licence for each retail outlet.
- Economic need test (*ENT*) applies to 2nd retail outlets onward.
- Specific criteria for ENT assessment introduced, eg:
 - scale of the relevant geographical market;
 - the number of existing retail outlets and impact of the proposed retail outlet to the stability of the market in that area; and
 - contribution of the proposed retail outlet (e.g. additional employment or contributions to the State budget).
- ENT is exempted if the retail outlet:
 - has an area of less than 500m²;
 - is established in a shopping center; and
 - is not a convenient store or mini mart.
- Licensing process remains lengthy and complex, involving ENT assessment and case-by-case consultation with Ministry of Industry and Trade.

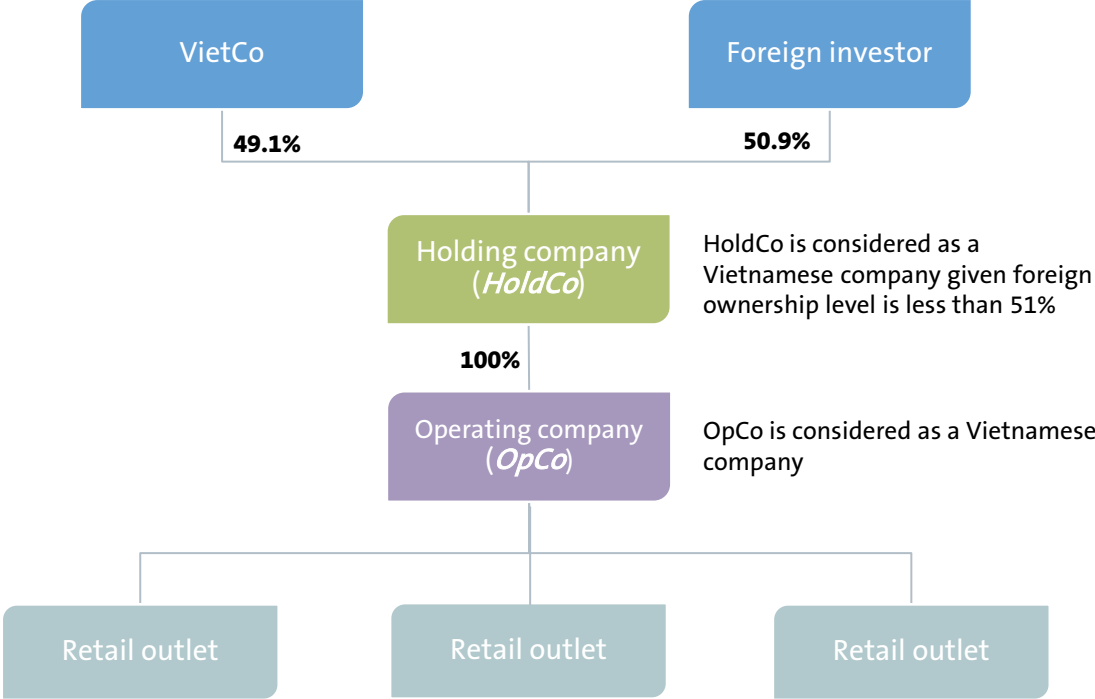


> M&A in retail sector

- Previous legislation is not clear on foreign investment by way of M&A in the retail sector, in particular the treatment of the target company and its existing retail outlets post-acquisition.
- Decree 09 clarifies M&A rules in retail sector.
- Vietnamese retail target company will become an FIE following the foreign investor's acquisition and must:
 - obtain a business licence in order to continue its retail activities; and
 - obtain a retail licence for each of its retail outlets – this is applicable to both existing outlets set up prior to the foreign acquisition and future outlets.
- This rule applies to all Vietnamese companies in which foreign investors invest, irrespective of the level of foreign investment.



> Common M&A structure



➤ Conclusion



Decree 09 provides a clearer and more transparent framework for foreign investment in the distribution and retail sector



Regulatory challenges remain for foreign investment in this sector, particularly in the retail market



However, it is possible to restructure the **investment** to achieve the parties' commercial objectives and avoid adverse impact on the target's operations



OVERALL, the distribution and retail sector will continue to be very attractive for foreign investors

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