

REQUIREMENTS FOR FOREIGN TRADE IN SERVICES

VIET NAM

General Limitations

- Commercial presence is allowed through:
 - joint venture
 - business cooperation contract¹
 - 100 % foreign invested enterprise
 - representative offices, but they shall not engage in any direct profit-making activities.
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- Foreign enterprise/service suppliers are permitted to make capital contribution in the form of buying shares of Viet Nam's enterprises.
- Entry and temporary stay are allowed for the following natural persons:
 - intra-corporate transferees, covering managers, executives and specialists.
 - such persons shall be employees of the foreign enterprise for at least one year
 - shall be granted entry and a stay permit for an initial period of three years which may be extended subject to the term of operation of those entities.
 - at least 20% of the total number of managers, executives and specialists shall be Vietnamese nationals.
 - a minimum of 3 non-Vietnamese managers, executives and specialists shall be permitted per enterprise.
 - other personnel: covering managers, executives and specialists.
 - cannot be substituted by Vietnamese
 - are employed outside Viet Nam's territory by a foreign enterprise which has established a commercial presence in the territory of Viet Nam
 - shall be granted entry and a stay permit in conformity with the term of the concerned employment contract or for an initial period of three years whichever is shorter, which may be extended subject to the employment contract between them and the commercial presence.
 - service sales persons:
 - The stay of these salespersons is limited to a 90-day period.
 - persons responsible for setting up a commercial presence: covering managers and executives
 - The stay of these persons is limited to a 90-day period.
 - contractual service suppliers (CSS)²:
 - may enter and stay in Viet Nam for a period of 90 days or for the duration of the contract, whichever is less
 - the foreign enterprise has obtained a service contract from a Vietnamese enterprise engaged in business operation in Viet Nam.
 - these persons must possess: (a) a university degree or a technical qualification document demonstrating knowledge of an equivalent level; (b) professional

¹ Business co-operation contract is a document which is signed by two or more parties (of which at least one party must be Vietnamese legal entity and one party must be foreign legal entity) and which stipulates the responsibilities of, and the sharing of business results between, the parties for the purpose of conducting investment and business in Viet Nam without creating a legal entity.

² Allowed for computer and related services and engineering services.

- qualifications where this is required to exercise an activity in the sector concerned pursuant to the laws and regulations of Viet Nam; and (c) at least 5 years of professional experience in the sector.
 - the number of these persons covered by the service contract shall not be larger than necessary to fulfil the contract.
 - these persons should have been employed by the foreign enterprise having no commercial presence in Viet Nam for a period of no less than 2 years and have met the requirements prescribed for "specialist" above.
- The period for land lease shall correspond to the time of operation of those enterprises and shall be stipulated in their investment licenses and shall be extended whenever the time of operation of those enterprises is extended by competent authorities.

Business Services Sector

Legal Services

- Commercial presence is allowed through:
 - branches of foreign lawyers organisations;
 - subsidiaries of foreign lawyers organisations;
 - foreign law firms;
 - partnership between foreign lawyer organisations and Viet Nam's law partnerships.
- Foreign law firms are not allowed to:
 - provide legal consultancy for Vietnamese law
 - to participate in legal proceeding in the capacity of defenders or representative of their clients before the court of Viet Nam.
 - provide legal documentation and certification services of the Laws of Viet Nam.
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- Foreign law firms are allowed to provide legal consultancy for Vietnamese law if::
 - the consulting lawyers have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese law practitioners. (3)
 - they hire Vietnamese lawyers. (APEC-IAP)
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- Foreign lawyers may only work as:
 - a member/employee at a foreign law organization in Viet Nam; (APEC-IAP)
 - an employee in a foreign law firm and a Vietnamese law partnership; (APEC-IAP)
- Vietnamese bar membership is not open to foreign citizens.

Accounting, Auditing and Bookkeeping Services

- Foreign auditors are allowed to provide auditing services if:
 - legally resident in Viet Nam for at least 1 year
 - possess auditor certificate granted by Viet Nam Ministry of Finance or accountant/auditor certificate issued by foreign institution recognised by Viet Nam Ministry of Finance
 - pass an examination on Viet Nam laws and regulations:
 - registered in the list of practicing auditors managed by Vietnam Ministry of Finance or Vietnam Association of Certified Public Accountants (VACPA).
 - have the employment contract.
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- One of the two auditors giving their signatures in an audit report must be Vietnamese, except for the cases prescribed in Clause 3, Article 30 of Decree No. 105/2004/ND-CP.

- Different regulation on legal capital or owner capital requirement between local and foreign invested audit enterprises.

Architectural Services

- Foreign architects may only practise with Vietnamese practising professional architects certified and recognised by relevant Vietnamese authority.

Engineering & Integrated Engineering Services

- Foreign engineering services suppliers can bring into Viet Nam only management, technical personnel that Viet Nam can not provide.
- The supply of services related to topographical, geotechnical, hydro geological and environmental surveys and technical surveys for urban-rural development planning, sectoral development planning are subject to the authorisation of the Government of Viet Nam.
- Foreign engineers may only practise with Vietnamese practising professional engineers certified and recognized by relevant Vietnamese authority.

Urban Planning and Landscape Architectural Service

- Services must be authenticated by an architect who has appropriate practicing certificate working in a Vietnamese architectural organization which has juridical entity status, and comply with relevant laws and regulations of Viet Nam.
- The responsible foreign architects working in foreign-invested enterprises must have the professional practicing certificate granted or recognised by the Government of Viet Nam.
- In some areas, subject to the regulations of the Government of Viet Nam for national security and social stability purposes, foreign service suppliers may not be permitted to provide this service.

Computer Related Services

- Chief of the branch has to be a resident in Viet Nam.

Advertising services

- Commercial presence is allowed through:
 - joint venture
 - business cooperation contract with Vietnamese partners who are legally authorised to do advertising services.
- Foreign organisations and individuals who do not register to operate in Vietnam must use advertising services from Vietnamese advertising companies.
- Foreign advertising services for cigarettes are not allowed. The advertising for wines and spirits shall be subject to State regulations, which are applied on a non-discriminatory basis.

Management Consulting Services:

- The chief of the branch has to be a resident in Viet Nam.

Production Management Consulting Services:

- Mining, oil, and gas related fields are excluded.
- Commercial presence is allowed through joint-venture or business co-operation contract.

Services related to Management Consulting

- Chief of the branch has to be a resident in Viet Nam.

Technical Testing and Analysis Services

- Mining, oil, and gas related fields are excluded.
- For sector previously closed to private sector competition on the grounds that the service had been supplied in the exercise of governmental authority:
 - Commercial presence is allowed through joint ventures (without limitation on foreign ownership) 3 years after such access to private sector competition is allowed.
 - No more limitation after five years after those private sector services suppliers have been granted such access.
- Restriction on access to certain geographic areas for national security reasons.

Related Scientific and Technical Consulting Services

- Commercial presence is allowed with foreign equity up to 51%. From 1 January 2011 onwards 100% foreign equity is allowed.

Maintenance and repair equipment

- Commercial presence is allowed with foreign equity up to 49%. From 1 January 2010 onwards 51% foreign equity is allowed and from 1 January 2012 onwards 100% foreign equity is allowed.

Portrait Photography Services and Special Photography services except aerial photography

- Commercial presence is allowed only in the form of BBC or joint venture with Vietnamese supplier.

Packaging services

- Commercial presence is allowed through joint venture and foreign equity up to 51%.

Printing, publishing for package only

- Commercial presence is allowed through joint venture and foreign equity up to 51%.

Communication Services

Courier Services

- Commercial presence is allowed through joint venture, and foreign equity is limited to 51%. From 1 January 2012 onwards 100% foreign equity is allowed.

Telecommunication Services

- For wire-based and mobile terrestrial services: service must be offered through commercial arrangements with an entity established in Viet Nam and licensed to provide international telecommunication services.
- For satellite-based services: subject to commercial arrangements with Vietnamese international satellite service suppliers duly licensed in Viet Nam. This limitation will be removed as of 1 January 2010 for multinational companies that are licensed to use satellite-earth station.
- For non-facilities-based services:
 - commercial presence is allowed through joint ventures with telecommunications service suppliers duly licensed in Viet Nam, and from 1 January 2010 onwards there will be no limitation on the choice of partner. Foreign equity is limited to 51%, and from 1 January 2010 will be limited to 65%, for the following subsectors: (3)
 - Voice telephone services including local, long distance and international
 - Packet-switched data transmission services
 - Circuit-switched data transmission services
 - Telegraph services
 - Telex services
 - Facsimile services
 - Private leased circuit services
 - Videoconference services
 - Video transmission services, excluding broadcasting
 - Radio based services: (mobile telephone mobile data, paging, pcs, trunking)
 - Internet exchange service (IXP)
 - Internet access services
 - Commercial presence is allowed through business cooperation contracts (BCC) or joint ventures. Foreign equity is limited to 51%, and from 1 January 2010 will be limited to 65%, for the following subsectors: (3)
 - Email
 - Voicemail
 - Online Information and Database Retrieval
 - EDI
 - Enhanced/Value Added Facsimile Services
 - Code and Protocol Conversion
 - Online Information and Data Processing
 - Commercial presence is allowed through joint venture without limitation on the choice of partner, and foreign equity is limited to 70%, for Virtual Private Network (VPN).(3)
- For facilities-based services:
 - Commercial presence is allowed through joint ventures with telecommunications service suppliers duly licensed in Viet Nam, and foreign equity is limited to 49%, for the following subsectors: (3)
 - Voice telephone services including local, long distance and international

- Packet-switched data transmission services
 - Circuit-switched data transmission services
 - Telegraph services
 - Telex services
 - Facsimile services
 - Private leased circuit services
 - Videoconference services
 - Video Transmission services excluding broadcasting
 - Radio based services: (Mobile telephone Mobile data, Paging, PCS, Trunking)
 - Internet Exchange Service (IXP)
 - Internet access services (foreign equity is limited to 50%)
- Commercial presence is allowed through business cooperation contracts or joint ventures with telecommunications service suppliers duly licensed in Viet Nam, and foreign equity is limited to 49%, for the following subsectors: (3)
 - Email
 - Voicemail
 - Online Information and Database Retrieval
 - EDI
 - Enhanced/Value Added Facsimile Services
 - Code and Protocol Conversion
 - Online Information and Data Processing
 - Commercial presence is allowed through joint ventures with telecommunications service suppliers duly licensed in Viet Nam, and foreign equity is limited to 49%, for VPN (3)
 - Foreign investors in business cooperation contracts (BCC) will have the possibility to renew current arrangements or to convert them into another form of establishment with conditions no less favourable than those they currently enjoy.

Motion Picture and Video Tape Production and Distribution Services

- Commercial presence is allowed through business cooperation contracts or joint ventures with Vietnamese partners who are legally authorised to provide these services in Viet Nam , and foreign capital is limited to 51%
- Foreign service suppliers are not allowed to engage in business cooperation contract or joint-venture with Viet Nam's houses of culture, film projection place, public cinema clubs and societies and mobile projection teams.
- The importation of foreign films for broadcasting on Viet Nam Television will be undertaken by Viet Nam Television Agency, in cooperation with the Ministry of Culture and Information
- Animated pictures and video discs production and distribution companies may cooperate with domestic movie makers only after permitted by Ministry of Culture and Information (APEC-IAP)
- “Foreign representative offices” wishing to circulate tapes and sound records in Vietnamese or foreign languages must submit official note to the Ministry of Foreign Affairs on the purposes, contents, names, publication periods, framework, printing places, quantities, recipients of these publications for consideration and apply for approval of the Ministry of Culture and Information.

Construction Services

- Chief of the branch has to be a resident in Viet Nam
- Foreign construction contractor can bring into Viet Nam only management, technical personnel and foremen that Viet Nam cannot provide.

Distribution Services

Commission Agents' Services, Wholesale Trade Services and Retailing Services

- Foreign-invested companies are permitted to distribute tractors, motor vehicles, cars and motorcycles.
- From 1 January 2010, foreign-invested companies will be permitted to distribute all legally imported and domestically produced products.
- The establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of an Economic Needs Test (ENT)

Franchising

- Branching is not allowed until 31 December 2009
- The chief of the branch has to be a resident in Viet Nam.

Educational Services

- Commercial presence is allowed only in technical, natural sciences and technology, business administration and business studies, economics, accounting, international law and language training fields
- The education content must be approved by Viet Nam's Ministry of Education and Training.
- Wholly foreign-owned education entities are allowed, for:
 - higher education
 - adult education
 - other education
- Foreign teachers who wish to work in foreign-invested schools shall have at least 5 years of teaching experience, and their qualifications shall be recognised by the competent authority.

Environmental Services

- Commercial presence is allowed through joint venture (in the form of build-operate-transfer (BOT) and build-transfer-operate (BTO)), and foreign capital is limited to 51% until 31 December 2010, after that: no limitation.
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- Services supplied in the exercise of governmental authority may be subject to public monopolies or exclusive rights granted to private operators for:
 - sewage services

- refuse disposal services
- cleaning services of exhaust gases and
- noise abatement services
- For the purpose of ensuring public welfare, foreign-invested enterprises are restricted from collecting refuse directly from households. They are only permitted to provide services at the refuse collection points as specified by local municipal and provincial authorities.
- Access to certain geographic areas may be restricted for national security reasons.

Healthcare Related and Social Services

- Commercial presence is allowed through:
 - 100% foreign invested hospital
 - joint venture with Vietnamese partners
 - business cooperation contract
- The minimum investment capital for a commercial presence:
 - US\$20 million for a hospital
 - US\$2 million for a policlinic unit
 - US\$1million for a specialty unit.
- The work permit will last according to the working contract with the respective health centre in Vietnam but no longer than 5 years. Foreigners who wants to extend the work permit need to submit application forms to Health Department.
- Foreigners who are not fluent in Vietnamese must have interpreters who meet the legal requirements

Hospital services, Medical and Dental Services, Services provided by Midwives, Nurses, Physiotherapist and Paramedical Personnel, Other Human Health Services

- Employers may employ foreign employees as follows:
 - number of foreign employees calculated by following formula: $Lnn = Ldn \times 0.03$
 - Lnn is number of foreign employees including employees who are employed by labour contract and foreigners who are sent by foreign side to work in enterprises in Viet Nam. Minimum Lnn is 01.
 - foreigners who are members of the Board of Directors, Board of Members (applied with Limited companies in Enterprise Law), foreigners who work in enterprises in Viet Nam to implement contracts (except labour contract) (Clause 5, Article 6 of Decree No. 105/2003/ND-CP) are not counted in number of foreign employees of enterprises.
 - Ldn is number of employees in enterprises (including both Vietnamese and foreign employees) at the time foreign employees are recruited. This number includes: employees who are working in enterprises; employees who are sent abroad to work or study; employees who are using social insurance services (sickness, maternity and work accident leave); employees who are trained by enterprises; employees who postpone implementation of labour contract.
 - If Ldn is not a natural number, it will be rounded up to the closest natural number. (Viet Nam's submission CCS Special 2008)

Veterinary services

- Access is granted to natural persons exclusively for the conduct of private professional practice.
- Provision of professional practice is subject to authorisation by the veterinary authorities.

Social services

- Commercial presence is allowed through joint venture, and foreign equity is limited to 49%.

Tourism and Travel Related Services

Hotels and restaurants

- Services provided should be in parallel with the investment in the hotel construction, renovation, restoration or acquisition.

Travel agencies and tour operators services

- Commercial presence is allowed through of joint venture with Vietnamese partners.
- Foreign enterprises can only do inbound services and domestic travel for inbound tourists as an integral part of inbound services.
- Tourist guides in foreign-invested enterprises shall be Vietnamese citizens.

Tourism theme park

- Commercial presence is allowed through joint venture with Vietnamese partners, and foreign equity is limited to 51%.

Recreational, Cultural and Sporting Services

Entertainment services (including theatre, live bands and circus services)

- Commercial presence is allowed after 1 January 2012 through joint ventures, and foreign equity will be limited to 49%.

Electronic games business

- Commercial presence is allowed through joint venture or business cooperation contract with Vietnamese partners who are authorised to provide these services, and foreign equity is limited to 49%

Transport Services

Passenger and Freight Maritime Transport

- For operating a fleet under the national flag of Viet Nam:

- commercial presence is allowed through joint ventures, and foreign equity is limited to 49%
- foreign seafarers not exceed 1/3 of total employees of the ships.
- the Master or first chief executive must be Vietnamese citizen.
- For other forms of commercial presence: commercial presence is allowed through joint ventures, and foreign equity is limited to 51%. From 1 January 2012 onwards wholly foreign-owned enterprise shall be permitted.
- The number of joint ventures companies will be limited to 5 companies in 2007, with three additional companies to be allowed every two years. From 1 January 2012 there shall be no limitation on the number of joint ventures.
- Foreign-invested enterprises are only permitted to carry out the following:
 - marketing and sales maritime transport services through direct contact with customers, from quotation to invoicing;
 - acting on behalf of the cargo owners;
 - provision of required business information;
 - preparation of documentation concerning transport documents including customs documents, or other documents related to the origin and character of the goods transported; and
 - provision of maritime transport services including cabotage services by Vietnamese flagged vessels for the supply of integrated transport services.
- From 1 January 2012, the following additional activities will be allowed:
 - acting on behalf of the company, organising the call of the ship or taking over cargoes when required;
 - negotiate and sign contracts for road, rail, inland waterways transportation related to cargoes transported by the company.
- Foreign shipping companies are obliged to appoint a Vietnamese Shipping Agency Company to act as their general ship-agent to supply maritime agency services for their vessels calling at Vietnamese sea-ports.

Other Maritime Transport Services

- Commercial presence is allowed through joint venture, and foreign equity is limited to:
 - 49%, for:
 - Maritime agency services
 - maintenance and repair of vessels
 - maritime cargo handling services
 - rental of vessels with crew
 - 50%, for:
 - container handling services
 - 51% (up to 31 December 2013, and no limitation afterwards) for:
 - container station and depot services
 - 51%, for
 - customs clearance Services (no limitation since 1 January 2012)

Internal Waterways Transport Services

- Commercial presence is allowed through joint venture with Vietnamese partners, and foreign equity is limited to 49%

Rail Transport Services

- Commercial presence is allowed through joint venture with Vietnamese partners, and foreign equity is limited to 49%

Road Transport Services

- Commercial presence is allowed through business cooperation contracts or joint-ventures, and foreign capital contribution is limited to 49%, and from 1 January 2012 onwards wholly foreign-owned enterprise shall be permitted.
- 100 % of joint-venture's drivers shall be Vietnamese citizen.

Services Auxiliary to all Modes of Transport:

- Commercial presence is allowed through joint venture, and foreign equity:
 - 49% (51 % after 1 January 2010) for:
 - other Services Auxiliary to all Modes of Transport
 - 50% for:
 - container handling services, except services provided at airport
 - 51% (up to 31 December 2013, and no limitation afterwards) for:
 - Storage and warehouse services
 - Freight transport agency services