

VIETNAM'S WTO COMMITMENTS ON SERVICES: WHAT SHOULD BE KNOWN

General Introduction on Vietnam's WTO Commitments

After 14 formal meetings from 1998 to 2006, Vietnam finally entered into the WTO in 2007. As a result, several major documents were accordingly adopted which include the Schedule of Concessions and Commitments on Goods and the Schedule of Specific Commitments on Services as a result of the negotiations between Vietnam and WTO Members.

Within the scope of this Article, we aim to provide an overview and some important points of the Schedule of Specific Commitments on Services (“**Vietnam's WTO Commitments on Services**”).

Overview of Specific Commitments on Services

Vietnam's WTO Commitments on Services has obviously given foreign investors more favorable access to a wide range of local service sectors. Accordingly, Vietnam's WTO Commitments on Services covers 11 service sectors:

- Business services
- Communication services
- Construction and related engineering services
- Distribution services
- Educational services
- Environmental services
- Financial services
- Health related and social services
- Tourism and travel related services
- Recreational, cultural and sporting services
- Transport services

It is understood that Vietnam has not yet committed to open the market access for those service sectors which are not listed in Vietnam's WTO Commitments on Services.

Mode of Services Delivery

There are 4 vehicles by which foreign investors may use for providing services into Vietnam under the Commitments, including: (1) cross-border supply; (2) consumption abroad; (3) commercial presence; and (4) presence of natural person.

As the most common vehicle used by foreign investors is commercial presence, the rest of this

article focuses on provisions applicable to limitation on market access imposed on foreign enterprises investing into Vietnam via establishing commercial presence.

Accordingly, subject to various conditions as the case may be, Vietnam's WTO Commitments on Services allows foreign enterprises to make investment into Vietnam under the following forms:

- Business cooperation contracts with Vietnamese partners
- Establishment of joint venture enterprises with Vietnamese partners
- Establishment of 100% foreign-owned enterprises
- Acquire shares or capital contribution from local company

In addition to the foregoing, foreign enterprises can also establish representative offices in Vietnam, provided the offices shall not engage in any direct profit making activities. However, as contradict to the representative offices, the establishment of branches is declared unbound in Vietnam's WTO Commitments on Services, except for those engage in the following services:

- Legal services
- Computer and related services
- Management consultant services
- Services related to management consulting
- Construction and related engineering services
- Franchising services
- Non-life insurance services
- Banking services
- Several securities services
- Services which are opened in full for foreign enterprises under the mode of commercial presence

Up to 2017, except for some sectors designated as unbound (e.g. secondary education or machinery and equipment renting/ leasing) or restricted (e.g. the banking sector or electronic games business), most of the other ones are now opened in full for foreign investors to incorporate wholly foreign-owned enterprises. Below are the the services that are open in full for foreign enterprises:

- Professional services (legal services; accounting, auditing and bookkeeping services; taxation services; architectural services; engineering services; integrated engineering services; urban planning and urban landscape architectural services; computer and related services; research and development services; aircraft renting/leasing services without operators; market research services; management consultant and related services; services incidental to mining; services incidental to manufacturing; related scientific and technical consulting services; maintenance and repair of equipment services not including maritime vessels, aircraft or other transport equipment)

- Courier services
- Construction and related engineering services
- Distribution services (commission agents' services; wholesale trade services; retailing services; franchising services)
- Educational services, except for secondary education services
- Environmental services (sewage services; refuse disposal services; cleaning services of exhaust gases and noise abatement services; environmental impact assessment services)
- Insurance and insurance-related services
- Banking and related financial services
- Securities services
- Hospital services
- Lodging services; catering food and drinks service
- Transport services (international maritime transport services except for establishment of registered companies for the purpose of operating a fleet under the national flag of Vietnam; container station and depot services; computer reservation services for air transport; maintenance and repair of aircraft; storage and warehouse services; freight transport agency services)

Some Matters of Practice in Terms of the Implementation of Vietnam's WTO Commitments on Services

The implementation of Vietnam's WTO Commitments on Services still has to face many challenges in practice. In principal, the local regulations must be in alignment with the Vietnam's WTO Commitments to ensure the implementation of the Commitments. However, as a matter of practice, in some cases, the local regulations or conditions are claimed to be stricter than those mentioned in the Commitments.

This leads to the inconsistency application and interpretation amongst licensing authorities, and consequently exposes difficulties for foreign investors in the preparation of licensing procedures and dossiers.

One of the most common approaches to this situation is that local licensing authorities often refrain from actively making decision on the implementation of a commitment that is not yet specifically supported by clear domestic laws. In these cases, the final decisions are only made after consulting the higher level authorities, which may take several months or sometimes years to obtain the decision.

Besides, it is worth noted that the investment of investors from non-WTO-member states are not governed by the Vietnam's WTO Commitments. This leads to the fact that a proposed investment by a said investor would be subject to the consideration and decision of the competent State authorities on a case by case basis.

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