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Business Law Practitioners



# Guide for Branch Offices of Foreign Companies in **VIETNAM**

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# Contents

|   |          |
|---|----------|
| <b>Legislation .....</b>                              | <b>1</b> |
| <b>General .....</b>                                  | <b>1</b> |
| <b>Procedures/Application File .....</b>              | <b>1</b> |
| Obtaining Establishment License .....                 | 1        |
| Post-License procedures .....                         | 2        |
| <b>Term of License.....</b>                           | <b>2</b> |
| <b>Scope of Activities of the Branch Office .....</b> | <b>2</b> |
| <b>Prohibited Activities .....</b>                    | <b>3</b> |
| <b>Labor Matters .....</b>                            | <b>3</b> |
| <b>Tax Matters .....</b>                              | <b>3</b> |
| <b>Reporting Regime .....</b>                         | <b>4</b> |
| <b>Contact Us .....</b>                               | <b>5</b> |

## Legislation

The establishment and operations of a branch office of a foreign business entity (the “**Branch 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 five (5) years under the laws of the country of its head office may apply for the establishment of a Branch Office in Vietnam. The foreign business entity is entitled to establish a Branch Office in any province. The number of Branch Offices in Vietnam of the foreign business entity is unlimited. However, if the foreign business entity has two or more Branch Offices located within a province in Vietnam, such Branch Offices’ names must not be duplicated.

## Procedures/Application File

### Obtaining Establishment License

To establish a Branch Office, the foreign business entity must apply for an establishment license (the “**Establishment License**”) issued by the Ministry of Industry and Trade as the licensing authority. The following documents must be submitted to obtain the Establishment License:

- Application (standard form);
- A certified/legalized copy of the Certificate of Incorporation and any amendments of the foreign business entity;
- A notarized and translated copy of the Letter of Appointment of Head of the Branch Office;
- A notarized and translated copy of the Audit report of the foreign business entity for its latest financial year issued by an auditing company;
- A copy of the Charter of the Branch Office;
- A notarized and translated copy of the Head of the Branch Office’s passport; and
- A copy of the Office Lease Contract.

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 Branch Office must proceed with the 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 Branch 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, the term of the Branch Office 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 Branch 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 Branch 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.

The Establishment License with extended term will be issued within five (5) working days from the date of submission of the proper documents.

## Scope of Activities of the Branch Office

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

- To conduct profit-making activities in Vietnam;
- To enter into contracts in Vietnam in accordance with the activities stated in the Establishment License;
- To conduct activities being the purchase and sale of goods and other commercial activities consistent with the Establishment License;
- To adopt the accounting system stipulated by the law of Vietnam; and
- To remit profits abroad.

## Prohibited Activities

The Branch Office is not permitted to lend or sub-lease its office space.

The Head of the Branch Office may not concurrently hold the following positions:

- Chief of representative office in Vietnam established by other foreign business entity;
- Chief of representative office in Vietnam established by the same foreign business entity; or
- Legal representative of an enterprise established pursuant to the laws of Vietnam.

The Head of the Branch 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 Head of the Branch Office. If the Head of the Branch Office fails to do so, the foreign business entity must appoint another person to hold the position of the Head of the Branch Office.

## Labor Matters

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

The foreign Head of the Branch Office and foreign employees who work for the Branch Office are subject to a work permit for working in Vietnam.

## Tax Matters

The Branch Office must register for a tax code and adopt an accounting system stipulated by the laws of Vietnam.

The following taxes shall be imposed:

- Personal income tax (PIT);
- Corporate income tax (CIT);
- Value added tax (VAT); and
- Other taxes.

## Reporting Regime

- Annual operational reports are 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.
- Financial and statistical reports are required to be implemented in accordance with the applicable laws of Vietnam.

# Contact Us

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