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# DISTRIBUTION RIGHTS OF FOREIGN RETAILERS IN VIETNAM

## How to play efficient by the rules?

Presented by
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# 1. OVERVIEW ON RETAIL INVESTMENT

**Market access**

**Brief regulatory procedures**

# 1. OVERVIEW ON RETAIL INVESTMENT

## 1.1 Areas of market access

**Market Openings** (via FTAs + domestic regulations)

**Foreign ownership**

100% foreign-owned company now allowed

**Store opening**

- Licensing mechanism for store opening
- ENT **required** for retail stores beyond the first one (unless otherwise exempted)

**Goods**

Some goods are **excluded from** market opening commitment.
E.g. Cigarettes, pharmaceutical products, sugar, oil, etc.

# 1. OVERVIEW ON RETAIL INVESTMENT

## 1.1 Market access (cont.) – ENT requirements

### Concessions under the WTO Commitments: The devils are in the details!

"The **establishment of outlets for retail services** (beyond the first one) shall be allowed on the basis of an **Economic Needs Test (ENT)**.[24]

[24]Applications to establish more than one outlet shall be subject to **pre-established publicly available procedures**, and approval shall be based on **objective criteria**. The **main criteria** of the ENT include the *number of existing service suppliers in a particular geographic area*, *the stability of market and geographic scale.*"

# 1. OVERVIEW ON RETAIL INVESTMENT

## 1.1 Market access (cont.) – ENT requirements

# Extraction of WTO Commitments:

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural person

| Sectors and sub-sectors | Limitations on Market Access | Limitations on National Treatment | Additional Commitments |
|---|---|---|---|
| | As of 1 January 2009, foreign-invested companies engaging in distribution services will be permitted to engage in the commission agents', wholesale and retail business of tractors; motor vehicles; cars and motorcycles. Within 3 years of Viet Nam's accession, foreign-invested companies engaging in distribution services will be permitted to engage in the commission agents', wholesale and retail business of 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)[24].<br>(4) Unbound, except as indicated in the horizontal section. | (4) Unbound, except as indicated in the horizontal section. | |
| D. Franchising services (CPC 8929) | (1) (2) None.<br>(3) None, except a joint venture with a Vietnamese partner(s) is required, and foreign capital contribution shall not exceed 49%. As of 1 January 2008, the 49% capital limitation shall be abolished. As of 1 January 2009, none. After 3 years from the date of accession, branching is allowed.<br>(4) Unbound, except as indicated in the horizontal section. | (1) (2) None.<br>(3) None, except that the chief of the branch has to be a resident in Viet Nam.<br>(4) Unbound, except as indicated in the horizontal section. | |

[24] Applications to establish more than one outlet shall be subject to pre-established publicly available procedures, and approval shall be based on objective criteria. The main criteria of the ENT include the number of existing service suppliers in a particular geographic area, the stability of market and geographic scale.

# 1. OVERVIEW ON RETAIL INVESTMENT

## 1.1 Market access (cont.) – licensing mechanism for store opening

# by domestic laws: a half-decentralized mechanism?

**(Decree 09/2018) Article 8. Licensing agencies**

1. […]

2. Department of Industry and Trade of province where a retail outlet is located shall issue, reissue, modify, renew or revoke its <u>license for establishment of retail outlet</u>.

3. The licensing agency shall <u>consult with the Ministry of Industry and Trade and managing Ministry</u> in any of the following cases:

a) […]

b) […];

c) Consulting with the Ministry of Industry and Trade before issuing or modifying a license for establishment of retail outlet.

# 1. OVERVIEW ON RETAIL INVESTMENT

## 1.1 Market access (cont.) – licensing mechanism for store opening

### …a half-decentralized mechanism? (cont.)

**DOIT**

*Submission*

**MOIT**

*Opinion ~ Approval*

**DOIT**

*Issuance*

If ENT is required ➔ **ENT Council**

- PCs
- DOIT
- DPI
- Others (DOT, Police Department, DOC, DONRE, etc.)

# 1. OVERVIEW ON RETAIL INVESTMENT

## 1.1 Market access (cont.) – details on ENT requirements

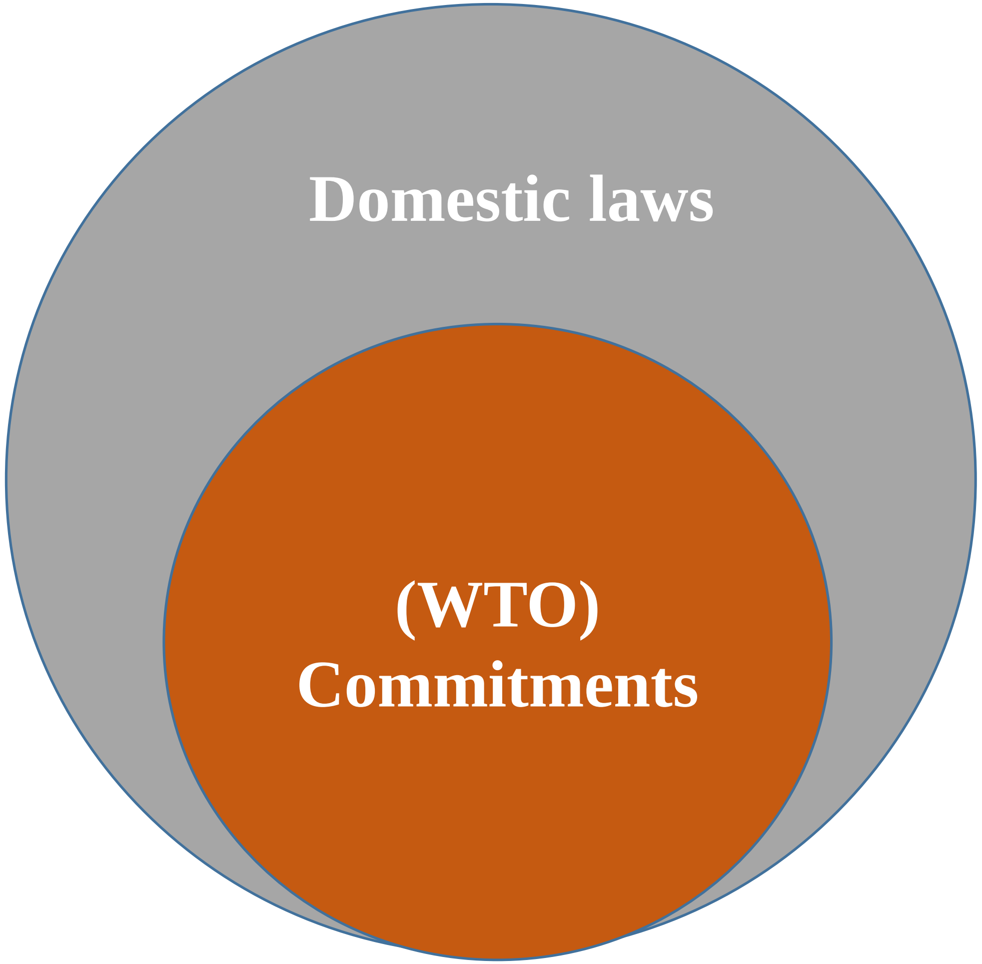
### as detailed in domestic laws…

1. **<u>Scale</u>** of affected geo-market
2. **<u>Number</u>** of operating outlets
3. **<u>Impact</u>** on the market stability + operating outlets + traditional market
4. **<u>Impact</u>** on traffic density + environment hygiene + fire safety
5. **<u>Contribution</u>** to the socio-economic development

# 1. OVERVIEW ON RETAIL INVESTMENT

## 1.1 Market access (cont.) – ENT requirements (cont.)

**and implemented…**




| # | WTO Commitments | Domestic laws |
|---|---|---|
| 1 | No. of existing suppliers | • No. of operating outlets |
| 2 | Market stability | • Impact on market stability + operating outlets + traditional market |
| 3 | Geo scale | • Scale of affected geo market |
| 4 | Others (non-main?) criteria | • Impact on traffic density + environment hygiene + fire safety<br>• Contribution to the socio-economic development<br>• Past compliance records (tax) |

# 1. OVERVIEW ON RETAIL INVESTMENT

## 1.1 Market access (cont.) – ENT exemptions

**First retail outlet**

**Store with qualified criteria**

- In trade center
- < 500 sqm
- NOT convenience store OR mini-supermarket

# 1. OVERVIEW ON RETAIL INVESTMENT

## 1.2 Regulatory procedures: multi-levelled playing field!

**15 days**

Investment Registration Certificate
**(IRC)**

IRC may be NOT available/required

Enterprise Registration Certificate

*Non-ministerial approval required* — **15 days**

*Ministerial approval required* — **~ 1.5 month**

Trading License
**(TL)**

*Non-ENT* — **~ 1 month**

*ENT* — **~ 2.5 months**

Store Establishment License
(ENT & non-ENT)
**(SEL)**

For each store opened

Branch/Business Location establishment License

➔ **Actual/ practical timeline is likely prolonged**

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# 2. CROSSING THE LICENSING HURDLES: SOME PRACTICE NOTES

- Store issues
- Financial capacity & contribution to socio-economy
- Miscellaneous

# 2. CROSSING THE LICENSING HURDLES: SOME PRACTICE NOTES

## 2.1 Store issues – issues regarding STORE LOCATION

| Statutory requirement | Common practice | Key takeaways |
|---|---|---|
| **Art. 22.1(c), Decree 09**:<br><br>*"Location must fit the relevant approved planning."* | *To explain that*<br><br>• Location's designated purpose of use fits for retail distribution; and<br>• Location fits the master planning for retail & distribution in the area. | ***<u>Where to consider?</u>***<br><br>**Level of scrutiny**: Location in trade center < stand-alone location.<br><br>***<u>What to do?</u>***<br><br>• Perform (limited) due diligence;<br>• Make use of all available docs & commit to later provide currently unavailable docs (where possible); and<br>• Ensure to have an option to terminate (walk-away from) the lease. |
| **Art. 3.17, Decree 09**:<br><br>*"Store location documentation is one of the following documents: MOU or lease agreement or document justifying that the FIE has the right to use the premise for retail outlet;* ***<u>and other enclosed documents</u>****."* | *To submit:*<br><br>• Land use right certificate (& construction ownership certificate);<br>• Construction permit;<br>• Pass completion certificate<br>• Acceptance minutes; or<br>• Other construction documents. | |

# 2. CROSSING THE LICENSING HURDLES: SOME PRACTICE NOTES

## 2.1 Store issues – TERM of SEL

| Statutory requirement | Common practice | Key takeaways |
|---|---|---|
| **Art. 26.2, Decree 09:**<br><br>*"The term of SEL corresponds to the remaining term of the **IRC for the establishment of the store**. In the absence of IRC, the term of SEL corresponds to the term under the **store location documentation**."* | Given sub-IRC for each store remains arguable, the term under lease agreement is vital in determining the term of SEL. | ***What to do?***<br><br>Have lease term **FIXED** under the lease agreement and **NOT EXCEEDING** the term of master IRC (if any). |

# 2. CROSSING THE LICENSING HURDLES: SOME PRACTICE NOTES

## 2.1 Store issues – issues regarding FIRE PREVENTION

| Statutory requirement | Common practice | Key takeaways |
|---|---|---|
| **Art. 23.2(d), Decree 09:**<br><br>*"2. ENT criteria:*<br><br>*[…]*<br><br>*d) Impact of the retail store on traffic density, environment hygience,* ***fire prevention*** *within the geographical market area."* | *To submit:*<br><br>• Certificate of appraisal & acceptance of fire prevention design;<br>• Acceptance minutes on fire prevention conditions.<br>• Certificate of satisfaction of fire prevention conditions; and<br>• Minutes of inspection of fire prevention conditions. | ***What to do?***<br><br>• Perform (limited) due diligence;<br>• Make use of all available docs & commit to later provide currently unavailable docs (where possible); and<br>• Ensure to have an option to terminate (walk-away from) the lease. |

# 2. CROSSING THE LICENSING HURDLES: SOME PRACTICE NOTES

## 2.2 Financial capacity & socio-eco contribtuion – FUNDING sources

| Statutory requirement | Common practice | Key takeaways |
|---|---|---|
| **Art. 22.2, Decree 09:**<br><br>*"To have financial plan to establish the retail store."* | If **<u>there are multiple stores</u>** and the funds for establishment & operation of each store are all taken from one source (e.g. charter capital): may get challenged. | ***<u>What to do?</u>***<br><br>Prepare reasonable financial explanation by using "cash-flow" perspective (e.g. funds are "flowed" between the stores). |

# 2. CROSSING THE LICENSING HURDLES: SOME PRACTICE NOTES

## 2.2 Financial capacity & socio-eco contribtuion – CONTRIBUTION to State

| Statutory requirement | Common practice | Key takeaways |
|---|---|---|
| **Art. 23.2(dd), Decree 09:**<br><br>*"(dd) The ability to contribute to the development of socio-economy of geographical market area, in particular:*<br><br>*[…]*<br><br>*- The ability and level of contribution to the State budget."* | If the projected contribution to the State budget does not increase year-by-year: may get challenged. | ***<u>What to do?</u>***<br><br>To justify the projected contribution by balancing between the projected cost for extended investment (e.g. opening new stores) and the projected revenue. |

# 2. CROSSING THE LICENSING HURDLES: SOME PRACTICE NOTES

## 2.3 Miscellaneous – SUB-IRC for each retail outlet

| Statutory requirement | Common practice | Key takeaways |
|---|---|---|
| **Art. 3.4, LOI 2020:**<br><br>"*Investment project* means a collection of proposals for the **expenditure of mid-term or long-term** capital **to carry out investment activities** in a particular administrative division over a certain period of time."<br><br>**Art. 64.3, Decree 31/2021**:<br><br>*An FIE is entitled to establish branches, representative offices and business locations outside its headquarters without necessarily having an investment project […].*" | Some (strict) view: each retail store must be treated as an investment project, thus requiring a separate IRC.<br><br>➔ Remain arguable among State authorities in different provinces. | ***<u>What to do?</u>***<br><br>To prepare reasonable explanation:<br><br>• Using Art. 64.3 Decree 31/2021;<br><br>• Using "cash-flow" perspective to explain the financing of the store.<br><br>• Last recourse: back-up plan to obtain sub-IRC. |

# 2. CROSSING THE LICENSING HURDLES: SOME PRACTICE NOTES

## 2.3 Miscellaneous – describing GOODS on TL & SEL

| Statutory requirement | Common practice | Key takeaways |
|---|---|---|
| No statutory requirement on whether goods reflected in the TL & SEL must be in the form of:<br>• HS codes; or<br>• Text description.<br><br>MOIT's view → Investor has the right to choose either approach. | Local practice > Investor's autonomy | • Keep the goods in TL and SEL reflected under one single approach, to avoid intricacies in later licensing process.<br>• In case it's not possible, prepare explanation to "translate" the HS code to text description or vice versa, depending on the local practice. |

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# 3. ENT REMOVAL

## 3.1 CPTPP implication

ENT to be removed

**NCM-I**

ENT will be removed for national treatment obligation as of 15 Jan 2024

**NCM-II**

ENT removal is not listed in Appendix II-A as a more preferential market access compared to those under WTO

ENT to be retained

# 3 ENT REMOVAL

## 3.2 EVFTA implication

**EVFTA**

"Positive-list"

**Annex 8-B**

As of 2 August 2025…

ENT will be **removed**, but *non-discriminatory* zoning or planning measures can be **applied**

ENT will be removed, but the zoning/planning requirements may be more stringent equally for both local & foreign investor

# 3. ENT REMOVAL

## 3.3 Direct application issue

**<u>CPTPP</u>**

**Appendix 2 of Resolution No. 72/2018/QH14**

Services in NCM I & II **can be applied <u>directly</u>**

**<u>EVFTA</u>**

**Appendix 2 of Resolution No. 102/2020/QH14**

Schedules of Commitments to be applied **<u>directly</u>**

Practice, however, remains to be seen

# 3. ENT REMOVAL

## 3.4 What to do? – “Wait-and-see” approach

**“Wait”**

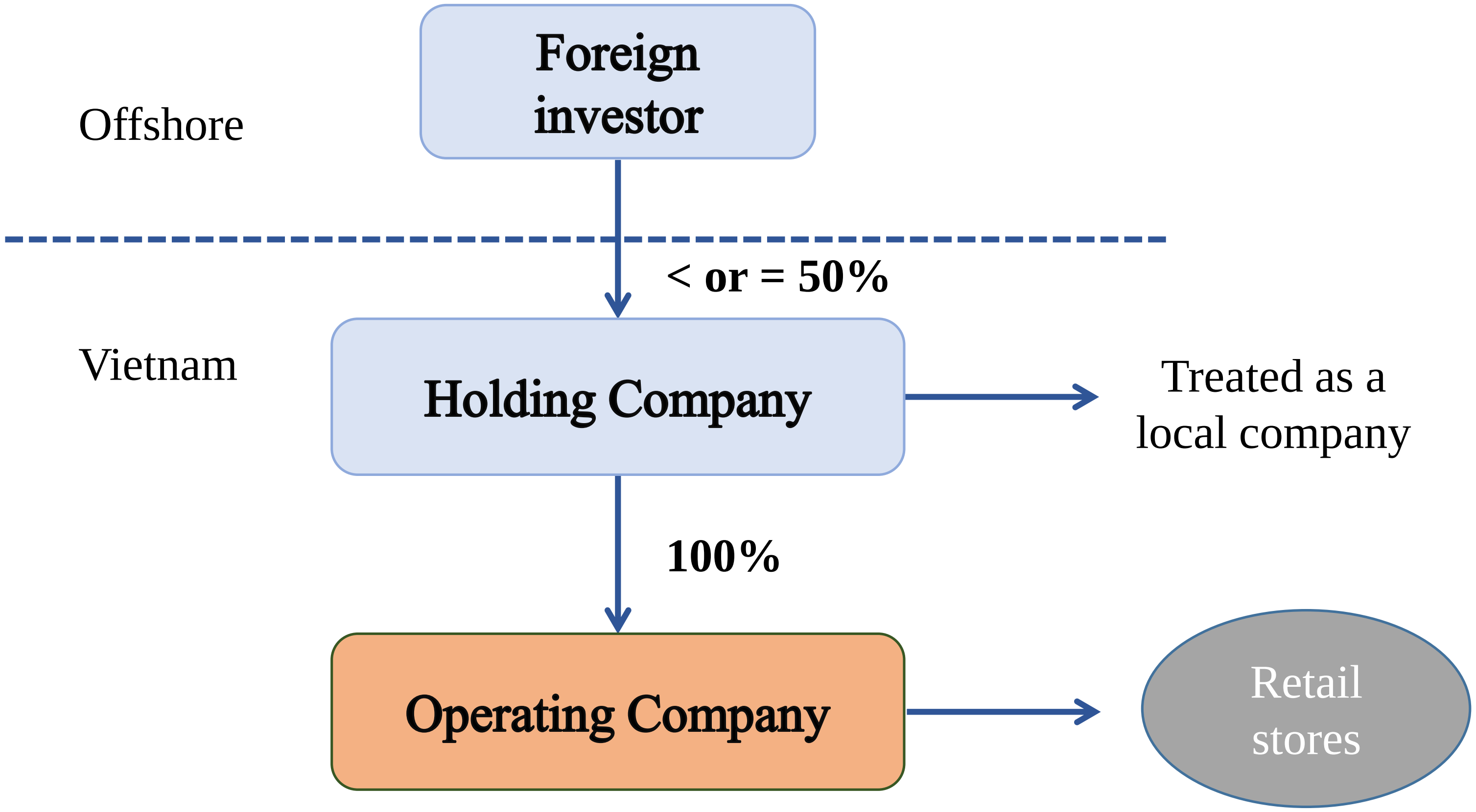
The effectiveness of potential ENT removal under trade agreements

**“See”**

How the removal is practically implemented

# 3. ENT REMOVAL

## 3.4 What to do? – Use "special structure" (+ accept risks)




Example re basic special structures

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# 4. ECOMMERCE: SOME PRACTICE NOTES

## 4.1 Market opening in ecommerce: not committed + half-decentralized mechanism for licensing

**(Decree 09/2018) Article 8. Licensing agencies**

1. […]

2. […]

3. The licensing agency shall consult with the Ministry of Industry and Trade and managing Ministry in any of the following cases:

a) […]

b) Consulting with the Ministry of Industry and Trade before issuing or modifying a business license related to the business prescribed in Points b, d, dd, e, g, h, and i Clause 1 Article 5 of this Decree;

→ Point [h] = Provide electronic commerce services

# 4. ECOMMERCE: SOME PRACTICE NOTES

## 4.2 Self-operating e-commerce website & Apps

**Register biz lines**

- Update IRC
- Supplement business lines

**Notify to MOIT**

- Prepare personal info protection policy
- Prepare general trading conditions policy

Start selling

**<u>Recommended</u>** to be DONE at the initial set up (even if there's no plan at such time to do e-commerce activities)

# 4. ECOMMERCE: SOME PRACTICE NOTES

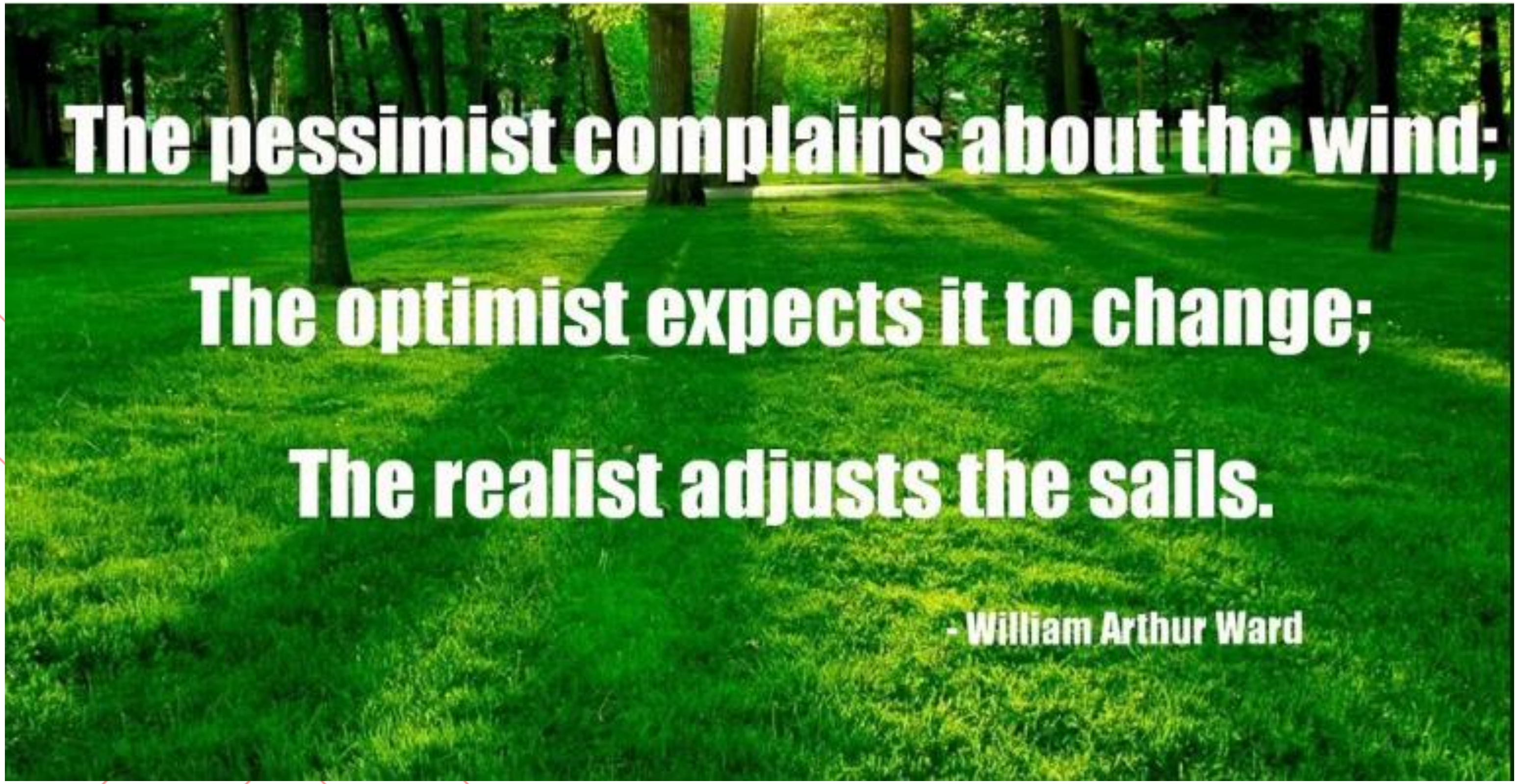
## 4.2 Self-operating e-commerce website & Apps (cont.)

Web-based e-commerce website

Mobile Apps

**Separate, but better concurrent,**
notifications to MOIT

# What would you do?



# Q & A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