

Managing change

Client Alert Vietnam

Vietnam – the new civil code

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> Company formation requirements in Vietnam from Q1 2018

The Vietnamese legal environment is ever changing, attempting to cope with the country's rapid economic growth.

As such, the country has recognized a significant requirement to improve the legal environment in order to increase the ease of doing business.

▪ Current Status

Vietnam's market entry is considered the second most liberal entry in the region, being next only to Singapore. Its international connectivity with other countries and Unions puts Vietnam into a position ahead of other countries.

Investments from overseas are growing significantly, and the Vietnamese government has identified this as a key to success. As a result, the Government is working on the ease of doing business in the country.

The latest improvement for international investors is the new Decree No. 09/2018/ND-CP, detailing the Commercial Law on international goods sale and purchase activities of foreign-invested enterprise in Vietnam (replacing Decree 23/2007).

Current requirements

Foreign trading companies go through an Investment Process in Vietnam. At the end of this process, the companies are issued with an Investment Registration Certificate (IRC) and an Enterprise Registration Certificate (ERC).

In general, the average duration of the application process amounts to 15 working days for the IRC, and another 5 working days for the ERC - which in total runs up to 20 working days, equaling approximately one month.

Once the licenses have been issued, distribution companies require a Business License (BL) which is to be issued by the Ministry of Investment. Processes involving the Ministry of Investment may take quite some time. By law, the BL is supposed to be issued within 30 days, in practice it is actually likely to take longer, sometimes consuming more than three months.

Trading activities may then only be performed with the products that have been registered in the licenses. As such, HS codes are registered.

New regulations

Distribution may be performed by way of wholesale and retail. Under the new regulations, only retail business is subject to the issuance of a BL and thus subject to a longer process. Distribution by way of wholesale therefore now is a comparably easy business scope to register. This has been significantly different in the years until 2015 when distribution took about 2 years to register.

Further to that – and this point unfortunately remains rather unclear under the new decree – it might be intended to eliminate the requirement to register HS codes in the licenses, which is limiting foreign investors to these products. In this case, the foreign investor would no longer be limited in trade, and would therefore be treated as a local investor in this respect. This would be a significant step forward, also having a considerable impact on capitalization, as under the current

regulations, the number of registered HS codes serves as a basis to determine the required capitalization.

Conclusion

Reducing the burden of gaining a BL is an important step forward as to the ease of doing business in Vietnam. If, however, the requirement to register HS codes in the license was suspended, this would definitely signify a considerable further improvement.

A clarification in terms of guidelines for this Decree is expected to provide a more reliable base for evaluation.

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