



LEGAL UPDATE

KEY AMENDMENTS IN THE DRAFT DECREE REPLACING DECREE 09 ON TRADING ACTIVITIES OF FOREIGN-INVESTED ENTERPRISES

1. Background

The Ministry of Industry and Trade ("MOIT") has issued a draft decree ("Draft Decree") to replace Decree No. 09/2018/ND-CP ("Decree 09"), which currently regulates trading and directly related activities of foreign investors and foreign-invested economic organisations ("FIE") in Vietnam. The Draft Decree seeks to align with the decentralisation framework under Decree No. 146/2025/ND-CP, codify Vietnam's commitments under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, ("CPTPP"), the EU-Vietnam Free Trade Agreement ("EVFTA"), and the UK-Vietnam Free Trade Agreement ("UKVFTA"), and resolve practical issues arising from the implementation of Decree 09. This update outlines the key proposed changes affecting foreign retailers' market entry and operations in Vietnam.

2. Administrative Procedure Reform

The Draft Decree marks a significant shift from central-level pre-checks to local empowerment. Notably, it abolishes the requirement for provincial authorities to consult the MOIT when granting licenses,¹ except in national security cases where opinions from the Ministry of Public Security and the Ministry of National Defence are required.² It also removes the need to submit financial plans and employment creation plans for domestic workers in foreign investor's application dossiers.³

However, the Draft Decree introduces a stricter maintenance condition, obliging foreign investors to maintain market access conditions *"throughout the entire course of business operation in Vietnam"*.⁴ This creates compliance risks in M&A transactions. Specifically, if an FIE currently enjoying preferential market access (e.g. due to

EU/CPTPP ownership) is acquired by a non-FTA investor (e.g. the US or South Korea), the target company may lose those entitlements. If the amended Business License is not approved, the company must suspend the affected trading activities until a new license is granted.⁵ In such scenarios, the enterprise must apply to amend its Business License within ten (10) working days of the updated Enterprise Registration Certificate ("ERC") issuance.⁶

3. Economic Needs Test

The Draft Decree codifies the Economic Needs Test ("ENT") exemption for CPTPP, EVFTA, and UKVFTA investors regardless of outlet size,⁷ replacing the vague provisions under Decree 09 and solidifies the competitive advantage for investors from these regions. For non-FTA investors, the existing exemption for outlets under 500m² in shopping malls remains. Where ENT is required, the assessment is decentralised to the commune/ward level for outlets under 5,000m², and to the provincial level for those exceeding 5,000m².⁸

The Draft Decree removes the criteria on the *"scale of the geographical market area"* and the *"number of existing retail outlets"* under Decree 09,⁹ reducing ambiguity and compliance burden on investors. Although not explicitly required, enterprises may need to demonstrate their FTA eligibility through an Explanation Letter and the updated ERC recording the new investor.¹⁰ For the exemption applicable to outlets under 500m² in shopping malls, proof of location and leased area (e.g. lease agreement) will serve as the primary evidence.¹¹

4. Clarified Definitions and New Technical Barriers

¹ Article 8 and 44 of the Draft Decree

² Article 8.3 of the Draft Decree

³ Article 9, 11, 21, and 25 of the Draft Decree

⁴ Article 9.1(a) of the Draft Decree

⁵ Article 15.3 and 12 of the Draft Decree

⁶ Article 15.1 of the Draft Decree

⁷ Article 22.1 of the Draft Decree

⁸ Article 22.2 of the Draft Decree

⁹ Articles 23.2(a) and 23.2(b) of Decree 09

¹⁰ Article 25.2 and 25.4 of the Draft Decree

¹¹ Article 25.2.a of the Draft Decree



To resolve ongoing classification issues, the Draft Decree separates "*lubricants*" and "*grease*" into distinct categories. It also introduces specific quantitative definitions including "*convenience store*" which refers to an outlet under 300m², and "*mini supermarket*" is named for outlets under 500m².¹² This distinction is critical for determining the applicable ENT threshold.

A significant new technical barrier is introduced regarding the documentation for establishing retail outlets over 500m². The Draft Decree mandates the submission of the project's Investment Registration Certificate ("**IRC**") for these larger outlets,¹³ unlike optional filing of "if any" specified in Decree 09. The removal of the phrase "if any" implies that having an IRC is now mandatory for outlets exceeding 500m², forcing enterprises to amend or obtain a new IRC before applying for a License for Establishment of Retail Outlet ("**LERO**") instead of simply registering a business location, as currently practised. This change is expected to increase both the timeline and costs for expanding large-scale retail chains.

5. Transitional Period for M&A Transactions

Under Decree 09, the timeline for a domestic enterprise to obtain the required trading licenses (Business License or LERO) after becoming an FIE is unclear, leaving many enterprises operating in a regulatory "grey area" for an extended period after an acquisition. The Draft Decree addresses this legislative gap by establishing a hard deadline of twelve (12) months from the date the foreign investor's capital contribution or share purchase is legally recorded.¹⁴ During this 12-month window, the enterprise is permitted to continue its existing retail operations while finalising the licensing procedures.

However, the 12-month period is a deadline to obtain, not just submit, the required license. Failure to obtain the required Business License or LERO within this timeframe means the enterprise must cease trading activities, otherwise it will be deemed unlicensed trading and subject to administrative penalties. This may create a compliance

cliff for M&A transactions, making the licensing timeline a critical post-closing obligation.

6. Shift towards Post-Licensing Compliance and Enforcement

While Decree 09 only required a single annual report,¹⁵ the Draft Decree increases reporting frequency to twice a year. FIEs must report trading activities before 31 January and 30 June each year to the provincial People's Committee.¹⁶ These reports are expected to include detailed information on revenue, profit, tax obligations, and the status of retail outlets.

The Draft Decree also retains but strengthens enforcement. In particular, the licensing authority may revoke licenses if the enterprise fails to submit reports for 24 consecutive months or ceases operations for more than 12 months without notice.¹⁷ While these penalties are not new, the increased reporting frequency doubles the administrative burden and the risk of non-compliance.

7. Conclusion

The Draft Decree marks a major update to the regulatory framework for foreign trading activities, decentralising licensing authority and codifying Vietnam's FTA commitments to facilitate market entry. At the same time, it strengthens post-licensing supervision and introduces stricter technical requirements for large retail outlets. As a result, while entry procedures may become simpler, ongoing compliance obligations will increase. Investors should assess their current and planned operations to ensure readiness once the new Decree is issued.

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¹² Article 3.12 and 9 of the Draft Decree

¹³ Article 25.4(b) of the Draft Decree

¹⁴ Article 5.6 of the Draft Decree

¹⁵ Article 40 of Decree 09

¹⁶ Article 38.1 of the Draft Decree

¹⁷ Article 41.1 (e) and 41.2(e) of the Draft Decree