

CLIENT UPDATE

Decree 07/2016/ND-CP detailing regulations on establishment of Representative Offices or Branches of foreign traders in Vietnam

A Representative Office is the most common vehicle for foreign traders to conduct liaison activities, market research and promotion of their investment and business in Vietnam. On 25 January 2016, the Government issued Decree No. 07/2016/ND-CP (“**Decree 07**”) regulating the establishment of Representative Offices or Branches of foreign traders in Vietnam under the Trade Law in replacement of Decree No. 72/2006/ND-CP of the same title (“**Decree 72**”), after approximately 10 years from the effective date of Decree 72. For foreign investors who desire to establish representative office(s) in Vietnam, Decree 07, which took effect on 10 March 2016, has a number of significant points as detailed below.

The number of Representative Offices

Decree 07 provides that each foreign trader (“**FT**”) shall not establish more than one representative office with the same name within a province or centrally-affiliated city.¹ This was not a requirement under Decree 72, however this regulation has been introduced for implementation under the new Decree. Accordingly, under Decree 07, each FT can establish one or more representative offices within a province/city as long as the representative offices do not have the same name.

The conditions for establishment

FT’s are entitled to establish representative offices in Vietnam upon satisfaction of four conditions outlined below:²

- (i) FT’s are entitled to establish and register a business subject to provisions of the law of the countries or territories that are parties to treaties to which Vietnam is a signatory, or is a FT recognized by the aforesaid countries or territories. If the FT’s are not foreign traders of such countries, the establishment of a representative office must be approved by the Minister(s) that directly supervises such specific sectors of investment.
- (ii) The FT has been operating for at least one year from the date of establishment or registration;
- (iii) If the Business Registration Certificate or equivalent documents of the FT have regulations on its operation term, the remaining term must be at a minimum of one year from the date of submitting the dossier; and
- (iv) The scope of operation of the representative office must be consistent with Vietnamese commitments within international agreements of which Vietnam is a signatory.

Therefore, in comparison with Decree 72, FTs which are entitled to establish representative offices in Vietnam are specifically prescribed in more detail and are imposed with further requirements than that of the preceding Decree.

Scope of Operation

Representative offices are established to implement the functions of liaison activities, market research and promotion of the business.³ From its effective date, Decree 07 will have abrogated one of the operation contents of the representative office, previously listed in Decree 72, being the supervision and acceleration of the implementation of foreign business contracts that are either signed by Vietnamese

¹ **Article 3.2, Decree 07**

² **Article 7, Decree 07**

³ **Article 30, Decree 07**

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partners or are in relation to Vietnamese markets of its representative FT. Nevertheless, in most cases, as this scope also falls under a promotional function of the business of the FT in general, it is likely that the operational scope of representative offices remains significantly unchanged.

Heads of representative offices

According to Decree 72, the heads of representative offices must grant power of attorney to another person to perform his/her rights and obligations when absent from Vietnam. In situations where the head of the representative office is absent from Vietnam for a period longer than 30 days without any authorization, the FT must appoint another person as the new head of the representative offices. In this respect, Decree 72 does not have any provisions on delegating authority to act as the head of the representative office when absent from Vietnam. Decree 07, with the purpose of assuring the management of representative offices are more effective, seems to implement stringent regulations on the responsibility of the head of the representative office, especially if they are absent from Vietnam for a period longer than 30 days.

Licensing agency

Previously, the Department of Industry and Trade was the sole agency having power to grant, extend, amend, supplement and/or revoke licenses for establishment of representative offices. However, from the effective date of Decree 07, the Department of Industry and Trade shall have power to manage representative offices which are located outside industrial parks, export-processing zones, economic zones or hi-tech zones. For representative offices that are located inside industrial parks, export-processing zones, economic zones or hi-tech zones, Management Boards shall have the power to manage.

Procedure for granting establishment license

Decree 07 reduces the time for granting a license for the establishment of a representative office to 7 working days⁴ compared to 15 working days under Decree 72. In addition, the composition of the dossier on granting a license for establishment of a representative office has a number of changes under the new regulation. Specifically, in comparison to Decree 72, the dossier under Decree 07 has abrogated the requirement for providing a copy of the trader's charter. Additionally, Decree 07 requires that the application must be supplemented with a letter of appointment of the head of the representative office, copies of the passport or ID card or copies of the passport of the head of the representative office and documents on the expected location of the representative office.⁵ In practice, under Decree 72, a number of local agencies required the registration dossiers to be supplemented with these additional documents, however, there were not any provisions under the previous laws that created an obligation on the investors to submit such additional documents as now provided under Decree 07.

For a representative office established before the effective date of Decree 07

Decree 07 prescribes that a representative office whose License for establishment is granted before the effective date of this Decree **shall be entitled to continue operating up to the expiration date as stipulated in their granted license for establishment**. The law, however, is still silent on the correct interpretation of this regulation. In particular, the law is silent as to whether upon the expiration of the license, a representative office can apply for an extension or it is required to apply for a new issuance of the license. At the time of this update there is no guidance for this specific matter, however we will follow this issue and ensure we update our clients accordingly upon further clarification..

In light of the above, Decree 07 provides more specific and transparent conditions on the number of representative offices, the procedure for granting licenses for establishing representative offices, the dossiers and conditions for establishment and operation of representative offices. Along with this greater

⁴ Article 11.3, Decree 07

⁵ Article 10, Decree 07

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clarity, FT shall be required to adhere to a number of strict conditions subject to the establishment, establishment dossier and the heads of representative offices to ensure the effective operation of representative offices in Vietnam.

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ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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