

Clarification on Decree No. 23 of the Government on Trading & Distribution, dated 12 February 2007 (Decree 23)

4 May 2007

On 1 May 2007, Youth Newspaper reported that the Ministry of Trade (**MOT**) sent a written response to the Ho Chi Minh City Department of Planning and Investment (**DPI**) indicating that, at present, the MOT will not consider licensing *any* foreign invested companies to import and distribute products in Vietnam.

Despite the recent issuance of Decree 23 in accordance with Vietnam's WTO commitments in the trading and distribution sector, the MOT cited the lack of an implementing circular as the basis for its reluctance to approve any such licences at this time.

Decree 23 authorises, subject to prior written approval of the MOT, provincial people's committees (in the case of Ho Chi Minh City, through the DPI) to issue **business licences** to new, foreign-invested trading and distribution enterprises and already established foreign-invested enterprises seeking to add trading and distribution activities (or literally, 'activities of purchase and sale of goods and activities directly related to the purchase and sale of goods'). In the case of such new, foreign-invested enterprises, the business licence would be included as part of the investment certificate issued to the new enterprise.

Decree 23 provides that foreign-invested companies established to engage only in import/export of products without distribution, and already established foreign-invested companies seeking to add import/export as an additional activity (again without distribution), do not require MOT approval. The MOT's response to the DPI should not apply to foreign investors in this situation, but it is not clear how the DPI will interpret and apply this response from the MOT.

In accordance with Vietnam's WTO commitments, foreign investors *should* be permitted to engage in trading and distribution activities (with respect to those products permitted under the terms of the WTO commitment schedule) in the form of a joint venture with a Vietnamese party (foreign party not holding more than 49 per cent of the charter capital), from 11 January 2007.

As from 1 January 2008, the limitation on the percentage of foreign charter capital is abolished (that is, in theory permitting the foreign party to hold a 99 per cent interest). As from 1 January 2009, the joint venture requirement is abolished and a 100 per cent foreign-invested enterprise in trading and distribution will be permitted (subject always to the WTO schedule of permitted products).

For a free translation of Decree 23, please go to

<http://www.vietnamlaws.com/freelaws/D23gv12Feb07DistributionEnterprisesFOC.pdf>

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