



Indochine Counsel
Business Law Practitioners

Guide for Representative Offices of Foreign Companies in **VIETNAM**

January 2022

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Legislation

The establishment and operations of a representative office of a foreign business entity (the “**Rep Office**”) conducting commercial activities in Vietnam are currently governed by the following pieces of legislation, among others:

- ✓ Law on Commerce No. 36/2005/QH11 passed by the National Assembly of Vietnam dated 14 June 2005, effective from 1 January 2006 (the “**Commercial Law**”);
- ✓ Decree No. 07/2016/ND-CP issued by the Government dated 21 January 2016 detailing the Commercial Law on the representative offices and branch offices of foreign business entities in Vietnam (“**Decree 07**”); and
- ✓ Circular No. 11/2016/TT-BCT issued by the Ministry of Industry and Trade dated 5 July 2016 providing guidelines for implementation of Decree 07 (“**Circular 11**”).

General

Under the Commercial Law and Decree 07, a foreign business entity duly established and operating for at least one (1) year under the laws of the country of its head office may apply for the establishment of a Rep Office in Vietnam. The foreign business entity is entitled to establish the Rep Office in any province in Vietnam. The number of Rep Offices in Vietnam of a foreign business entity is unlimited.

Procedures/Application File

Obtaining Establishment License

To establish a Rep Office, the foreign business entity must apply for an establishment license (the “**Establishment License**”) issued by the Provincial Industry and Trade Department where the Rep Office is located. The following documents must be submitted to the licensing authority for obtaining the Establishment License:

- ✓ Application (standard form);
- ✓ A certified/legalized copy of the Certificate of Incorporation and any amendments of the parent company;
- ✓ A certified/legalized copy of the Audit report of the parent company for its latest financial year issued by an auditing company;
- ✓ A notarized and translated copy of the Letter of Appointment of the Chief Representative of the Rep Office;
- ✓ A notarized copy of an Office Lease Contract; and
- ✓ A notarized copy of the Chief Representative’s passport.

The required documents issued abroad are requested to be certified/legalized by the competent

agency in the home country where the foreign business entity is incorporated.

The Establishment License will be issued within seven (7) working days from the date of submission of the proper documents.

Post-License procedures

Upon the issuance of the Establishment License, the Rep Office shall have to proceed with post-license procedures including:

- ✓ Getting a seal from the Provincial Police Department on Administrative Management of Social Order;
- ✓ Opening a bank account; and
- ✓ Handling tax, labor matters and other operational issues.

Term of License

The Establishment License of the Rep Office shall have a duration of five (5) years, but in a case where foreign law stipulates the duration of the business registration certificate of the foreign business entity then the duration must not exceed the residual term of such business registration certificate of the foreign business entity. In other words, the term of the Establishment License cannot exceed any term of existence of its foreign business entity.

The Establishment License of the Rep Office may be extended when its term is expired, except in the case that the Establishment License is revoked because of:

- ✓ Failure to come into operation for one (1) year and failure to institute any transaction with the licensing authority;
- ✓ Failure to submit operational reports of the Rep Office for two (2) consecutive years;
- ✓ Failure to submit reports within six (6) months from the deadline of submission or at the written request of the licensing authority; and
- ✓ Other cases as stipulated by law.

The procedures for extension of the Establishment License must be carried out at least thirty (30) days prior to the expiry of the Establishment License.

During the term of operation, any changes to the address of the foreign business entity, the Chief Representative, or the address of the Rep Office itself must also be notified to the Provincial Industry and Trade Department.

Scope of Activities of Representative Office

The Rep Office shall be permitted to conduct the following activities:

- ✓ Exercise the function of a contact office;
- ✓ Market research to promote opportunities for purchase and sale of goods and provision and sale of commercial services of the business entity it represents;
- ✓ Monitoring and activating performance of contracts of the foreign business entity it represents which have been assigned with the Vietnamese parties or which relate to Vietnamese markets; and
- ✓ Other activities permitted by the laws of Vietnam.

Prohibited Activities

The Rep Office is not allowed to conduct any profit-generating activity. Further, the Rep Office may not promote the goods or services of their foreign business entity or enter into contracts with local companies for such promotion. This must be done directly between the foreign business entity and the local promotion company.

The Rep Office is not permitted to act as the representative of another foreign business entity, and may not sub-lease its office space.

The Chief Representative may not concurrently hold the following positions:

- ✓ Chief of a Branch Office of a foreign business entity in Vietnam;
- ✓ Legal representative of the foreign business entity in order to sign contracts without written power of attorney from such foreign entity; or
- ✓ Legal representative of an enterprise established pursuant to the laws of Vietnam.

The Chief Representative of the Rep Office must have permanent residence in Vietnam. Where he/she is away from Vietnam for over thirty (30) days, he/she must authorize another person in writing to perform the rights and obligations of the Chief Representative. If the Chief Representative fails to do so, the foreign business entity must appoint another person to hold the position of the Chief Representative.

Labor Matters

The Rep Office is entitled to recruit Vietnamese and foreign employees to work for the Rep Office. The number of employees is unlimited.

The foreign Chief Representative and foreign employees who work for the Rep Office are subject to a work permit for working in Vietnam.

Tax Matters

No taxes are applicable to the Rep Office's operations, except for personal income tax which is imposed on the Chief Representative and its employees (both locals and expatriates). The Rep Office must register for a tax code for the Rep Office and declare personal income tax of its employees.

Reporting Regime

- ✓ Annual operational report is required to be submitted no later than 31 January of the following year.
- ✓ Annual personal income tax reports of Vietnamese and foreign employees are required to be submitted no later than 30 March of the following year.

Contact Us

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