

## Establishing Representative Offices and Branches of Foreign Traders in Vietnam

Under the Commercial Law, foreign traders can open their representative offices and branches in Vietnam and also establish foreign investment-funded enterprises in Vietnam. Then the Ministry of Planning and Investment is responsible for managing the issuance of licenses to allow foreign traders to invest in Vietnam. The Ministry of Industry and Trade is responsible for the issuance of licenses of establishing representative offices and branches of foreign traders in Vietnam.

Representative offices of foreign traders are not authorized to perform direct profitable business in Vietnam but carry out trade promotion activities within the constraints of the Law only.

Branches of foreign traders in Vietnam are allowed to (i) perform goods' trading business and other commercial activities in accordance with their establishment licenses under the laws of Vietnam, and (ii) open accounts in Vietnam and transfer their profits abroad.

Decree 72/2006/ND-CP details Commercial Law regarding the establishment, operation, rights and obligations of Vietnam-based representative offices and branches of foreign traders who specialize in goods' sale and purchase and activities directly related to goods' sale and purchase. Representative offices and branches of foreign-invested enterprises established in Vietnam shall not be governed by this Decree.

### **1) Which agencies are responsible for granting establishment permits?**

The Trade Ministry shall grant, re-grant, amend, supplement, extend or withdraw permits for establishment of branches and provincial/municipal trade or trade-tourism services shall grant, re-grant, amend, supplement, extend or withdraw representative office establishment permits.

### **2) What conditions need satisfied for establishment permits?**

For a permit to establish in Vietnam, the first and foremost condition is that the law of the businessperson's country or territory must recognize her or him. For a representative office, a further requirement is the foreign businessperson having been operating for at least one year after the office's establishment or registration, five years for branches.

Permits for establishment of Vietnam-based representative offices or branches of foreign businesspersons shall each have a valid term of five years, which must, however, not exceed the remaining valid term of such businessperson's business registrations or papers of equivalent value in case foreign laws specify valid terms of business registrations of foreign traders.

### **3) What documents need prepared in the dossier of application for establishment permits?**

#### **\* A dossier of application for a representative office establishment permit must comprise:**

An application for the representative office establishment permit, made according to a form set by the Trade Ministry and signed by the foreign businessperson's competent representative;

Copies of the foreign businessperson's business registration or papers of equivalent value certified by the competent authority of the locality where the foreign businessperson has been established. In case that an operation duration for the foreign businessperson is specified in such business registration or papers of equivalent value, such operation duration must remain valid for at least one year;

An audited financial statement or other document of equivalent value proving the actual existence and operation of the foreign businessperson in the latest fiscal year; and

A copy of the foreign businessperson's operation charter, for those belonging to business entities.

#### **\* A dossier of application for a branch establishment permit must have:**

An application for a branch establishment permit, made according to a form set by the Trade Ministry and signed by the foreign businessperson's competent representative;

A copy of the branch's operation charter, clearly stating the scope of authorization for the branch's head;

Copies of the foreign trader's business registration or paper of equivalent value certified by the competent authority of the locality where the foreign businessperson has been established or made its business registration. In case whereby an operation duration for the foreign trader is specified in such business registration or papers, such operation duration must remain valid for at least three years; and

An audited financial statement or other equivalent document substantiating the actual existence and operation of the foreign businessperson in the latest fiscal year.

Copies of the foreign businessperson's business registration, audited financial statement or equivalent documents, and a copy of the branch's operational charter must be translated into Vietnamese and certified and legalized by Vietnam's foreign-based diplomatic missions or consular offices.

**4) When will representative or branch establishment permits not be granted?**

The agencies competent to grant permits for establishment of a representative office or branch shall not grant such permits to foreign businesspersons when:

Such foreign businessperson: (i) fails to have the proper dossier of application or trading in goods and/or services, (ii) is on the list of goods and services banned from business, or (iii) applies for permits within two years after the law has withdrawn their permits.

There appears evidence that the establishment of such foreign businessperson's representative offices or branches may cause harm to Vietnam's: defense, security, social order and safety, history and culture, ethics, fine customs and practices, people's health, sustaining of natural resources, or preserving the environment.

**5) How long it takes to obtain an establishment permit?**

Within 15 days after receiving complete and valid dossiers, the provincial/municipal Trade Services (for establishment of a representative office) and Trade Ministry (for establishment of a branch) shall grant permits to foreign businesspersons. If the dossier is invalid, the permit-granting agencies shall, within three working days after receiving such dossiers, notify such in writing to foreign businesspersons so that the latter can supplement and complete the dossiers.

Upon the expiration of the time limits, if the competent agencies refuse to grant a representative office or branch establishment permits, they shall have to notify such in writing to the concerned foreign businessperson, clearly stating the reason for the action.

**6) How shall representative offices or branches make known their operations in Vietnam?**

Within 45 days after being granted a permit, a representative office or branch shall have to publish on three consecutive issues of a printed or online newspaper licensed in Vietnam: the name and address of the head office in Vietnam; name and address of the foreign businessperson and head of the representative office or branch; the serial number, date of issue and valid term of the representative office or branch establishment permit and the permit-granting agency; and operations of the representative office or branch.

At the same time, the foreign businessperson must officially commence operations and notify, in writing, the permit-granting agency that operations have commenced.

**7) What shall operations of representative offices cover?**

Operations of representative offices shall cover performance of the function of liaison offices; the formulation of cooperation projects of foreign businesspersons in Vietnam; studies of the market in order to promote opportunities to buy or sell goods, provide and use commercial services of traders they represent; and monitoring and control of the performance of contracts signed with Vietnamese partners or related to the Vietnamese market by foreign businesspersons they represent...

**8) What shall operations of branches cover?**

Operations of branches shall cover activities that are allowed in their establishment permits and compliant with Vietnam's law and International laws to which Vietnam is a contracting party.

Branches must satisfy conditions where a branch operates in conditional domains. These conditions are expressed

in form of business licenses, certificates of satisfaction of business conditions, practice certificates, certificates of professional liability insurance, requirements on legal capital, or other requirements set forth by the Enterprise Law.

**9) What accounts shall be opened for operations of representative offices and branches?**

Representative offices are allowed to open expenditure accounts in foreign currencies and expenditure accounts in Vietnam dong of foreign-currency origin at banks licensed to operate in Vietnam and use such accounts only for their operations.

Branches are allowed to open settlement accounts in foreign currencies or in Vietnam dong at banks licensed to operate in Vietnam in service of their operations.

In special cases, branches are allowed to open accounts at overseas' banks after obtaining consent of the State Bank of Vietnam. Branches shall have to report to the State Bank of Vietnam on the use of accounts opened overseas.

The opening, use, and closure of accounts of representative offices or branches shall comply with the regulations of the State Bank of Vietnam.

**10) How shall representative offices and branches report their operation?**

Annually, before the last working day of January, representative offices and branches shall send written reports on their operations of the preceding year to the agencies having granted representative office or branch establishment permits.

Branches shall have to observe the regime of financial statements and statistical reports.

In case of necessity as specified by Vietnamese law, representative offices and branches shall have to report, supply documents on, or explain matters related to, their operating at the request of competent state management agencies.

**11) What are rights and obligations of representative offices and their heads?**

Representative offices and their heads shall exercise their rights and perform their obligations in accordance with the Commercial Law and the following guidance:

Representative offices must neither act as representative for other businesspersons nor sub-lease their head offices.

The head of a representative office of a foreign businessperson must not concurrently hold the following posts:

The head of a Vietnam-based branch;

The representative at law of the foreign trader for signing contracts without the latter's letter of authorization; and

The representative at law of the enterprise establishment under Vietnamese law.

In case foreign businesspersons authorize heads of their representative offices to sign contracts, amend or supplement already signed contracts, they shall have to effect the authorization in writing for each contract signing or each amendment or supplementation of a signed contract.

**12) What are rights and obligations of branches and heads of branches?**

Branches and heads of branches shall exercise their rights and perform their obligation in accordance with the provisions of the Commercial Law and the following guidance:

Branches must neither perform the function of acting as representative for other businesspersons nor sub-lease their head offices.

Heads of branches of foreign businesspersons must not concurrently hold the following posts:

- Heads of representative offices of the same foreign businesspersons in Vietnam
- Heads of representative offices or branches of other Vietnam-based foreign businesspersons.

**13) In which cases shall representative offices or branches terminate their operation?**

Representative offices or branches shall terminate their operation in the following cases:

It is so requested by foreign businesspersons and approved by competent agencies;

Foreign businesspersons terminate their operation under laws of countries where such businesspersons have been established or accomplished business registrations;

Foreign businesspersons do not apply for extension of representative office or branch establishment permits upon the expiration of operation duration stated therein;

The permit-granting agencies refuse to extend the representative office or branch establishment permit upon the expiration of operation duration stated therein; and

The representative office or branch establishment permit are withdrawn by related agencies.

#### **14) What are the obligations of the foreign businessperson towards their representative office or branch?**

Foreign businesspersons shall be held responsible before Vietnamese law for all operations of their Vietnam-based representative offices or branches.

Heads of representative offices or branches shall be responsible for their activities and the operations of their representative offices or branches before Vietnamese law in cases whereby they conduct operations beyond the scope of authorization.

Ref: Circular No.11/2006/TT-BTM of the Ministry of Trade guiding the implementation of the Government's Decree No.72/2006/ND-CP detailing the Commercial Law regarding Vietnam-based representative offices and branches of foreign traders

#### **Source:**

[http://www.vietrade.gov.vn/en/index.php?option=com\\_content&id=790&Itemid=190](http://www.vietrade.gov.vn/en/index.php?option=com_content&id=790&Itemid=190)

### **Major Rules and Regulations on Investment**

#### **1. Types of direct investment in Vietnam**

The Investment Law notes the following types of direct investment: investment to establish 100% foreign businesses or joint-ventures between domestic and foreign investors; investment under BCC, BOT, BTO, BT contracts; investment for business development; and capital contribution, share buying in economic organizations, integrating and purchasing and indirect investments.

For foreign investors, direct investments under the new Investment Law are more open compared to guidance set forth in the Law on Foreign Investment. Hence, besides the type of limited companies (joint-venture companies, 100% foreign companies), investors can establish joint stock, associate companies under the Enterprise Law; contribute capital to, buy shares from Vietnamese enterprises in certain sectors, businesses under the government's regulations; and buy, integrate branches of companies under the law on competition and relevant laws.

Documentation filing, procedural order, formalities, investment and business registration content for the first-time foreign investor will be implemented pursuant to provisions of the Commercial Law and Investment Law. The investment certificate also serves as a business registration certificate.

#### **2. Procedures for investors to apply for investment licenses**

Investment projects and procedures are classified into three types:

**+ Investment registration projects:** Including domestic investment projects with capital under 15 billion VND except projects in conditional investment sectors. Investors only make their registration under the forms at provincial state investment management authorities for their investment but are not required to certify their investment.

**+ Investment certification projects:** Including domestic investment projects with capital of 15 billion

VND to less than 300 VND billion and foreign investment funded projects with capital of under 300 billion VND except projects in conditional investment sectors. Investors make their registration under the forms at provincial state investment management authorities for their investment to certify investment registration contents in certificates of business registration. The investment certification shall be made within 15 business days from the date of receipt of eligible files. The certificate of investment issued to foreign investors is also the certificate of business registration of the enterprise. A file for investment registration applicable to foreign investors consists of:

a, Documents on investment registration contents, including: legal status of investor; purposes, scale of operations, and location of investment project; investment funds, progress of project performance; demands for land use and commitments to environmental protection; and recommendations of preferential investments (if any);

b, Reports on financial capacity of investors; and

c, Joint-venture or BCC contracts, charter (if any).

**+ Investment investigation projects:** Consisting of projects valued 300 billion VND upward or projects under the List of Conditional Investment. Investors submit their files to state investment management authorities to have certificates of business–investment registration certified. The investigation to certify investments shall be made within 30 business days from the date of receipt of full and eligible files. A file consists of: Application for a certificate of investment; documents certifying legal status of investors; report on financial capacity of investors; and a feasibility study with contents, purposes, location of their investment, needs for using lands, investment scale, investment capital, project implementation progress, technology and environmental solutions. For foreign investors, a file also requires joint venture or BCC contracts, charters (if any).

- Foreign investors making their first investment in Vietnam shall have investment projects to establish foreign investment funded economic organizations in Vietnam. In the event of establishment of domestic and foreign enterprises attached to investment projects, procedures of enterprise establishment and procedures of investment project performance are carried out at the same time for the issuance of certificates of business–investment registration. The draft law does not stipulate the business period of enterprises. The period of an investment project shall conform to project contents and shall not exceed the period of land rental.

### **3 Organizations responsible for issuance of investment licenses**

#### **- *Projects of which the Prime Minister approves investment policies:***

a) Investment projects without distinction of scale, investment funds in some sectors such as: airport construction and business; air transport; seaport, national highway construction and business, sea transport in case of foreign investment funded projects; exploration and exploitation of oil and gas and valuable and rare natural resources; broadcasting, television, press, publication; investment and business related to casinos, high-award games in case of foreign investment projects; production and processing of cigarettes in cases of foreign investment projects; establishment of colleges, universities, post-graduation programs and equivalent levels; and investment and establishment of industrial zones, export processing zones, high technology zones and economic zones.

b) Investment projects not in the set forth sectors but valued at 1,500 billion VND upwards in sectors of: energy, mineral exploitation and processing, metallurgy; building railways, roads, interior waterways and related infrastructure; and production and business involving wine, beer.

c) Foreign investment funded projects in the sea transport business; establishing networks and supplying postal operations and delivery, telecommunication and internet services; establishing wave

transmission networks; printing and publishing newspapers; publishing; and establishing independent units for science research.

For the set forth investment projects which have been in the planning approved by the Prime Minister or under the Prime Minister's authorization and met conditions under the laws and international treaties of which Vietnam is a signatory, authorities responsible for issuing certificates of investment prepare the issuance of certificates of investment without submission to the Prime Minister for decisions on investment policies.

***Provincial People's Committees carry out investment registration and issue certificates of investment when:***

- Investment projects are outside industrial zones, export processing zones, high technology zones, and economic zones, including investment projects of which the Prime Minister, as set forth above, has approved investment policies.

Investment projects for developing the infrastructure of industrial zones, export processing zones, high technology zones in localities in which management units of such zones have not been established.

***Projects of which certificates of investment are issued by management units of industrial zones, export processing zones, high technology zones, economic zones***

Management units of industrial zones, export processing zones, high technology zones, and economic zones register investments and issue certificates of investment to investment projects in industrial zones, export processing zones, high technology zones, economic zones, including investment projects of which investment policies have been approved by the Prime Minister.

**4 Organizations receiving files of investment projects**

- Departments of Planning and Investment receive project files in cases whereby provincial People's Committees have issued certificates of investment.

- Management Units of industrial zones, export-processing zones, high technology zones, economic zones receive project files in cases whereby certificates of investment are issued in the areas of localities.

- For investment projects in the areas not under administration management of provinces, central cities or are carried out in many provinces or central cities, their files are submitted to Departments of Planning and Investment where investors place or intend to place their head offices or branches or operating offices to perform such investment projects.

**5 Documents required in a registration file for certificates of investment**

- Investment registration form;

- Contract of business cooperation in cases of investment under a contract of business cooperation; and

- Report on financial capacity of the investor (prepared by and under responsibility of the investor).

***For investment projects attached to the establishment of economic organizations, besides the above set forth documents, investors shall submit the following:***

- A file for business registration corresponding to each kind of enterprise under the Enterprise Law and relevant laws; and

- Joint-venture contract in cases of investment to establish a joint-venture business organization between domestic and foreign investors.

## **6 Areas and locations received investment incentives**

The Investment Law issued in 2005 encourages investments in producing new materials, new energies, biotechnology, and computer science; raising and processing agricultural, forestry, and sea products; using high technology, modern technology, protecting the ecologic environment, and investing in developmental research; building and developing the following both directly and their associated infrastructure: important industrial projects, traditional vocations, education, health, cultural and sport development, and labor-intensive projects. It also encourages investments in areas with socio-economic difficulties, industrial zones, export processing zones, high-technology zones, economic zones, and vocational villages.

Investment projects in priority sectors and areas will receive tax preferences (including exemption of import duties applicable to equipment, materials, transport means; enjoying tax preference applicable to income from capital contribution, shares; and exemption of income tax for technology transfer...); loss transfer (transferring losses to the succeeding year; these losses are deductible to taxable income ...); depreciation of fixed assets (applying fast depreciation for fixed assets...); and land use privilege (exemption and reduction of land tax, land rentals; period of land use may be extended to 70 years ...).