

New Decree on Logistics Services Opens Up Opportunities for Foreign Investors in Vietnam

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On December 30, 2017, the government of Vietnam issued Decree No. 163/2017/ND-CP (Decree 163) on regulations for doing business in logistics services. Under the provisions of Decree 163, which will come into effect on February 20, 2018, replacing Decree No. 140/2007/ND-CP dated September 5, 2007 (Decree 140), the classification of logistics services will be more aligned with Vietnam's WTO commitments. Decree 163 also sets out the basis for foreign investors to set up companies providing logistics services in Vietnam under certain ownership limits.

Classification of Logistics Services

Logistics services under Decree 163 are categorized into 17 main types, but a number of logistics services allowed in Decree 140, such as import and export entrustment services, goods maintenance services, trading and consignment agencies, etc., are no longer included. At the same time, Decree 163 adds several services which were not set out under Decree 140, most notably wholesaling support services, transport services as part of rail transport services, air carriage services, and technical testing and analysis services.

Decree 140 had its own rule for categorizing logistics services which was not aligned with the classification of logistics services under Vietnam's WTO commitments. However, under Decree 163, logistics services will be grouped in accordance with Vietnam's schedule of specific commitments to the WTO. Accordingly, foreign investors should find it much easier to compare Vietnamese regulations with international commitments.

Investment Conditions and Foreign Ownership Limits

One of the highlights of Decree 163 with regard to foreign ownership limits is that overseas investors from WTO-member countries are now allowed to establish companies or contribute capital to/purchase shares from Vietnamese enterprises doing business in logistics services, provided that the capital contribution ratio of foreign investors in the enterprise does not exceed—depending on the type of service—49%, 50%, or 51%. In certain situations, no foreign ownership limit is stated, and the only condition is that there must be capital contribution from a domestic investor in that enterprise.

Besides foreign ownership ratios, Decree 163 also specifies several other conditions for foreign investors to conduct business in the sector. For example, for marine transport trading (excluding internal shipping), foreign investors can set up companies operating fleets of ships flying Vietnamese flags, but the captain and the first deputy captain must be Vietnamese citizens, and foreign crew members must be less than one-third of the total. For road transport, all drivers at foreign-invested companies must be Vietnamese citizens. It should be noted that, in addition to

the conditions set out by Decree 163, investment in specific logistics services may also be subject to various specific conditions set out by the relevant laws applicable to such services.

It is clear that the new regulations of Decree 163 will help to fill in the missing gaps of Decree 140, which was initially supposed to help incorporate Vietnam's WTO commitments into national legislation, but fell short of being consistent with the commitments in a number of areas. This new decree, once it takes effect, will signal better business opportunities for foreign investors in logistics services and help expand business partnerships between domestic and overseas companies operating in the sector.

This summary is designed to provide general information only and is not offered as specific advice on any particular matter.

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