

GOVERNMENT

THE SOCIALIST REPUBLIC OF VIETNAM
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DECREE
providing detailed provisions of the Commercial Law on
Representative Offices and Branches of foreign business entities in Vietnam

THE GOVERNMENT

Pursuant to the Law on Organization of the Government dated December 25, 2001;

Pursuant to the Commercial Law dated 14 June 2005;

On the proposal of the Minister of Trade,

DECREES:

Chapter I
GENERAL PROVISIONS

Article 1. Governing Scope

1. This Decree provides detailed provisions for the Commercial Law on the establishment, operations, and rights and obligations of representative offices and branches of foreign business entities in Vietnam.

2. Representative offices and branches of foreign invested enterprises established in Vietnam shall not fall under the governing scope of this Decree.

Article 2. Right to establish representative offices and branches of Foreign business entities in Vietnam

1. A foreign business entity may establish in Vietnam representative offices (hereinafter referred to as *representative offices*) in accordance with Articles 16, 17, 18 and e2(co)5.1o _____

sale of goods in accordance with Article 16, 19, 20 and 22 of the Commercial Law and the provisions hereof.

The Minister of Trade shall promulgate the list of sectors in which foreign business entities may establish branches under international treaties to which Vietnam is a member together with the roadmap for implementation of the commitments thereunder.

3. A representative office and a branch is a dependant entities of a foreign business entity; and it is prohibited to establish a representative office or a branch under such representative office or branch.

4. Representative offices and branches of foreign business entities operating in specific commercial sectors which have been governed by other legal normative documents shall remain to comply with those legal normative documents.

Article 3. Agencies issuing registration certificates to establish representative offices and branches

1. The Ministry of Trade shall issue, re-issue, amend, supplement, extend and withdraw registration certificates to establish branches operating in the sectors specified in Article 2.2 hereof.

2. The provincial Departments of Trade or the Departments of Trade and Tourism (jointly referred to hereinafter as **provincial Departments of Trade**) shall be responsible to issue, re-issue, amend, supplement, extend and withdraw registration certificates to establish representative offices.

3. In cases specified in Article 2.4 hereof, the competent State agency under a specialized legal normative document shall be responsible to manage and provide guidelines on the operations of representative offices and branches in such sectors.

Chapter II ISSUING, RE-ISSUING, AMENDING, SUPPLEMENTING AND EXTENDING REGISTRATION CERTIFICATES TO ESTABLISH REPRESENTATIVE OFFICES AND BRANCHES

Article 4. Conditions for the issue of registration certificates to establish representative offices and branches

1. Any foreign business entity which satisfies all of the following conditions shall be issued with a registration certificate to establish a representative office in Vietnam:

a. It has being an economic organization which is duly established or existing under the law of the country or the territory (hereinafter collectively referred to as *country*) where such foreign business entity is established.

b. It has been operating for no less than one (1) year since the date of its legal establishment under the law of its country.

2. Any foreign business entity which satisfies all of the following conditions shall be issued with a registration certificate to establish a branch in Vietnam:

a. It has being an economic organization which is duly established or existing under the law of the country where such foreign business entity is established.

b. It has been operating for no less than five (5) years since the date of such establishment.

3. A registration certificate to establish a representative office or a branch in Vietnam of a foreign business entity shall be valid for 5 years provided that it will not expire after the expiry date of the business registration certificate or the equivalent documentation of the foreign business entity in the foreign country where the term is stipulated under the laws of such country.

Article 5. Request documentation for a registration certificate to establish a representative office or a branch

1. Request documentation for a registration certificate to establish a representative office shall comprise the following:

a. An application for a registration certificate to establish its representative office signed by the authorized representative of the foreign business entity in the form published by the Ministry of Trade.

b. A copy of the business registration certificate or an equivalent document of the foreign business entity which is certified by the local authorized body where the foreign business entity is established. If the business registration certificate or an equivalent document provide for a term, that term must be valid at least for one more year.

c. An audited financial statement or an equivalent document of the foreign business entity proving the actual existence and operations of the foreign business entity for the preceding year.

former registration certificate to establish a representative office or a branch of the foreign business entity is withdrawn in accordance with Article 30.2 hereof;

3. The foreign business entity intends to trade in only goods and services falling under the list of goods and services prohibited from business in accordance with the laws of Vietnam;

4. The foreign business entity fails to satisfy the conditions set out in Article 4 hereof;

5. The request documentation submitted is invalid and fails to be appropriately supplemented as requested by the competent authority; and

6. other cases in accordance with the laws.

Article 7. Time limit for issuing a registration certificate to establish a representative office or a branch

1. The foreign business entity shall submit request documentation for a registration certificate to establish a representative office or a branch to the agency issuing registration certificates as referred to in Article 3 of this Decree.

2. Within fifteen (15) days from the date of receipt of complete and valid documents, the relevant provincial Department of Trade shall complete the assessment and issue to the foreign business entity with a registration certificate to establish a representative office and forward copies of the registration certificate to the Ministry of Trade, the people's committee of the province or city (hereinafter referred to as the *provincial people's committee*), the provincial tax office, statistical office and the police where the office of the representative office is located.

3. Within 15 days as of the date of receipt of complete request documentation, the Ministry of Trade shall complete its assessment and issue to the foreign business entity a registration certificate to establish a branch and forward copies of the registration certificate to the provincial People's Committee, the provincial tax office, statistical office and the police office where the office of the representative office is located.

4. If the request documentation is invalid, within three working days from the date of receipt of such documents, the agency issuing registration certificates must notify in writing to the relevant foreign business entity for supplement and completion of the documents.

5. The time limits set out in clauses 2 and 3 of this Article shall not include the period of time in which the foreign business entity supplements or completes

commitments of Vietnam under international treaties to which Vietnam is a member.

Article 10. Amending and supplementing a registration certificate to establish a representative office or a branch

1. In the cases specified below, a foreign business entity must carry out the procedures for amending or supplementing the registration certificate to establish a representative office or a branch at the competent authorities within 10 days as of the date of such changes:

a. Change the head of the representative office or the branch.

b. Relocation of the head office of the foreign business entity that do not lead to any change in the nationality of the foreign business entity.

c. Relocation of the representative office within the same province or city.

d. Relocation of the branch within Vietnam;

dd. Change the name or contents of operations of a representative office or a branch.

2. Request documentation for amending and supplementing a registration certificate to establish a representative office or a branch shall include:

a. An application for amending and supplementing the registration certificate to establish a representative office or a branch in the form published by the Ministry of Trade which is signed by the authorized representative of the foreign business entity;

b. the original of the registration certificate to establish a representative office or a branch as issued.

3. Within ten (10) days from the date of receipt of the eligible request documentation from a foreign business entity, the agency issuing registration certificates is responsible for amending or supplementing the registration certificate to establish a representative office or a branch and must forward copies of the registration certificate as amended or supplemented to the relevant bodies referred to in Articles 7.2 and 7.3 of this Decree.

Article 11. Re-issuing a registration certificate to establish a representative office or a branch

1. In the cases below, a foreign business entity must carry out the procedures for re-issuing a registration certificate to establish a representative office or a branch at the competent authority within 15 days as of the date such change takes place:

a) Change the office of the representative office from a province or city to another province or city;

b) Change the name, nationality of the foreign business entity;

c) Change the operation contents of the foreign business entity.

2. Where a registration certificate to establish a representative office or a branch is lost, torn, burnt, or otherwise destroyed, the foreign business entity must carry out the procedures for re-issuance of a registration certificate to establish a representative office or a branch at the competent authority within 30 days as of the date such change takes place.

Article 12. Request documentation for the re-issuance of a registration certificate to establish a representative office or a branch

1. Request documentation for re-issuance of a registration certificate to establish a representative office or a branch in cases referred to in Article 11.1.a shall include:

a) an application for re-issuance of a registration certificate to establish a representative office or a branch in the form published by the Ministry of Trade which shall be signed by the authorized representative of the foreign business entity;

b) certification of the agency issuing the former registration certificate to establish a representative office or a branch on removal of the registration of the representative office in the former location;

c) a notarized copy of the registration certificate to establish a representative office or a branch as granted.

2. Request documentation for re-issuance of registration certificate to establish a representative office or a branch referred to in Article 11.1.b and c shall include:

a) an application for re-issuance of a registration certificate to establish a representative office or a branch in the form published by the Ministry of Trade which shall be signed by the authorized representative of the foreign business entity;

granted registration certificate to establish a representative office and give notices to the agencies specified in Article 7.2 hereof.

2. Within 10 days, as of receipt of the complete request documentation from the foreign business entity as stipulated in Article 12.2 and 12.3, the agency issuing the registration certification shall be responsible to re-issue a registration certificate for a duration not exceeding the remaining period of the granted registration certificate to establish a representative office or a branch and give notices to the agencies specified in Article 7.2 and Article 7.3 hereof.

Article 14. Extending registration certificates to establish representative offices or branches

1. A foreign business entity which satisfies all of the following conditions shall be extended its registration certificate to establish a representative office in Vietnam:

a) Where the foreign business entity wants to further operate in Vietnam in the form of a representative office or a branch.

b) Where the foreign business entity remains in operations under the law of the country of the foreign business entity establishment.

c) Where the foreign business entity has not committed any serious breaches of the Vietnamese law with respect to the operations contents of the representative office or a branch.

2. Request documentation for extending a registration certificate to establish a representative office or a branch shall include:

a) An application for extending the registration certificate to establish its representative office or branch in the form stipulated by the Ministry of Trade and signed by the authorized representative of the foreign business entity.

b) Audited financial statements or the equivalent of the foreign business entity proving the actual existence and operations of the foreign business entity for the preceding year. Those papers referred to in this clause must be translated into Vietnamese which translation must be authenticated by the Vietnamese diplomatic representative agency overseas and must be consularized in accordance with the Vietnamese law.

c) Operations report of the representative office or a branch up to the point of application for extension of the registration certificate to establish a representative office or a branch.

d) The original registration certificate to establish a representative office or a branch as granted.

3. No later than 30 days prior to the expiry of the registration certificate to establish a representative office or a branch, the foreign business entity must carry out the procedures for extension of the same.

4. State competent authorities shall have to carry out the procedures for extending registration certificate to establish a representative office or a branch in accordance with the provisions of Article 7 hereof.

5. Upon expiry of the time limit as stipulated in this Article, if no registration certificate to establish a representative office or a branch is issued, the competent authority must give a written reply to the foreign business entity specifying the reasons for such refusal.

6. The agency issuing registration certificate to establish a representative office or a branch shall be responsible to give notices to the agencies stipulated in Articles 7.2 and 7.3 hereof on the extension or non-extension of a registration certificate to establish a representative office or a branch.

Article 15. Fee for issuing, re-issuing, amending, supplementing or extending registration certificates to establish representative offices and branches

1. A foreign business entity shall pay fees for issuing, re-issuing, amending, supplementing or extending its registration certificate to establish a representative office or a branch.

2. The Ministry of Finance shall, in coordination with the Ministry of Trade, specify the specific amounts of and the management of fees for issuing, re-issuing, amending, supplementing or extending registration certificate to establish a representative office or a branch.

Chapter III
CONTENTS OF OPERATIONS, RIGHTS AND OBLIGATIONS OF REPRESENTATIVE OFFICES AND BRANCHES

Article 16. Contents of Operations of a Representative Office

Operations of a representative office cover the following:

1. To execute functions as a liaison office;

Article 22. Rights and obligations of a representative office and its employees

A representative office and its employees shall exercise rights and perform obligations as stipulated in the Commercial Law and the following specific provisions:

provisions of Article 25.3 or Article 25.4, the agency issuing registration certificate to establish a representative office or a branch shall delete the registration to establish a representative office or a branch from the Registration List.

5. Within 15 days as of the date on which delete the registration to establish a branch, the Ministry of Trade shall be responsible for notify the termination of operations of a branch to the provincial People Committee, Department of Trade, provincial tax office, statistical office and the police office where the office of the representative office is located.

Within 15 days as of the date on which delete the registration to establish a representative office, the provincial Department of Trade shall be responsible for notify the termination of operations of a branch to Ministry of Trade and the provincial People Committee, provincial tax office, statistical office and the police office where the office of the representative office is located.

Article 25. Obligations of foreign business entities regarding their representative offices and branches

1. A foreign business entity shall be responsible before the laws of Vietnam for all operations of its representative office or branch in Vietnam.

2. The head of a representative office or a branch shall be responsible for his/her activities and operations of the representative office or branch in accordance with the Vietnamese laws if any activity is carried out beyond the scope of authorization.

3. No later than 15 days before a representative office or a branch terminates operations in accordance with items a, b and c of Article 24.1 hereof, the foreign business entity and his/her representative office or branch must settle their liabilities and other debts with the State of Vietnam and other relevant organizations and individuals in Vietnam in accordance with the laws.

4. Within 60 days after a representative office or a branch terminates operations in accordance with items d and dd of Article 24.1 hereof, the foreign business entity and his/her a representative office or a branch must settle their liabilities and other debts with the State of Vietnam and other relevant organizations and individuals in Vietnam in accordance with the laws.

Chapter IV STATE MANAGEMENT OF REPRESENTATIVE OFFICES AND BRANCHES

Article 32. State Management Functions of the Operations of Representative Office and Branches of the Ministry of Trade

1. To preside and coordinate with ministries and sectors in drafting and submitting to competent agencies for promulgation legal normative documents concerning representative offices and branches; or to promulgate those documents within the scope of its power;
2. To be responsible for management and provision of guidelines on issuing, re-issuing, amending, supplementing, extending and withdrawing a registration certificate to establish a representative office or a branch;
3. To conduct examinations and inspections of State management

2. Inspecting and examining representative offices and branches where necessary in accordance with the laws or participating in inter – branch inspection and examination delegations under a decision of the provincial People’s Committee.

3. Provide annual reports to the Ministry of Trade on the issue, amendment, supplement, extension and revocation of registration certificates to establish representative offices in their localities.

4. Coordinate with the Ministry of Trade in developing a database on representative offices and branches in their localities.

Article 29. Provisions on Inspection and Examination

1. During its operations, a representative office or a branch must be subject to inspection and examination by such agencies as stipulated in Articles 26, 27, and 28 hereof and such other competent authorities in accordance with the laws of Vietnam. Inspection and examination of representative offices and branches must comply with the assigned functions, authority and procedures and legislation in inspection and examination.

2. The decision maker of an inspection or examination that does not comply with the provision of laws, or those abuse inspection and examination to harass the operations of a representative office or a branch shall be penalized according to the seriousness of the faults and may be handled under criminal proceedings and will have to pay compensation according to laws if damage is caused.

Article 30. Dealing with breaches

1. Foreign business entities, representative offices or branches which commit a breach of the provisions hereof and the following acts of breach, depending on the nature and seriousness of the breach, shall be subject to administrative penalty in accordance with the law on settlement of administrative breaches:

a) making false, inaccurate or in-timely declaration in the contents or changes in the request documentation for issuance, re-issuance, amending, supplementing and extending registration certificate to establish a representative office or a branch;

b) failing to conduct operations within the period stipulated after the issuance of a registration certificate to establish a representative office or a branch;

c) failing to give a notice to the agency issuing the registration certificate to establish a representative office or a branch within the time limit stipulated on the time for commencing operations;

d) failing to have any office of the a representative office or a branch or re-rent out the office of the representative office or branch;

dd) not sending periodical reports on the operations of a representative office or a branch to the agency issuing the registration certificate to establish a representative office or a branch as stipulated;

e) not sending reports or providing documentation or explanation on issues relating to the operations of the a representative office or a branch at the request of the competent State agency;

a) failing to carry out official operations within 6 months as of the issue of

3. All other legal documents on representative offices and branches of foreign business entities in Vietnam that are contrary to the provisions hereof shall be hereby made null and void.

Article 33. Transitional provisions

1. Any representative office or a branch establish prior to the date of validity of this Decree shall be entitled to continue operate in accordance with the contents of the granted licenses and shall carry out the procedures for re-