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**FOREIGN INVESTMENT IN TRADING &
DISTRIBUTION IN VIETNAM –
LEGAL FRAMEWORK
with updates from DECREE 09/2018/ND-CP**

Presented to AmCham
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- **Overview**

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- **Decree 09/2018: Key procedural matters**

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- **Decree 09/2018: Licensing hurdles**

ABBREVIATIONS

- ❑ **BL:** Business License for trading and distribution of FIEs
- ❑ **CPTPP:** Comprehensive and Progressive Agreement for Trans-Pacific Partnership
- ❑ **DPI:** Department of Planning and Investment
- ❑ **DOIT:** Department of Industry and Trade
- ❑ **ENT:** Economic Needs Test
- ❑ **ERC:** Enterprise Registration Certificate
- ❑ **FIEs:** foreign invested enterprises
- ❑ **IRC:** Investment Registration Certificate
- ❑ **JSC:** joint stock company
- ❑ **LLC:** limited liability company
- ❑ **MOIT:** Ministry of Industry and Trade
- ❑ **MPI:** Ministry and Planning and Investment
- ❑ **OL:** outlet license

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1. OVERVIEW OF REGULATIONS ON TRADING AND DISTRIBUTION

- ❑ **Legal framework:** International Treaties and Local Laws
- ❑ **Business activities regulated**
 - Trading = Import and Export
 - Distribution (wholesale, retail)
 - **Related businesses:** logistics services, commercial promotion, etc.
- ❑ **Market openings/ restrictions**
 - **Foreign ownership limit:** lifted (for trading and distribution)
 - **Sub-licenses:** Business License (**BL**) and Outlet License (**OL**)
 - **Types of goods** to be distributed

1. OVERVIEW OF REGULATIONS ON TRADING AND DISTRIBUTION (CONT.)

Types of goods: not committed to open to foreign investment:

- Cigarettes and cigars
- Books, newspapers and magazines
- Video records on whatever medium
- Precious metals and stones
- Pharmaceutical products and drugs
- Explosives
- Processed oil and crude oil
- Rice, cane and beet sugar

(→ Vietnam could still grant license on a pilot/ case by case basis).

1. OVERVIEW OF REGULATIONS ON TRADING AND DISTRIBUTION (CONT.)

Investment forms and relevant licenses/ approvals: TWO choices

Set up anew	Acquire existing (local) company (M&A)
<p>Licenses required:</p> <ol style="list-style-type: none">Investment Registration Certificate (IRC) – for the foreign investor’s project in Vietnam; andEnterprise Registration Certificate (ERC) – for the foreign investor’s company to be set up in Vietnam	<p>Licenses/ approval required:</p> <ol style="list-style-type: none">M&A approval – approve for the acquisition; andAmended ERC (for LLC)/ Notification (for JSC) – record acquirer as new (co-)owner
<p>3) Sub-licenses</p>	

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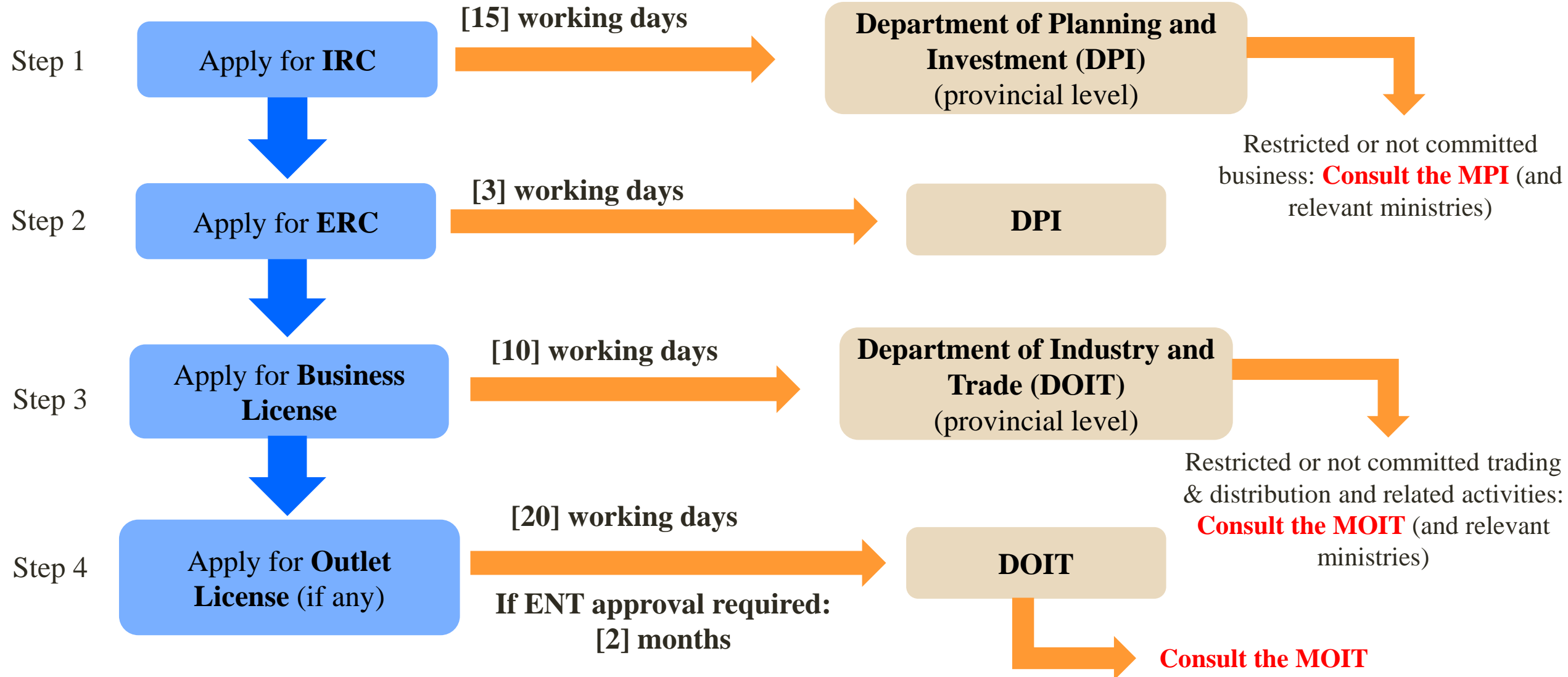
2. DECREE 09/2018/ND-CP: IDENTITY INFORMATION

- **Issue date:** 15 Jan 2018
- **Effective date:** **15 Jan 2018**
- **No guiding circular**
- **Repealing** Decree 23/2007/ND-CP (and its guiding circular No. 08/2013/TT-BCT)
- **Transition provisions:** Article 50

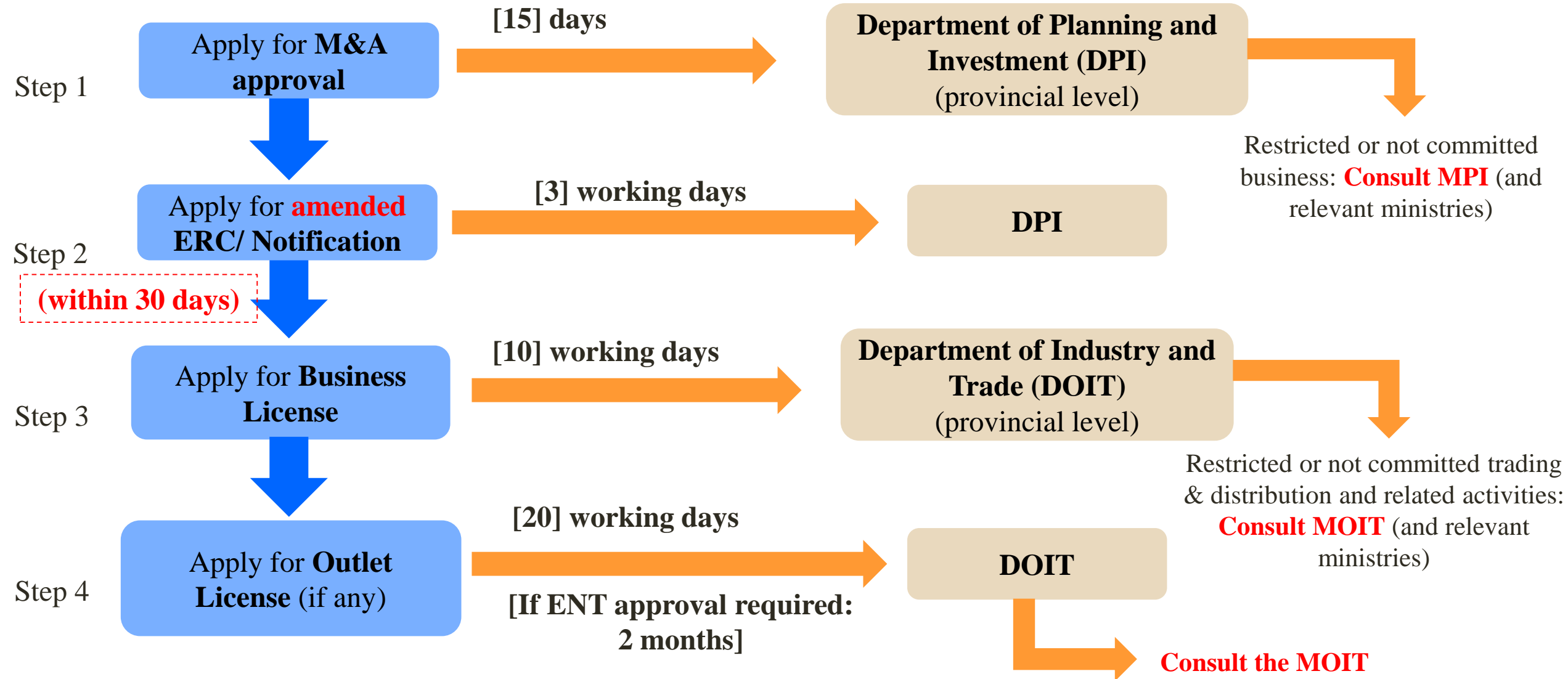
2. DECREE 09 AND RELEVANT LICENSING PROCESS (**SET UP ANEW**)



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2. DECREE 09 AND RELEVANT LICENSING PROCESS (**ACQUISITION**)



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3. DECREE 09: LICENSING HURDLES

- 1) **IRC**
- 2) **ERC**
- 3) (in case of share acquisition) **M&A Approval**
- 4) **Business License (BL)**: for engaging in trading and distribution
- 5) **Outlet License (OL)**: for establishing and operating **each** retail outlet (site for conducting retailing activities)

3. DECREE 09: LICENSING HURDLES - IRC

Key requirements:

- a) Investor's nationality
- b) Investor's financial capability
- c) The FIE's business lines
- d) The FIE's types of goods
- e) The FIE's head-office address
- f) Investment project proposal
- g) Retail outlet (separate issue)

RedAct:

- a) Check membership of international trade treaties (Art. 6.2 and 9.2) → Should consider CPTPP member.
- b) The investor's financing commitment OR the investor's (profit-making) financial reports
- c) "retail distribution": NOW redefined (Art. 3.7)
- d) Check for non-eligible goods
- e) Eligibility of the leased premises and the lessor
- f) Investment project proposal: purpose, scale, **capital**, location, labor,...

3. DECREE 09: LICENSING HURDLES - ERC

Key requirements:

- a) The FIE's corporate form
- b) The FIE's legal representative(s)

RedAct:

- a) Know the pros and cons of each corporate form (LLC vs JSC) especially corporate management
- b) How many legal reps?

3. DECREE 09: LICENSING HURDLES – M&A APPROVAL

Key requirements:

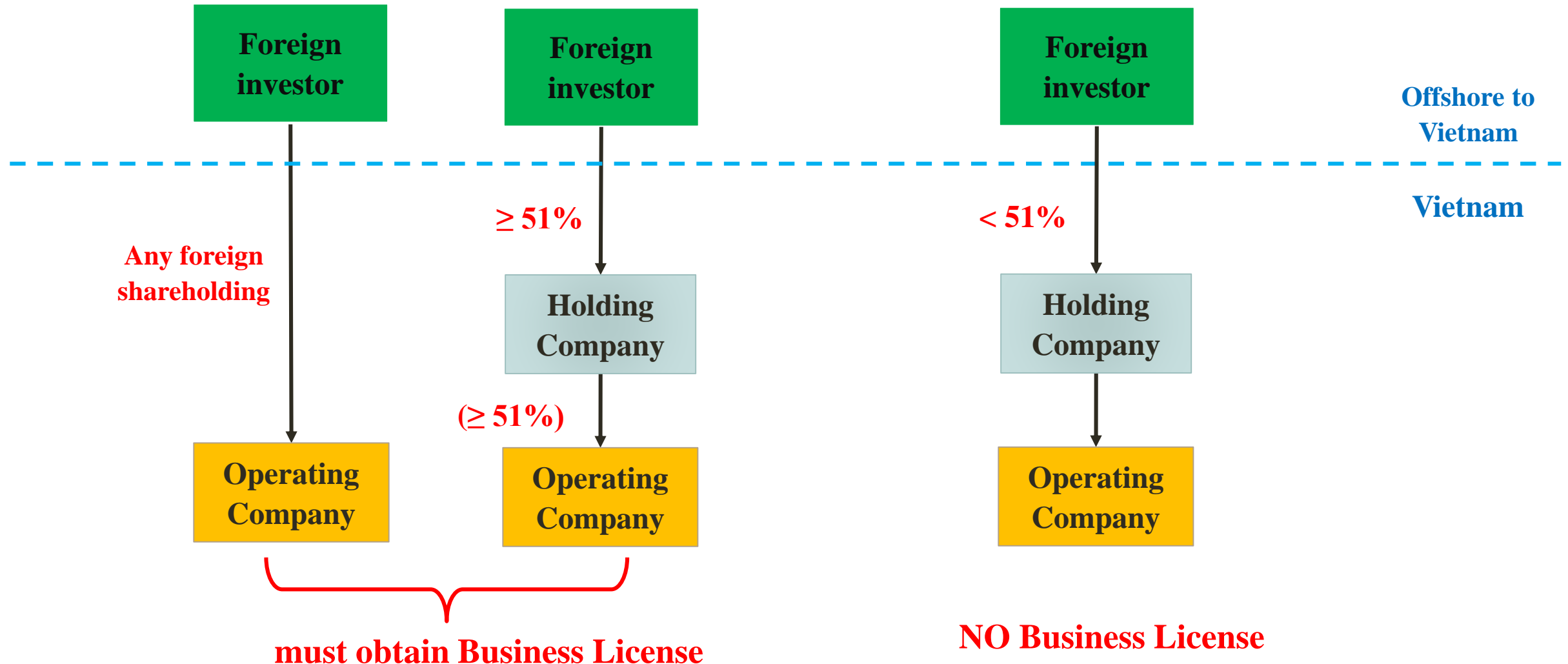
- a) Investor's nationality
- b) The FIE's business lines & types of goods
- c) The FIE's new legal rep
- d) Retail outlet (separate issue)

RedAct:

- a) Check membership of international trade treaties (Art. 6.2 and 9.2) → Should consider CPTPP member
- b) Remove the restricting business lines/ goods
- c) (For replacing the existing legal rep): pre-agreed for integration/ (post-)closing

3. DECREE 09: LICENSING HURDLES – BUSINESS LICENSE

WHO must obtain Business License?



3. LICENSING HURDLES: BUSINESS LICENSE (CONT.)

WHAT business activities required to obtain Business License?

Business License Required

Import or wholesale of oil, greases (HS 2709 and 2710) (*)

Retail of

- rice, sugar, articles with recorded images, books, newspaper and magazines (*)
- Other goods

Related activities, comprising of (*):

- 1) Logistics services **NOT** commit to open to foreign investment;
- 2) Leasing goods (excluding financial lease and leasing construction equipment with operator);
- 3) Commercial promotion service (excluding advertising);
- 4) Commercial intermediary activities;
- 5) E-commerce services;
- 6) Services for tendering/ bidding goods and services.

(*) **require consulting MOIT/ relevant authorities**

NOT required

Export right of all goods

Import and wholesale right (except for oil, greases)

Sale agency and franchising

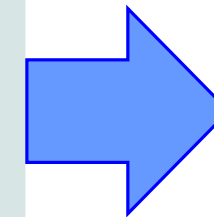
Other related activities, including:

- 1) Logistics that are committed to open to foreign investment
- 2) Trade inspection services

3. LICENSING HURDLES: BUSINESS LICENSE (CONT.)

WHAT **business activities** required to obtain Business License? (cont.)

Import right	NOT include the right to organize or participate in a goods distribution system in Vietnam
Wholesale	Sell goods to other wholesaling and retailing business entities and other organizations
Retail	Sell goods to individuals, family households and other organizations for use for <u>consumption purposes</u>



NEW: Including sell to manufacturers for their own manufacturing

3. LICENSING HURDLES: BUSINESS LICENSE (CONT.)

WHAT Conditions to be met for obtaining Business License?

Case	Conditions	BL Term
Members from international treaties to which Vietnam is a party (for	<ol style="list-style-type: none"> 1) Meeting the conditions on market opening; 2) Having a financial plan for the business activities; 3) NO overdue tax debts (for Vietnam-based companies established for ≥ 1 year) 	Not stipulate → No limit?
Non-members	<p>Conditions (2) and (3) of the Case immediately above, and:</p> <ol style="list-style-type: none"> a) Compliance with specialized laws; b) Competitive level of domestic enterprises in the same sector; c) Ability to create jobs for Vietnamese laborers; d) Ability to contribute and level of contribution to the State budget 	5 years
Services Vietnam does not commit to open		
Products Vietnam does not commit to open (i.e. oil, greases, rice, sugar, articles with recorded images, books, newspaper and magazines)		

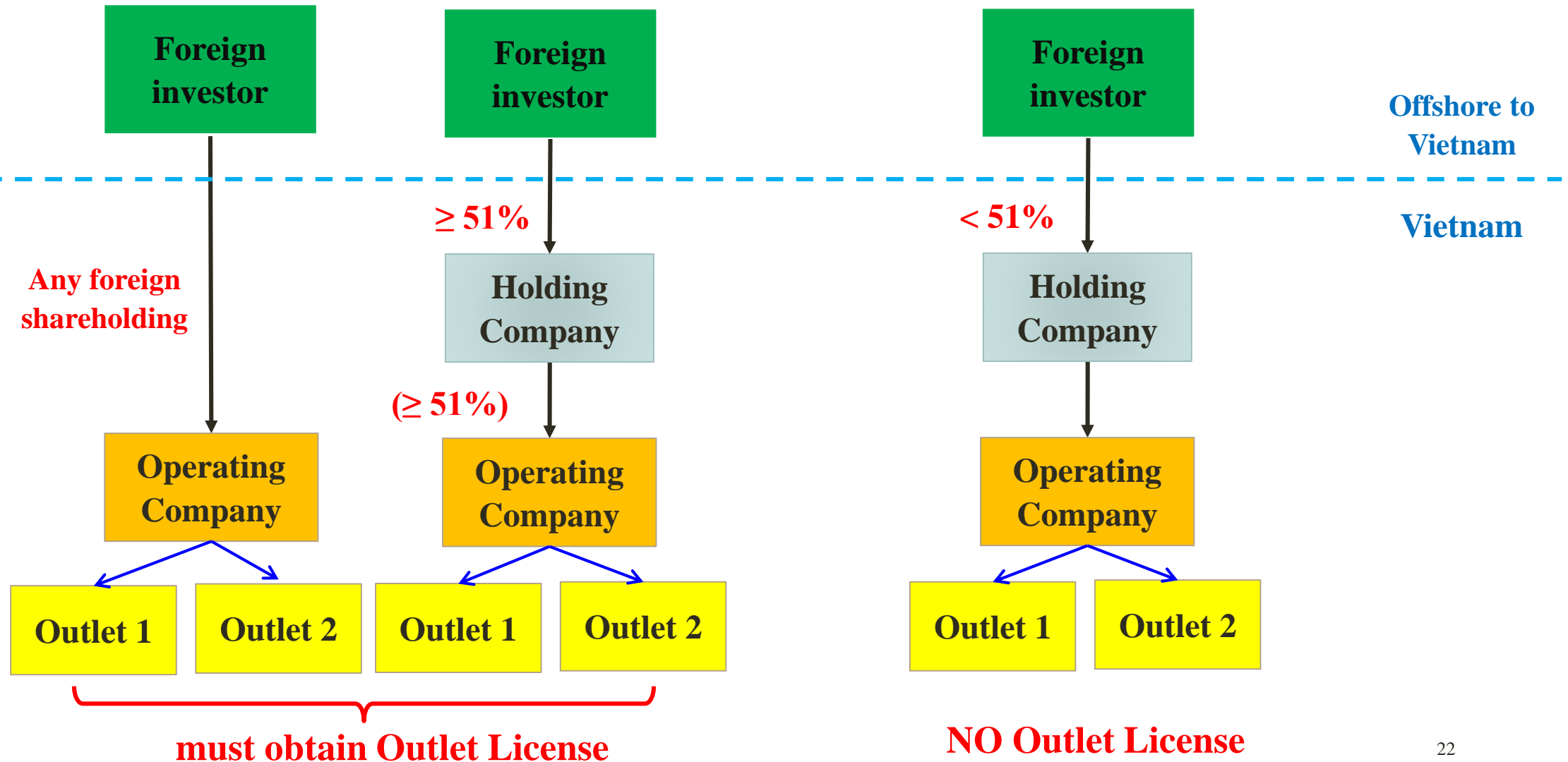
3. LICENSING HURDLES: BUSINESS LICENSE (CONT.)

WHAT Conditions to be met for obtaining Business License? (cont.)

Permissible activities	Additional conditions
Import, wholesale of Oil, greases (HS 2709 and 2710)	FIEs licensed to: <ul style="list-style-type: none">▪ Manufacture oil, greases; or▪ Manufacture or distribute goods using oil, greases
Retail of rice, sugar, articles with recorded images, books, newspaper and magazines	FIEs having retail outlets in the form of supermarkets, mini-markets and convenience stores


3. LICENSING HURDLES: OUTLET LICENSE

WHO must obtain (Retail) Outlet License? (same to Business License)



3. LICENSING HURDLES: OUTLET LICENSE (CONT.)

WHAT Conditions to be met for obtaining Outlet License?

- 1) Meeting the ENT tests 
 - Scale of relevant geographic market (RGM)
 - Number of existing retail outlets in RGM
 - Market stability and operating activities of other retail outlets and traditional markets in RGM
 - Traffic density, environment hygiene, fire safety in RGM
 - Potential contribution to the socio-economic development of the RGM (i.e. jobs for locals, development of the retailing sector in RGM, environment improvement and living conditions of inhabitants in RGM and potential contribution to state budget)
- 2) Having **financial plan** for the retail outlet;
- 3) (in case the applicant has been established in Vietnam ≥ 1 year) **no overdue taxes**;
- 4) Location of retail outlet: comply with the relevant master plans of “**geographical market region**”

ENT shall be removed after 5 years from effective date of CPTPP

3. LICENSING HURDLES: OUTLET LICENSE (CONT.)

ENT exemptions

❑ **First retail outlet**

❑ **Any retail outlet beyond the 1st**



1) having area of < 500m² each; AND

2) located inside a shopping mall; AND

3) NOT in the form of a convenient store or mini supermarket.

A retail outlet beyond the 1st one is an outlet which is:

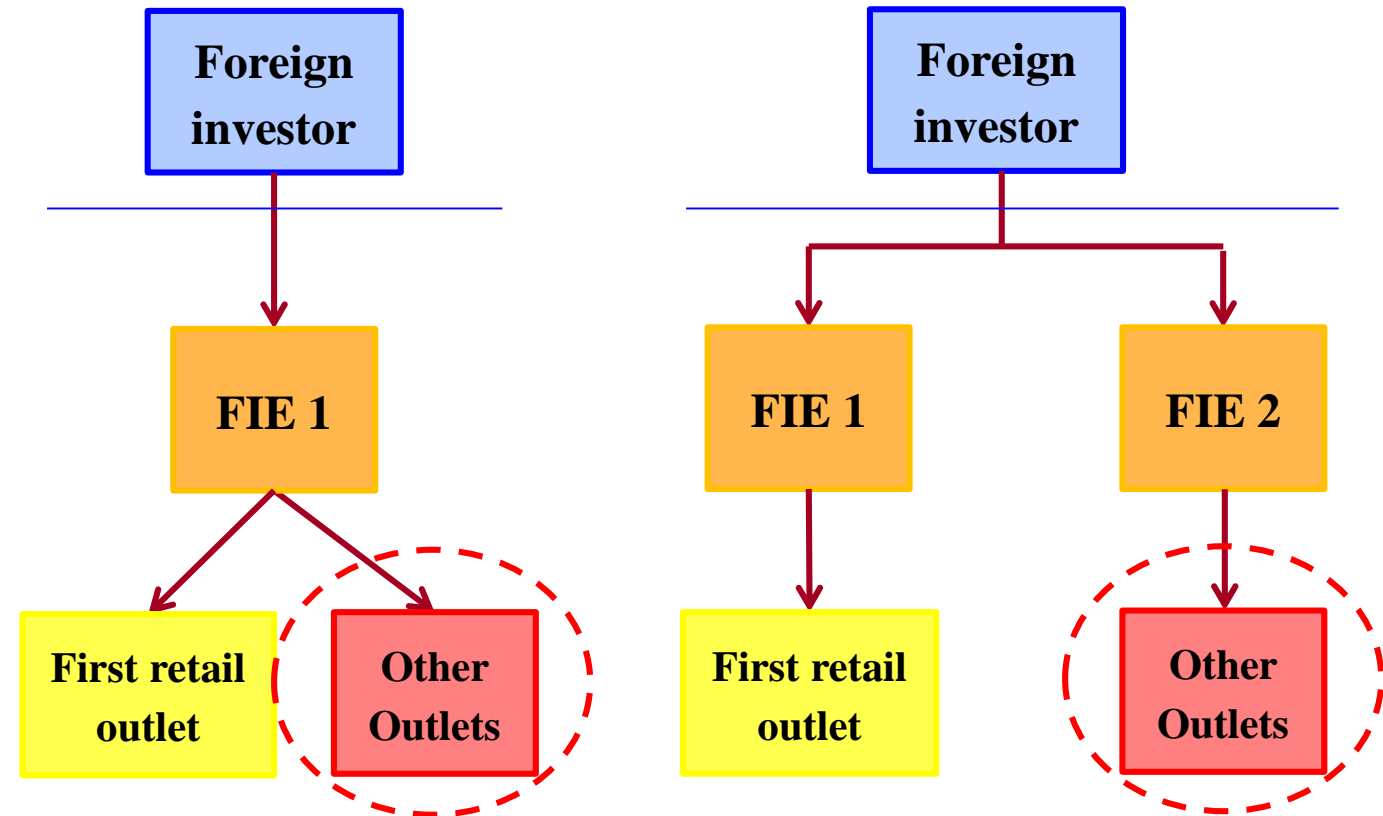
- Established in Vietnam by one of **the foreign investors Or FIE already having retail outlet(s) in Vietnam;**
OR
- Established under the same name or brand with at least one retail outlet owned by an FIE in Vietnam.

3. LICENSING HURDLES: OUTLET LICENSE (CONT.)

Some examples of retail outlet beyond the 1st one

A retail outlet beyond the 1st one is an outlet which is:

- Established in Vietnam by one of **the foreign investors OR FIE already having retail outlet(s) in Vietnam;**
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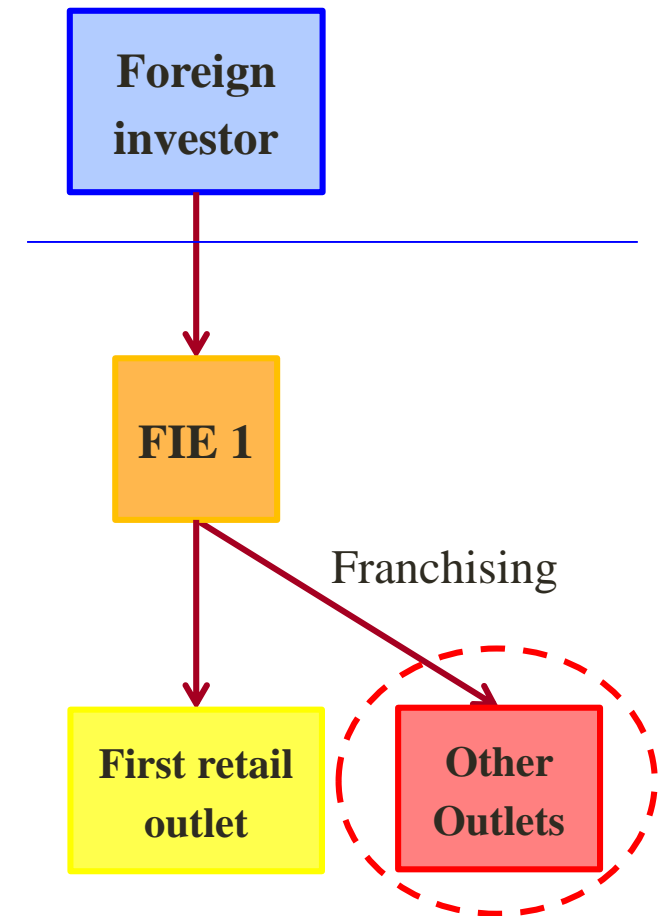
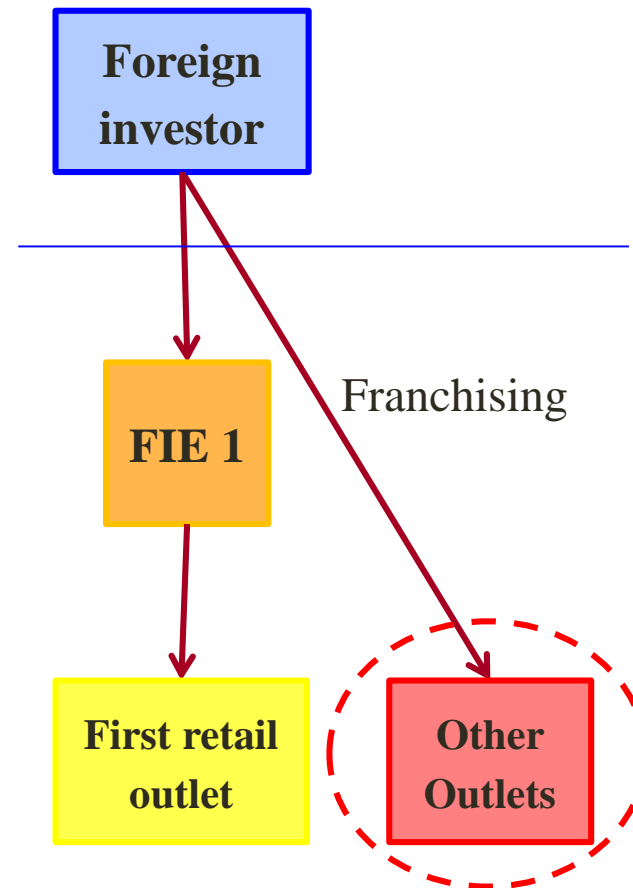


3. LICENSING HURDLES: OUTLET LICENSE (CONT.)

Some examples of retail outlet beyond the 1st one (cont.)

A retail outlet beyond the 1st one is an outlet which is:

- Established in Vietnam by one of **the foreign investors OR FIE already having retail outlet(s) in Vietnam;**
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3. LICENSING HURDLES: OUTLET LICENSE (CONT.)

Duration of Outlet License (*Article 26.2[a]*)

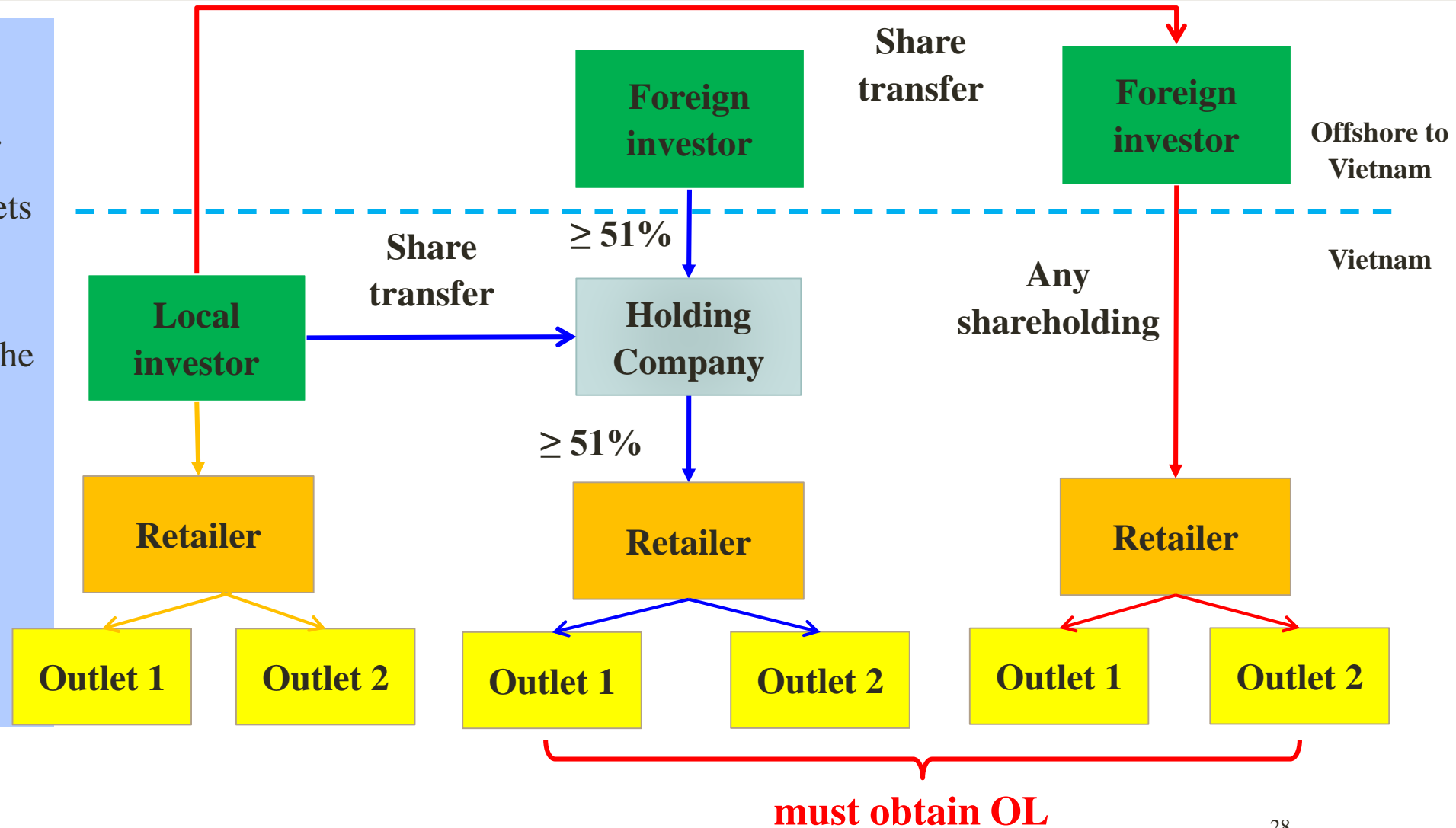
- ❑ Equal to IRC's remaining term
- ❑ In case of no IRC: subject to the (remaining) use term of the outlet's premises (!?)

3. LICENSING HURDLES: M&A MAY OFFER ADVANTAGES

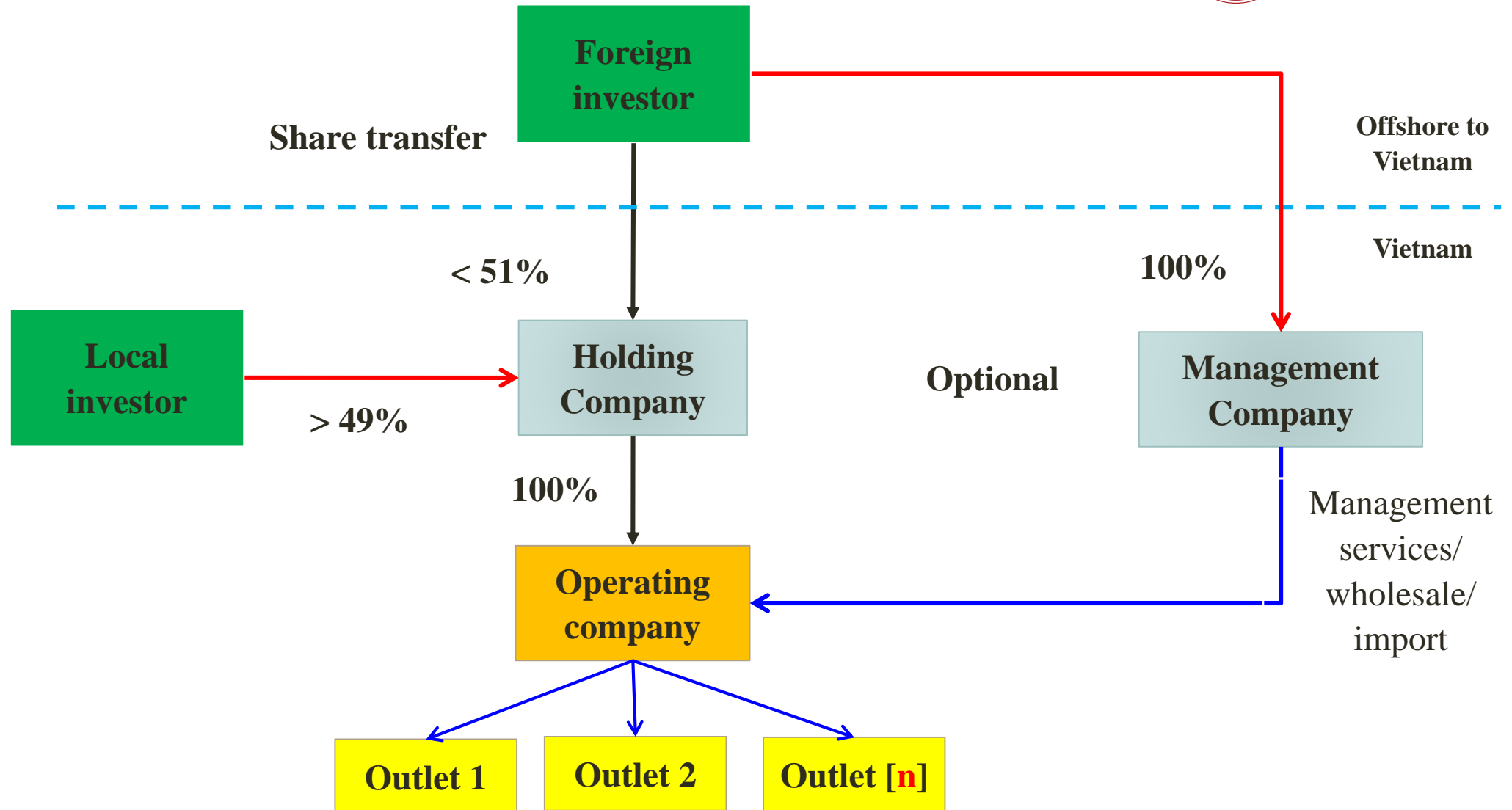
Key licensing notes for M&A cases

Temporary practice:

- ❑ May apply **concurrently** for all of the **existing** retail outlets
- ❑ Existing retail outlets may **continue operating** during the submission process (maybe subject to DOIT's written confirmation)
- ❑ Time for application: not regulated, should be asap



3. LICENSING HURDLES: **HOLDING STRUCTURE OPTION**



Free from BL, OL requirement; Should be prepared for ENT removal (via CPTPP)

Q&A





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