



LEGAL UPDATE

DECREE 163 ON LOGISTICS SERVICES

The Ministry of Industry and Trade (**MOIT**) issued a new Decree on logistic services No. 163/2017/ND-CP (**Decree 163**) replacing Decree No. 140/2007/ND-CP (**Decree 140**). Decree 163 will take effect from 20 February 2018.

10 years after becoming a WTO member, the classification of logistics services will be more aligned with Vietnam's WTO commitments than was the case under Decree 140.¹

Decree 163 sets out the basis for FDI companies to set up a business providing logistics services in Vietnam under certain ownership limits. Foreign investors have more opportunities, despite what the newspapers announced, it is not yet the long-awaited opening-up of the logistics market for foreign companies. It gives a positive signal though and could help attracting more foreign investment especially resulting in increased partnerships between domestic and overseas companies.

We highlight the main points below.

1. Classification of logistic services

Both Decree 140 and 163 contain a list of logistic services, Decree 140 was in accordance with Law on Commercial, while Decree 163 lists them pursuant to Vietnam's WTO Commitments. It has a consequence that some services listed in Decree 140 are no longer listed in Decree 163.

It may ensure consistency between the laws of Vietnam and WTO commitments and likely makes it easier to compare the Vietnamese regulations with the WTO commitments.

2. Establishment of commercial presences by foreign investors

Even though the market does not open completely for foreign investors, they will be allowed to establish

companies providing logistic services if they are from a WTO-member country. Further to this, foreign investors can establish a business entity, contribute capital, purchase shares or stakes in another enterprise.

Depending on the services provided, the foreign investor can only be done if the capital contribution ratio of the foreign investor does not exceed 49, 50 or 51%, and sometimes even no limit is imposed. For airline services, reference is made to the Law on Aviation, so Decree 163 does not apply.

Besides the foreign ownership ratios there are additional requirements. Which they are, again, depends on the service provided. Additional requirements go from the number of Vietnamese staff that should be working on a vessel² or a truck³ to the form in which the business should take place. More requirements could also be found in relevant service-specific legislation.

3. On-line services

Decree 163 explicitly mentions that a provider offering part, or all the logistic services listed in the Decree 163 on the internet, mobile network or other open networks must comply with regulations on e-commerce⁴. This means for example that the provider has to notify the MOIT of setting up an e-commerce website and protect personal information of consumers.

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¹ Decree 140 referred to the Law on Commerce.

² For marine transport trading a vessel can fly under Vietnamese flag, captain or the first deputy captain must be Vietnamese citizens, and foreign crew members must be less than one-third of the total.

³ All drivers must be Vietnamese citizen.

⁴ Decree 52/2013/ND-CP on e-commerce of 16 May 2013.