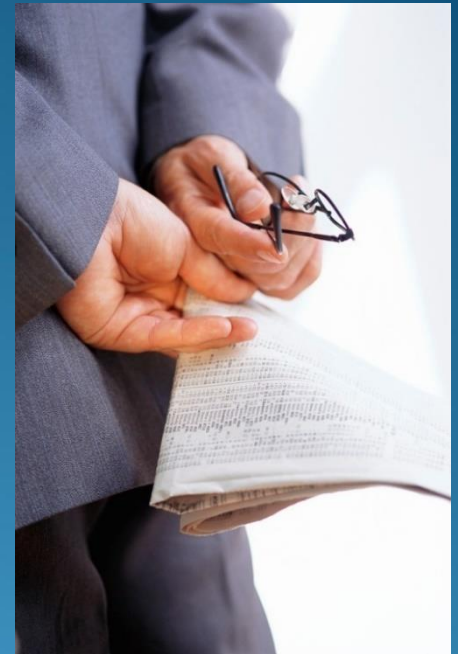


TRADE & RETAIL DISTRIBUTION LICENSE for FDI in Vietnam

TUAN A. PHUNG Esq.

Managing Partner VCI Legal | Vice Chairman VAFI HCMC

Hon. Consul General | Finnish Consulate HCMC



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

TEAM INTRODUCTION



In-depth Legal Consulting for Tax, Finance and M&A



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

LOCAL INSIGHTS MEET INTERNATIONAL EXPERTISE

- A full service law firm with a seasoned team of multi-disciplinary professionals
- in-depth understanding of the legal system, business environment, and cultural background in Vietnam.
- Offices: Hanoi and Ho Chi Minh City
- Professional staffs: 25
- Languages: *Vietnamese, English, Japanese, French, Chinese, Korean*



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

INTERNATIONAL AWARDS

Legal500, Chambers & Partners, IFLR 1000 and Legalese's Tax Director Handbook (global legal directories & ranking agencies) and international professional magazines list VCI Legal among the top law firms in Vietnam for: *M&A, competition law, banking and corporate, insurance, taxation, intellectual property, investment.*



Acquisition International Magazine:

- *Vietnam Corporate Law Firm of the Year 2012-2014,*
- *M&A Vietnam Law Firm of the Year 2013,*
- *Real Estate Law Firm of the year 2012-2013*

ACQ Global Magazine:

- *Vietnam Banking & Finance Law Firm of the Year 2012-2013*
- *Vietnam Capital Markets Law Firm of the Year 2012-2013*
- *Vietnam Corporate Law Firm of the Year 2012-2013*
- *Vietnam M&A Law Firm of the Year 2012-2013*

Financial Monthly – *Law Firm of the Year 2011-2013*

Corporate LiveWire – *M&A Vietnam Law Firm of the Year 2012- 2013*



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

Practice Overview

■ Full-service business law firm with business-oriented & specialized legal services:

- In-house Counsel Service™
- Finance, Legal & Stock Market Engineering Service;
- Investment Structuring & Placement
- Legal, Insurance & Risk Management Service;
- Intellectual Properties Strategic Management Service;
- IP Enforcement Service.



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

Key Practice Areas

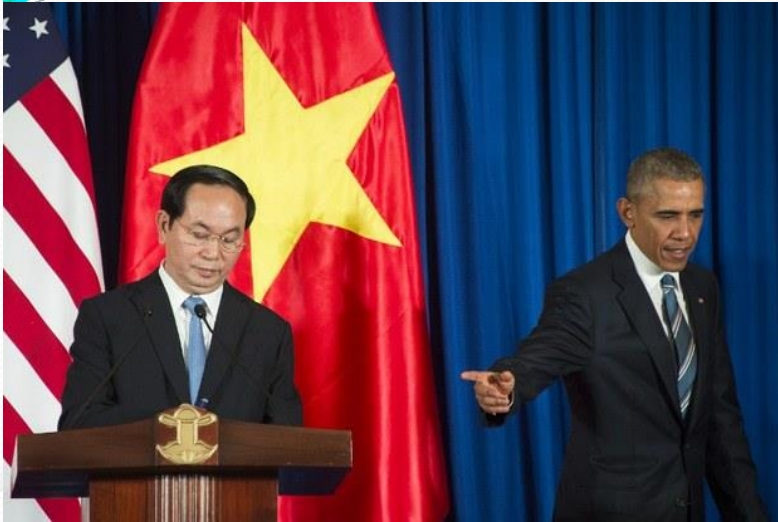
Strategic practice groups built on our “*In-house Counsel Service*” platform

1. Corporate | M&A | Investment Structuring;
2. Securities, Banking & Finance
3. Real Estate | Construction |
4. Tax | Transfer Pricing | HR Management & Labour
5. Petroleum | Mining | Energy
6. Infrastructure



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MULTI-INDUSTRY EXPERIENCE SPANNING DECADES
Since the Beginning of Economic Renovation in Vietnam

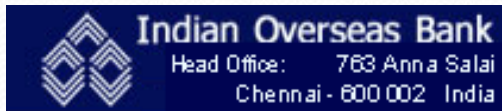
TRADING & FDI EXPERIENCE



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

Representative Clients & Experience Financial Services



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Representative Clients & Experience*

Technology – Petroleum – Heavy Industry



at&t



invent



by Schneider Electric

PHILIPS



BP PETCO



Ciba



metso



TOTAL



TATA



Shell



Reliance
Growth is Life



Systems



SAMSUNG



Shell ALTANA



RPG



TAIHEIYO CEMENT



BYK
Additives & Instruments



FRIGSTAD
OFFSHORE



Mercedes-Benz



Mitra Energy Limited



BLUESCOPE
STEEL

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Healthcare & Nutrition Products



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Representative Clients & Experience

FMCG & Logistics



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Representative Clients & Experience*

Real Estate & Construction



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Some Clients & Experience in Franchising & Licensing

- **Unilever** licensing contracts
- **Pierre Cardin** licensing contract
- **Fun Characters International & Walt Disney:** merchandise licensing
- **Fashion TV:** broadcasting licensing contract
- **Black Angus Steak House** franchising contract
- **Hilton Hotels, Renaissance & Marriot Hotel Group, Starwood Real Estate Group** licensing contract



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Clients & Experience in Franchising & Licensing

- **Elite Modeling Agency:** negotiate on licensing terms
- **Hard Rock Café:** licensing contract & business model
- **Dale Carnegie Professional Training;** registration of licensing contract
- **Trung Nguyen Café:** brand management & distribution contract, bad debt recovery
- **Wrap & Roll Restaurant** licensing & franchising contract



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

Recent Specialized Experience In Trading License for FDI

- Solenis & ERCA: US and European chemical importer & distributors
- Sime Darby: 2nd biggest importer & dealership of BMW, Jaguar Land Rover & Porsche



PORSCHE



Developing
Sustainable
Futures



THE UPS & DOWNS OF FRANCHISING



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

THE “UPS” - ADVANTAGES

- **Expansion of Business Model**
 - Expansion can be faster because franchisees provide labour and their sales provide growth.
 - Replicate business market.
- **Reduce a risk of building a new brand**
 - The risk of business failure is reduced by franchising. The business is based on a proven idea.
 - Products/services have already established a market share.
(No need for market testing)

THE “UPS” - ADVANTAGES

■ Big benefit

- The business can receive support from other franchisees in the network (Franchisees may be more talented at growing the business and turning a high profit)

■ Consistency in operation.

- Consistent operations across the business generally means improved efficiency and higher quality.



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

THE “DOWNS” – DISADVANTAGES

■ Franchisees controlling

- Franchisees cannot be managed as closely as employees.

■ High initial costs:

- Upfront investment (time and money) required can be huge. E.g.: support; training; transportation; and management costs.

THE “DOWNS” – DISADVANTAGES

- **Difficulty in choosing franchisees.**
 - Selecting a wrong franchisee can ruin the reputation of the whole franchise.
- **The flexibility of business.**
 - Very low.
 - The inflexible nature of a franchise may restrict your ability to introduce changes to the business to respond to the market or make the business grow.

THE “DOWNS” – DISADVANTAGES



- Disputes from variety of franchisees about rights or obligations.
- **Intellectual Property matters:**
- Sharing confidential information with franchisees is risky if they are not fully committed to the business. (esp. trade secrets).

DISPUTE





RETAIL, DISTRIBUTION & OUTLET LICENSE



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VIETNAM CORPORATE LAW FIRM OF THE YEAR



BACKGROUND


- Vietnam is a WTO member with commitments to open markets fully from 2007
- Foreign investment regulations must conform with committed roadmap under WTO
- Foreign goods or services are open to be traded locally; and
- FIEs operations must comply with Vietnam's WTO commitments & local laws



DECREE 09

Decree No. 09/2018/ND-CP dated January 15, 2018 of the Government on guidelines for the Law on Commerce and the Law on Foreign Trade Management regarding the sale of goods and other activities directly related to the sale of goods for foreign investors and foreign-invested businesses in Vietnam

Conditions for issuing business license



A foreign investor from a country or territory which has acceded to a treaty which Vietnam is a signatory and under which Vietnam has committed to open its market for the sale of goods

A foreign investor not from a country or territory which has acceded to a treaty to which Vietnam is a signatory

Article 9, Clause 1 of Decree 09

A foreign investor from a country or territory which has acceded to a treaty which Vietnam is a signatory and under which Vietnam has committed to open its market for sale of goods and other related activities shall:

- a) Meet market access conditions prescribed in international treaties which Vietnam is a signatory;
- b) Develop a financial plan deemed qualified to apply for a business license;
- c) Incur no overdue tax in a case where it has been established in Vietnam for at least 1 year.

Article 9, Clause 2 of Decree 09

A foreign investor not from a country or territory which has acceded to a treaty to which Vietnam is a signatory shall:

- Develop a financial plan deemed qualified to apply for a business license;
- Incur no overdue tax in a case where it has been established in Vietnam for at least 1 year.
- In accordance with special law;
- In conformity with the extent of competitiveness of domestic enterprises within the same sector;
- Employment creation for domestic workers;
- Potential and actual contribution to State Budget.



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CONDITIONS FOR SETTING UP RETAIL OUTLET



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VIETNAM CORPORATE LAW FIRM OF THE YEAR

Setting up the first retail outlet

a) Develop a financial plan for setting up retail outlet;

b) Incur no overdue tax in a case where it has been established in Vietnam for at least 1 year;

c) The location where the retail outlet is set up conforms with the relevant planning in the relevant geographic market.



Setting up retail outlet other than the first retail outlet



- The same conditions prescribed for setting up the first retail outlet.
- Economic needs test (ENT) criteria are fulfilled (where compliance requires an ENT)

Economic Needs Test (ENT)

- Applicability-WTO Commitments:
 - ENT is required for FIEs to obtain 1st license or new outlets
 - No ENT for domestic companies
- Objective criteria:
 - E.g.: number of existing suppliers in a particular geographic area,
 - stability of market and geographic scale

Economic Needs Test (ENT)

■ ENT criteria:

1. The scale of relevant geographic market being affected by to-be-retail outlet;
2. The number of existing retail outlets in the relevant geographic market;
3. Impact of the retail outlet on market stability and operating activities of other retail outlets and traditional markets in the relevant geographic market;
4. Impact of retail outlet on traffic density, environment, fire safety in the relevant geographic market;
5. *Potential contribution of the retail outlet to the socio-economic development of the relevant geographic market.*



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Economic Needs Test (ENT)

Potential contribution of the retail outlet to the socio-economic development of the relevant geographic market.

- *In particular:*

1. Employment creation for domestic workers;
2. Potential contribution to the development and modernization of the retailing sector in the relevant geographic market;
3. Improvement of environment and living conditions of inhabitants in the relevant geographic market;
4. Potential and actual contribution to State Budget.

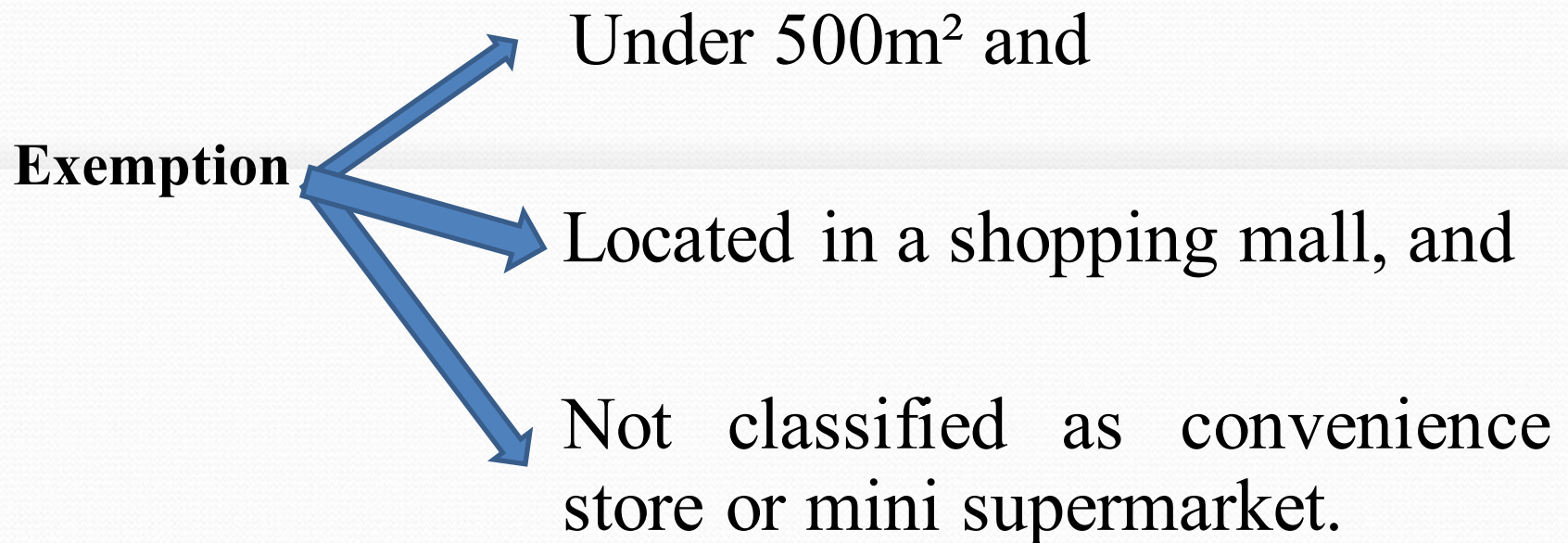


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VIETNAM CORPORATE LAW FIRM OF THE YEAR

Which retail outlet?

The second retail outlet of foreign investor must pass the ENT.



ENT requirements

The assessment factors are:

- Relevant target local market stability;
- The number of retail outlets in the relevant area;
- Impact of the new retail outlet on market stability;
- Impact on traffic density, environment, fire protection in the target local market;
- Possible contribution for socio-economic development of the target local area, including:
 - ✓ Possible jobs for Vietnamese workers;
 - ✓ Contribution to the development and modernization of the retail industry in the area;
 - ✓ Improve the environment and living conditions of the citizens in the area;
 - ✓ Contribution to the State Budget.

ENT procedure

- The ENT assessment is made by a committee of representatives from local authorities, including the Department of Planning and Investment and Department of Industry and Trade (DOIT).
- ENT dossier should be sent to the provincial DOIT where the retail outlet is located.
- ENT dossier is reviewed by various authorities: by the DOIT for 5 days, 7 days by the Provincial People's Committee, 30 days by the ENT committee, 3 days by the DOIT again, 10 days by the MOIT, then 3 days for the DOIT to issue the Certificate.
- Under the law, if the dossier does not need supporting documents, it takes 58 days in total.

Included Agreements

- IPRs Licensing Agreement
- Distribution Agreement
- Management & Technical Services Agreement
- Location leases
- Supply Contracts: materials & ingredients
- Confidentiality Agreement
- Technology Transfer Agreement



MORE QUESTIONS?



Tuan A. Phung Esq. | *Managing Partner*

- *Honorary Consul General* for Finland in HCM City
- *Vice Chairman* VAFI (Vietnam Association of Financial Investor)
- former *Board Member* for the EUROCHAM Vietnam
- *Board Member* YBA Young Business Association | HCMC

17 years of practicing experience for with international companies
as legal advisor & business executive

email: tuanphung@vci-legal.com

Tel.: (84) 8 38272 029 Fax: (84) 8 8 234 436

<http://www.vci-legal.com>

Ho Chi Minh City

Suite P7-42.OT06, Floor 42, Park 7,
Vinhomes Central Park 720A Dien Bien
Phu, Ward 22, Binh Thanh District,
Ho Chi Minh City, Vietnam

Tel.: (84) 8 38272 029 Fax: (84) 8 8 234 436

Hanoi

Suite 904, 9/F, ACB Building, 10 Phan Chu
Trinh Street, Hoan Kiem District,
Hanoi, Vietnam

Tel.: (84) 4 3 9364985 / 3 9364987



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