

## Development trends in the regulation on goods distribution and trading activities conducted by foreign traders

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### Legislative history

To provide guidance to Vietnam's commitments made upon its accession to the WTO on market openings, the Government in 2007 issued Decree No. 23/2007/ND-CP prescribing legal bases for foreign-owned enterprises to engage in trading and distribution activities in Vietnam (Decree 23).

The main obstacle to a clear and non-burdensome regulations regime was the economic needs test (the ENT) which is applicable to foreign investors when establishing more than one retail outlet in Vietnam. Decree 23 and Circular 09/2007/TT-BTM dated July 17th, 2007 (Circular 09) provide certain criteria related to the ENT when setting up more than one retail outlet, i.e. (i) the number of retail sales outlets, (ii) the market stability, (iii) the population density and (iv) the consistency of the investment project with the master plan of the province or city. There was no further regulation detailing how the ENT should be conducted. As a consequence, the ENT process is largely dependent on the discretion of the authority applying the ENT.

Recently, the Government took a new step in passing Circular No. 08/2013/TT-BCT dated April 22nd, 2013 of the Ministry of Industry and Trade on the goods distribution activities conducted by foreign owned enterprises (Circular 08). Circular 08 entered effect on June 7th, 2013 and replaced Circular 09.

### Differences between Circular 08 and Circular 09

Regarding the first retail sales outlet, there is a significant change in the provisions regulating the establishment of the first retail outlet. While Circular 09 provided few provisions to administer the approval of the first retail sales outlet, Circular 08 seems to be more serious about the matter. In particular, under Circular 08, the establishment of the first retail sales outlet is now subject to the relevant master plan for the retail sales activity of the province and central-affiliated city where such outlet is located.

For subsequent retail sales outlets, a noticeable change offered by Circular 08 (Article 7) is that it prescribes an exception for cases where the application of the ENT shall not be applied. Any retail sales outlet other than the first outlet which meets the following conditions shall not be subject to the ENT:

(a) meeting the master plan of the province or city where the retail sales outlet is located

- (b) being located in areas planned for goods trading activities by central-affiliated cities and provinces;
- (c) being established on a business premises with the area of less than 500 square meters; and
- (d) having completed the construction of infrastructure.

The table below reflects the main differences between the provisions of Circular 09 and of Circular 08 regarding the setting up subsequent retail sales outlets:

Criteria	Circular 09	(New) Circular 08
The number of retail sales outlets	To be counted within the area of province or city where the retail sales outlet is located	To be counted within the area of the district where the retail sales outlet is located
The market stability	Pertaining to the province or city where the retail sales outlet is located	Pertaining to the district where the retail sales outlet is located
The population density	Pertaining to the province or city where the retail sales outlet is located	Pertaining to the district where the retail sales outlet is located
The consistency of the investment project	Meeting the master plan of the province or city where the retail sales outlet is located	Meeting the master plan of the province or city where the retail sales outlet is located
Others		The scale of the district-level locality where the retail sales outlet is located

### Administrative mechanism of the ENT

To make the ENT process more transparent and consistent, Circular 08 also creates an organisation called the ENT Checking Council (the Council) to audit applications of the ENT.

In general, the Council is under the governance of the provincial people's committee and is constituted by a group of people who come from the relevant licensing authorities. In particular, the Council consists of the representatives of the relevant provincial people's committee, the department of planning and investment (the management board of the relevant economic zone), the department of industry and trade and other related authorities which are appointed by the president of the provincial people's committee.

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