



Newsletter No. 73 (EN)

Establishment and Operation of Representative Offices in Vietnam

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I. Introduction

Setting up a fully fledged company in Vietnam can be complicated and time consuming. Representative Offices can be established faster and cheaper and as such offer a viable alternative to those who wish to enter the Vietnamese market but do not have the resources or client base to justify the time and expense of establishing a subsidiary.

II. Legal Background

The key legislation which governs Representative Offices (“Rep. Office”) in Vietnam can be found in the Commercial Law, Decree No. 72/2006 and Circular No.11/2006.

Decree 72 sets out the conditions and procedures for the establishment and operation of a Rep. Offices in Vietnam

Under these provisions a foreign business entity may set up a Rep. Office provided that certain criteria are met. It should be noted that some sectors (e.g. finance, tourism, legal services, education, etc) have their own specific Rep. Office regulations which must be consulted.

The Decree also details the rights and obligations of both the Rep. Office and the responsible state bodies (Ministry of Trade and local Departments of Trade).

III. Purpose

According to the Commercial Law and Decree No. 72, a Rep. Office is an entity which is established solely for the purpose of enhancing the commercial activities of its parent company. This includes monitoring and

implementing the performance of contracts that the parent company has signed in Vietnam. Thus a Rep. Office is a dependant unit of the parent company and is not entitled to generate its own profits in Vietnam or to enter into contracts under its own name. The only exception to this rule is when the Head of the Rep. Office has been legally authorised by the foreign parent company to enter into contracts on its behalf.

A Rep. Office does, however, have the right to rent office space, lease or purchase equipment and facilities necessary for its operations and to recruit Vietnamese and foreign employees. In addition a Rep. Office will have its own company seal and may open an account at a Vietnamese bank for operational purposes.

IV. Conditions

In general any business entity that is legally established and recognised by any foreign country and that has been operating for at least one year from the registration date will be entitled to set up a Rep. Office in Vietnam. Usually the establishment of a Rep. Office will only be denied by the applicable authorities if the parent company falls into one of the following categories:

- (1) Trades goods and/or services which are prohibited by Vietnamese law;
- (2) The license of a previous Rep. Office was withdrawn within the last two years;
- (3) The establishment would harm national defence, social order and security or Vietnamese social values;
- (4) The establishment would harm the public's health and environment; or

- (5) The applicant submits an invalid application and fails to supplement or amend the same upon the request of the licensing body.

V. Heads of Rep. Offices

Under Decree No. 72 the Head of a Rep. Office must NOT concurrently act as:

- (1) A head of a branch of a foreign entity in Vietnam;
- (2) A legal representative of the parent company; or
- (3) A legal representative of a business entity which is established under Vietnamese law.

Further the head of a branch will be held liable for any act which exceeds either their or the Rep. Office's scope of authority.

VI. Licensing Procedure

The attraction of Rep. Offices in Vietnam lies in their flexibility and relatively simple licensing procedure. These simplified procedures and the continuing restrictions on foreign owned entities in some business sectors has led a considerable number of foreign companies to not only use Rep. Offices to seek and expedite opportunities but also to conduct extensive business activities. This is usually done by abusing their right to authorise the Head of Rep. Office to enter contracts on their behalf (please see above).

VII. Application File for Rep. Offices

A valid application file for the establishment of a Rep. Office must include the following documents:

- (1) Standard application form;

- (2) A copy of the parent company's business registration certificate or equivalent documents certified by the issuing authority. If these documents stipulate a set duration for the operation of the parent company then the residual term must be at least one year;

- (3) Audited financial statements or equivalent documents for the preceding fiscal year. These documents must certify the tax or financial status of the parent company during the preceding fiscal year and be issued by the competent authority where the parent company is located. Alternatively any document which is certified by a competent authority and confirms the existence and operation of the parent company in the preceding fiscal year may be used; and

- (4) A copy of the parent company's Charter.

All documents issued or certified by competent foreign authorities for the purpose of a Rep. Office applications must be consularised and translated into Vietnamese. All copy documents must be notarized including all copy documents which are issued or certified by the competent Vietnamese authorities.

VIII. Issuance of the Rep. Office License and its Validity

1. Issuance of the License

Once all the documents have been collected the application file must be submitted to the local provincial-level Department of Trade. The Department is required to complete its evaluation and issue the Rep. Office establishment license within fifteen days from the date of receipt of a complete and valid application file. Copies of such licence will also be sent to the Ministry of Trade, the local provincial or city People's Committee and the provincial level tax office, statistics office and police office.

If an application is invalid, the license issuing body must send a written notification to the parent company within three business days of the date such application was received.

The above time limits do not include any time which the parent company takes to amend or supplement its application.

If the establishment licence is not issued within the stipulated time limit then the licence issuing body must provide a written notification to the parent company to explain the reasons for the delay.

However, in reality the above time limits are rarely met due to repeated amendment and supplementation requests which are usually made by the relevant competent officer.

2. Validity

Rep. Office licenses are valid for five years and may be extended. However, such extensions can not exceed the validity period of the parent company's business registration certificate.

IX. Post Licensing

1. Notification of Operation of a Rep. Office

Within forty five days from the date the Rep. Office license is issued an announcement must be published to notify the public of its establishment and operation. This announcement must be placed in three consecutive editions of local or central newspapers or electronic media which are authorized for publication in Vietnam. Also within forty five days the Rep. Office must officially commence its operations and must provide written notice of such to the local Department of Trade.

2. Opening Bank Accounts

Rep. Offices may open bank accounts at banks licensed to operate in Vietnam for the payment of foreign currency disbursements and of Vietnamese Dong disbursements which are sourced from a foreign currency. However, due to the limitations on its scope of activities a Rep. Office must not generate a profit. Further these accounts must only be used for the Rep. Office's operations and must never be used to remit money abroad. Finally, the opening, use and closure of the Rep. Office's accounts must be consistent with the regulations of the State Bank of Vietnam.

3. Operational Reporting Regime

The Rep. Office must submit an annual operation report to the licensing authority. This submission must occur before the last business day of the following January. However the said authority may also require the Rep. Office to report, provide data on and/or explain any aspect of their operations at any-time during the year. Furthermore, Rep. Offices may be subject to random checks and inspections, by both the licensing authority and any other competent authority. The reason for such inspection is usually not provided.

Decree No. 72 tries to limit the potential for abuse of this inspection system by providing that anyone who takes advantage of an inspection/check for "his/her own interest" or to cause "harassment" or "difficulties" for the Rep. Office shall be subject to administrative penalties or even criminal prosecution. Further if such acts causes "loss" or "damage" to the Rep. Office then the offender may be required to pay compensation.

X. Re-issuance, Amendment, Addition and Extension of Rep. Office Licenses

Prior to the issuance of the Rep. Office license the foreign parent company is free to amend or supplement their application.

Following the issuance, if any of the information therein changes e.g. the office address then the license must be re-issued. Similarly the Rep. Office must apply for a re-issuance if the licence is lost, destroyed or torn. Further if the parent entity changes its operations or place of registration from one country to another, then the Rep. Office must submit an application for the re-issuance of its own licence. This concept originates from the Rep. Office's status as a dependant unit of the parent entity.

As aforementioned, a Rep. Office should not generate a profit; as such they are not subject to corporate income tax. Over the years many companies have therefore established Rep. Offices for the express purpose of making tax-free profits. In an attempted to counteract this malpractice, Decree 72 explicitly reduces the operational scope of a Rep. Office to the bare minimum. Furthermore, as noted above Decree 72 also allows the authorities to carry out inspections in order to ensure that a Rep. Office is adhering to these limitations. In accordance with the practice currently observed in Ho Chi Minh City, it is advisable to anticipate frequent visits from the local tax officials.

*We hope that the information provided in this brochure was helpful for you.
If you have any further questions please do not hesitate to contact us.*

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