

Special Alert

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Commentary regarding changes of Legal Representative in Vietnam Corporate Entities of Multinational Corporations

Introduction

The legal representative of a company in Vietnam is not only a managerial position, but also a legal status that entails significant rights and obligations. The legal representative can sign contracts, make decisions, and interact with the authorities on behalf of the company. Therefore, changing the legal representative is a complex and delicate process that requires careful planning and execution. This commentary aims to provide some insights and practical tips for multinational corporations (“**MNCs**”) who intend to change their legal representative, as well as other management roles, in Vietnam.

Dates and Dilemmas

Determining the date of change

According to the Enterprise Law, the information in the Enterprise Registration Certificate (“**ERC**”), such as the legal representative’s information, is only legally valid from the date of issuance. Therefore, in theory and in practice, until the registration of the new legal representative (the incoming person) with the relevant Department of Planning and Investment (“**DPI**”) is completed, the authorities will consider the existing legal representative (the outgoing person) is the only legitimate legal representative of and for the company.

Hence, the following are important dates for consideration:

- (i) The date of removal of the outgoing (“**Date 1**”).

- (ii) The date of appointment of the incoming person (“**Date 2**”).
- (iii) The internal effectiveness date of the group’s appointment of the incoming person and of the removal of the outgoing (“**Date 3**”).
- (iv) The date(s) of the resolution(s) issued by the corporate organ of the company (the date of decision) in accordance with its internal rules and Charter of the corporate entity in Vietnam regarding the change, and the date of appointment, the date of removal, and the date of effectiveness (“**Date 4**”).
- (v) By law, a company is required to register its change of legal representative with the relevant DPI within ten (10) calendar days from the date of the change. Failure to do so can result in a complicated and lengthy licensing process, and perhaps, involve a penalty for the company.

The date of completion of the registration of change with DPI, which resulted in an issuance of the amended ERC of the company recording the change. The date of the amended ERC of the company of the same is considered as the effective date of change towards third parties and authorities (“**Date 5**”).

Dilemmas

In an ideal world, Date 3 is determined by Date 1 and Date 2, and the three dates are the same date. However, in case, Date 1 and Date 2 are not the same, how will Date 3 be determined? Also, in a world where Date 3 and Date 4 are not the same, which date will be used to calculate the regulatory obligation of registration? Then, finally, between Date 3 / Date 4 and Date 5, who shall be the one to represent for and on behalf of the company?

Therefore, it is important for any MNC to be aware of the local law and practice prior to execution of any decision regarding change of legal representative (perhaps, cum other management roles) in its Vietnam corporate entities. This is especially true for those MNCs with complex structures and multiple decision-makers, to avoid creating unnecessary problems for their legal entities in Vietnam when dealing with this issue, which is quite clear and straightforward by law.

Best Practices and Recommendations

To ensure a smooth transition of leadership and avoid operational disruptions, the company should follow these best practices and recommendations:

Knowing key dates and having a clear succession plan

To ensure a smooth transition and avoid any legal issues or delays, the company needs to coordinate with the outgoing legal representative, who still holds the official status on the ERC. The company should ask him/her to delegate his/her authority to the incoming person, or another suitable person

within its corporate entity in Vietnam until Date 5. This delegation will allow the company to deal with third parties effectively, but noting that in a few cases in practice, it may not be acceptable to sign dossiers to conduct administrative procedures with the authorities, e.g. business and investment registration procedures in some provinces / cities.

Having more than one person

A company can appoint multiple legal representatives under Vietnamese law, which is a beneficial feature for the corporate structure. Having more than one legal representative enables the company to manage its affairs smoothly in case of an emergency situation that requires replacing one of them. MNCs should consider and adopt this model within their corporate entities in Vietnam.

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