**IMPORTANT THINGS FOR FOREIGN INVESTMENT COMPANY IN THE RETAIL INDUSTRY**

Retail activities are growing in popularity right now, especially during the Covid 19 Pandemic. A series of retail supply chains of goods and retail Companies have sprung up quite a lot, with the aim of economic recovery and adapt to this pandemic.

Retail activities for domestic enterprises are quite simple, the procedure to put the Company into operation is very quick. However, for foreign investors, retail activities have certain constraints and limitations. This article will provide an overview and basic understanding to investors who plan to transition to retail before making an investment decision.

There are two forms of retail now being used by businesses:

1. **Form 1:** Online retail via the website, Facebook, e-commerce sites such as Tiki, Lazada, Shoppee,..: consumers will enter online sales pages to search for suitable products, place orders, pay online, or pay after receiving the product. The goods will then be delivered to the customer's address.
2. **Form 2:** Store-based direct retailing: consumers can go directly to stores to select products and make purchases.

Many Companies are using the Form 1 to save money on shop rental, operation, and management. During this Pandemic, online business is also highly appropriate and popular with consumers because it saves time in travel, limits interaction, and prevents disease.

A Foreign-Invested Company (**“Company”**) must apply for the following permits at the Department of Industry and Trade in the province/city where the Company is located in order to operate in this field:

1. Business Licenses;
2. Retail outlet Licenses

Examples:

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| --- | --- | --- |
| **No.** | **Activities** | **Required License** |
|  | Only retail goods through the Form 1 | Business Licenses |
|  | Sales as the Form 1 and the Form 2 | Business Licenses   and retail outlet Licenses |
|  | Open a store to display products and sell goods as the Form 1 | Business Licenses |
|  | Open a product display shop, sell goods at the store like Form 2 and combine sales like the Form 1 | Business Licenses   and retail outlet Licenses |

* Conditions to be granted a Business License:
* Foreign investors are members of international treaties with commitments to open the market in the field of purchase and sale;
* In order to have an adequate financial allocation strategy for retail sales of goods, investors must estimate expenses such as office rental costs, labor costs, marketing costs, purchasing costs, and other expenses in line with the Company's present capital.
* Foreign-invested companies, when applying for a business license, must have a confirmation that they do not owe overdue taxes if the company has been established for more than 1 year or more. This shows that if the company has not fulfilled its obligations to the tax authorities, the Company is not approved for a Business License.

Besides, the goods include rice; sugar; recorded articles; books, newspapers and magazines, the Department of Industry and Trade only considers licensing the retail distribution rights to foreign-invested economic organizations that already have retail outlets in the form of supermarkets, mini-marts, convenience stores for retail sale at such outlets. At the same time, companies need to consider whether retail business goods are on the list of banned or restricted businesses to avoid being refused when applying for a license.

Time to apply for a business license: 10 working days after receiving a complete and valid dossier.

* Conditions to be granted a retail outlet license:

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| --- | --- | --- |
| **Object** | **In case of REQUIRING compliance with an economic needs test** | **In case of WITHOUT REQUIRING compliance with an economic needs test** |
| Setting up the first retail outlet |  | 1. Acquire a financial plan for setting up retail outlet; 2. Incur no overdue tax in a case where it has been established in Vietnam for at least 1 year; 3. The location where the retail outlet is set up is conformable with the relevant planning in the relevant geographic market. |
| Setting up retail outlet other **than** the first retail outlet, meeting one of the following conditions:   * Retail outlet is **less** than 500m2 in size, * **Located** in a shopping mall; * Not classified as convenience store or mini supermarket. |  | 1. Acquire a financial plan for setting up retail outlet; 2. Incur no overdue tax in a case where it has been established in Vietnam for at least 1 year; 3. The location where the retail outlet is set up is conformable with the relevant planning in the relevant geographic market. |
| Setting up retail outlet other **than** the first retail outlet, meeting the following conditions:   * Retail outlet is **more** than 500m2 in size; * **Not located** in a shopping mall; * Not classified as convenience store or mini supermarket. | Meeting conditions of the first retail outlet and the following conditions:   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 the 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 hygiene, fire safety in the relevant geographic market; 5. Potential contribution of the retail outlet to the socio-economic development of the relevant geographic market, in particular: 6. Employment creation for domestic workers; 7. Potential contribution to the development and modernization of the retailing sector in the relevant geographic market; 8. Improvement of environment and living conditions of inhabitants in the relevant geographic market; 9. Potential and actual contribution to state budget. |  |

* Economic needs test council (ENT council)shall be established by the People’s Committee of province where the retail outlet is set up at the request of the licensing agency.
* The ENT council is composed of: Representative(s) of the People’s Committee of province or representative(s) of the agency authorized by the People’s Committee of province to act as Chairman of ENT council; representative(s) of the Department of Industry and Trade, the Department of Planning and Investment and relevant agencies and organizations acting as ENT council members. If the retail outlet is located in a geographic area of ward, commune, or district-level town (hereinafter referred to as commune) bordering another province, the ENT council must have a representative of the People’s Committee of bordering province.
* The ENT council shall, in consideration of the above criteria, clarify the conformity or nonconformity of the retail outlet location in order for the Chairman of ENT council to whether approve or disapprove the setting up of the retail outlet at that location.

For the establishment of retail outlets including economic needs test or no economic needs test, the Department of Industry and Trade must consult with the Ministry of Industry and Trade before granting a permit.

* Time to apply for a license to set up a retail outlet:
* For retailers with economic needs test: 58 business days
* For retailers that do not have an economic need test: 20 business days

The conditions and criteria listed above are the basic requirements for investors to have an overview of the retail activity. Although retailing is a popular and developed business in the Vietnamese market, investors must first go through the procedure of acquiring a permit from the authority. This also serves as a barrier to competition between foreign-owned and Vietnamese businesses.