

Some changes of rules in distribution and trading sector for foreign invested enterprises

By **Dang Bich Xuan**



On April 22nd, 2013 the Ministry of Industry and Trade issued Circular No. 08/2013/TT-BCT on trade in goods by foreign invested enterprises in Vietnam (Circular 08) to replace Circular 09/2007/TT-BTM (Circular 09) on the same matter. Circular 08 provides more specific regulations on the licensing and assessment process of the Economic Needs Test (ENT). In this article, we look at certain key and positive changes of rules offered by Circular 08.

Under the Commitments made by Vietnam upon its accession to the WTO, the ENT shall be required in case of establishment of outlet(s) for retail services (beyond the first one) by a foreign invested enterprise (FIE) in Vietnam, which comprises an administrative review of the number of existing retail sales outlets in a particular geographic area, the market stability, the population density and the relevant urban development scheme. Circular 08 narrows the geographic scope of ENT assessment to the district where the proposed outlet is located, rather than the city or province as previously required under Circular 09.

Exception

Circular 08 provides an exception to the ENT assessment. Additional retail outlets may not be subject to ENT assessment if they meet the following conditions:

1. the area of the retail outlet is less than 500sqm;
2. the retail outlet is located in an area planned by the provincial / city authority level for trading activities of goods; and
3. the infrastructure of the area has been completed.

ENA Committee

Circular 08 also establishes a committee, namely the Economic Needs Assessment Committee (ENA Committee), to carry out ENT

assessment for retail outlets to be established at the level of provincial / city People's Committees. The ENA Committee's members comprise the authorised representatives of the People's Committee, the Department of Planning and Investment, Department of Industry and Trade and other related agencies. The ENA Committee's opinion must be included as part of an FIE's application submitted to the Ministry of Industry and Trade for their in-principle approval.

Exports

For the exportation of goods, FIEs may now purchase not only goods directly from traders that are licensed to import or distribute such goods, but also goods that have been imported by the FIE itself or by other Vietnamese entities provided that all import tax and financial obligations relating to such goods have been settled. However FIEs are still prohibited from organizing a network of goods purchase in Vietnam.

Imports

FIEs licensed with the right to import without distribution rights are only entitled to sell the imported goods directly to Vietnamese traders who are licensed for export or distribution of those goods.

Circular 08 takes effect from June 7th, 2013. There is hope the positive changes set out in Circular 08 may help to facilitate the distribution and trading business in Vietnam.

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