

The header image features a night cityscape of Vietnam with lights reflecting on water. The text "Vietnam IP News Bulletin" is overlaid in a large, white, serif font.

# Vietnam IP News Bulletin

Kenfox IP & Law Office

April 2019

## QUESTIONS/MATTERS ON REPRESENTATIVE OFFICE IN VIETNAM

### 1. What is a Representative Office allowed to do under the laws of Vietnam?

**KENFOX:** Setting up a Representative Office (“RO”) is often the first step in establishing a commercial presence in Vietnam. A RO does not have a separate legal personality from the offshore enterprise. It is cheaper and faster to establish a RO in Vietnam as compared to establishing other forms of a commercial presence.

However, ROs have limited rights. They are permitted to engage only in certain activities, such as business development, and cannot engage in activities that generate profit in Vietnam. The head of the representative office is permitted to sign economic or commercial contracts with Vietnamese businesses on behalf of the offshore company only if he or she has specific legal authority from the foreign company for each contract (in other words, a general standing authorization is not permitted). Despite the limitations, a RO may play an important role in facilitating operations and business objectives on behalf of the foreign company. For instance, an offshore company engaged in a long-term distribution or manufacturing agreement with a local company may establish a RO in Vietnam to implement and oversee the contract.

### 2. What are requirements to set up a Representative Office in Vietnam?

**KENFOX:** Per Article 07 of Decree 07/2016/ND-CP, a foreign business entity duly established and operating for at least one year under the laws of the country of its head office may apply for establishment of a resident Representative Office (“RO”) in Vietnam. The foreign company is entitled to establish ROs in any province in Vietnam. The number of representative offices in Vietnam of a foreign company is unlimited.

### **3. What should we provide to set up a Representative Office in Vietnam?**

**KENFOX:** To establish a Representative Office (“RO”) in Vietnam, a foreign company must apply for a license issued by the provincial Department of Industry and Trade (“DOIT”) and complete post licensing procedures including Notice of Operation and obtaining a seal. Basically, the following documents must be submitted to set up a RO in Vietnam:

- Application form;
- A legalized copy of the Certificate of Incorporation and any amendments of the parent company;
- A certified and legalized copy of the Memorandum and Articles of Association of the parent company (if any);
- A legalized copy and Vietnamese translation of the audited financial statements of the parent company for its latest financial year issued by an auditing company;
- A notarized copy of Office Lease Contract; and
- A notarized copy of Chief Representative’s passport.

Kindly note that all foreign documents must be legalized and then translated into Vietnamese by an authorized translator.

### **3. Could you advise us on relevant timeline concerning establishment of a Representative Office in Vietnam?**

**KENFOX:** A Representative Office (“RO”) license may be granted within 15 days when submitted documents meets satisfactory requirements.

Upon receipt of the RO license, some additional steps should be undertaken as part of the registration process, i.e.

- (i) making a public announcement of the establishment of the RO in a printed (and licensed) newspaper in Vietnam, start of operations, and submitting a notice of operation;
- (ii) opening a bank account in Vietnam;
- (iii) applying for a business seal
- (iv) filing an application for work permits (for foreign employees).

The entire process may typically take between two to six months.

### **4. Could you advise us on the duration of a Representative Office License under the laws of Vietnam?**

**KENFOX:** The RO license has a term of 05 years, but not exceeding the remaining effective period of the Certificate of Business Registration or the equivalent (for documents having expiry date) (Article 9 of Decree 07/2016/ND-CP). After that, the license can be renewed. If the parent company’s business license or establishment certificate expires, the RO license will also expire. Taxation The RO’s operations are not subject to tax, except for personal income tax on the salaries of its staff mentioned above.

## 5. Which case must the foreign company adjust a Representative Office License?

**KENFOX:** The foreign company will have to apply for adjustments to a RO license in the following cases:

- Changes in the name or location of the head office of a foreign company.
- Changes in lines of business of the foreign company affecting the operations of its representative office in Vietnam.
- Replacement of the head of the representative office.
- Changes in the name of the representative office.
- Changes in the operations of representative office
- Changes in the location of the representative office .

## 6. What are required documents for adjustments to Representative office Licenses in Vietnam?

**KENFOX:** Per Article 16 of Decree 07/2016/ND-CP, documents for adjustments to a RO license in Vietnam are as follows:

(i) An application form for adjustments to the License for Establishment of the RO (standard form (Form MD-3) in Appendix of Circular No. 11/2016/TT-BCT).

(ii) Documents as proof of adjustments. In detail:

- ✓ Changes in the name or location of the head office of a foreign company: copies of legal documents as proof of changes in the name or location of the head office of a foreign trader released by competent authorities.
- ✓ Changes in the name or location of the head office of a foreign company: copies of legal documents as proof of changes in the lines of business of the foreign company released by competent authorities.
- ✓ Replacement of the head of the representative office: a letter of appointment of the new head of the representative office; copies of the passport or ID card (for Vietnamese) or copies of the passport (for foreigners) of the new head of the representative office; proof of fulfillment of personal income tax liabilities of the former head of the representative office at the time of changes.
- ✓ Changes in the location of the representative office: copies of memorandum of understanding (MOU) or leasing agreements or documents as proof of the right to use a location as the representative office; copies of documents on the expected locations of the representative office .

(iii) The original RO license.

### Note:

- Documents as proof of changes in Clauses 1, 2 and 3, Article 15 (*if the letter of appointment of the new head of the representative office and copies of the passport of the head being*

*foreigner are made in foreign languages*) must be translated into Vietnamese and certified true in accordance with laws of Vietnam.

- The proof of changes specified in Clauses 1 and 2, Article 15 hereof shall be certified or legalized by overseas diplomatic missions or Consulates of Vietnam in accordance with laws of Vietnam.

## **7. What are procedures for adjustments to Licenses for Establishment of Representative Office?**

**KENFOX:** Per Article 17 of Decree 07/2016/ ND-CP, procedures for adjustments to the RO License are as follows:

- ✓ Within 60 days from the date of changes in items, the foreign company will apply for adjustments to the RO License to the licensing agency where the representative office is expected to be located directly or by post or online (*where applicable*).
- ✓ Within 03 working days from the date of receipt of the application, the licensing agency shall examine such application and request the applicant to complete the application (if the application is incomplete). The request for supplementation to the application shall be made only once during the processing of the application.
- ✓ Apart from those specified in clause 5 of Article 17, within 05 working days from the date of receipt of the valid application, the licensing agency shall send the applicant a written notification of whether the adjustments to the RO Licenses are approved or not. In case of rejection, the licensing agency shall send the applicant a written notice in which reasons for rejections shall be specified.
- ✓ In case of adjustments to the operations of representative office resulting in the cases specified in clause 5, Article 7 hereof for RO respectively, and in case of adjustments to the operations of representative office that have yet to be governed by specialized legislative documents:
  - The licensing agency shall submit a written request for directions to the relevant Ministry within 03 working days from the date of receipt of the valid application.
  - Within 05 working days from the date of receipt of the request for directions from the licensing agency, the relevant Ministry shall submit the licensing agency a written notification of whether they approve for the application for adjustments to the License for Establishment of the representative office.
  - Within 05 working days from the date of receipt of the notification from the relevant Ministry, the licensing agency shall send the applicant a written notice of whether the adjustments for the License for Establishment of the representative office is approved or not. In case of rejection, the licensing agency shall send the applicant a written notice in which reasons for rejections shall be specified.

## **8. Which case and required documents are a Representative office License re-granted?**

**KENFOX:** The foreign company will apply for re-grant of the RO License in the following cases:

(1) Its RO relocates to another province or territory within the administration of another Management Board. The following documents are required for re-grant of RO License:

- An application form for re-grant of the License for Establishment of the representative office using the form promulgated by the Ministry of Industry and Trade and signed by a competent representative of the foreign company.
- An announcement of shutdown of the representative office submitted to the licensing agency in which the representative office is currently located, using the form issued by the Ministry of Industry and Trade and signed by a competent representative of the foreign company.
- Copies of the existing RO License.
- Copies of documents on the expected location of the representative office include: + Copies of documents on the expected location of the representative office Copies of memorandum of understanding (MOU) or leasing agreements or documents as proof of the right to use a location as the representative office; + Copies of documents on the expected location of the representative office in accordance with provisions of Article 28 hereof and related laws.)

(2) The RO License is lost, damaged or destroyed in any form or shape. The following documents are required: An application form for re-grant of the RO License using the form promulgated by the Ministry of Industry and signed by a competent representative of the foreign company.

## **9. What are the procedures for re-grant of RO License?**

**KENFOX:** In case RO relocates to another province or territory within the administration of another Management Board, the procedures for re-grant of RO License include:

- ✓ The foreign company shall apply for re-grant of the RO License to the licensing agency where the representative office is expected to be located directly or by post or online (where applicable) within 30 days from the date on which the notification of shutdown of the representative office is submitted. If the foreign company fails to apply for re-grant of RO License in the aforesaid time limit, such foreign company shall apply for the RO License under Article 10 and Article 11 of Decree 07/2016/ND-CP.
- ✓ Within 03 working days from the date of receipt of the application, the licensing agency shall examine such application and request the applicant to complete the application (if the application is incomplete). The request for supplementation to the application shall be made only once during the processing of the application.
- ✓ Within 05 working days from the date of receipt of the valid application, the licensing agency shall re-grant the license or establishment of the representative office to the applicant. In case of rejection, the licensing agency shall send the applicant a written notice in which reasons for rejections shall be specified.

## **10. How does the representative office usually name?**

**KENFOX:** Like a branch office, the name of a representative office is based the following criteria:

- Representative office shall be named using letters in Vietnamese alphabet, letters F, J, Z and W, numbers and symbols.
- The name of a representative office shall be the name of its head office enclosed with the phrases “representative office”.
- The nameplate of every representative office shall be put up at their office. The size of the name of the representative office printed in their transaction documents, records and publications shall be smaller than that of its head office.

#### **11. What are dossier for extension/renewal of Representative Office License?**

**KENFOX**: To renew RO License, the following documents are required:

- An application form for extension of the RO License using the form promulgated by the Ministry of Industry and signed by a competent representative of the foreign company.
- Copies of the Certificate of Business registration or equivalent documents of the foreign company; (*copies must be translated into Vietnamese and certified or legalized by Vietnam Consular in accordance with laws of Vietnam*)
- Copies of audited financial statements or certificates of fulfillment of tax liabilities or financial obligations of the last fiscal year or equivalent documents as proof of existence and operation of the foreign company issued or certified by competent authorities where such foreign trader is established; (*copies shall be translated into Vietnamese and certified true in accordance with laws of Vietnam*).
- Copies of the existing RO License.

#### **12. Could you advise us on procedures for extension/renewal of RO License?**

**KENFOX**: Procedures for extension/renewal of RO License are taken as follows:

- At least 30 days prior to the expiry of the license, the applicant shall apply for extension of the RO License to the licensing agency where the representative office is expected to be located directly or by post or online (*where applicable*).
- Within 03 working days from the date of receipt of the application, the licensing agency shall examine such application and request the applicant to complete the application (*if the application is incomplete*). The request for supplementation to the application shall be made only once during the processing of the application.
- Within 05 working days from the date of receipt of the valid application, the licensing agency shall grant an extension of the license or establishment of the RO to the applicant. In case of rejection, the licensing agency shall send the applicant a written notice in which reasons for rejections shall be specified.
- With respect to applications for extension of the RO License that have yet to be governed by specialized legislative documents, the licensing agency shall submit a written request for directions to the relevant Ministry within 03 working days from the date of receipt of the valid application. Within 05 working days from the date of receipt of the request for directions from

the licensing agency, the relevant Ministry shall submit the licensing agency a written notification of whether they approve for the application for extension of the ROLicense. Within 05 working days from the date of receipt of the notification from the relevant Ministry, the licensing agency shall send the applicant a written notice of whether the extension is granted or not. In case of rejection, the licensing agency shall send the applicant a written notice in which reasons for rejections shall be specified.

### **13. Which case must the foreign company shut down its representative office?**

**KENFOX**: The foreign company must shut down its representative office if:

- It is requested by its head office;
- The foreign company ceases to operate according to laws of the country or territory in which such foreign company is established or registered.
- The License for Establishment of the representative office is expired but its head office does not apply for extension of the license.
- The licensing agency refuses to grant an extension of the expired License for Establishment of the representative office.
- The Representative office License is revoked as: (i) Fail to come into operation for 01 year and fail to enter into transactions licensing agencies; (ii) Fail to submit reports on the operation of the representative office for 02 consecutive years; (iii) Fail to submit reports stipulated in clause 2, Article 32 of Decree 07/2016 to the licensing agency within 06 months from the deadline of submission or at the written request of the licensing agency; (iv) Be governed by provisions of laws.
- The foreign company or its representative office no longer satisfies one of the requirements stipulated in Articles 7 and 8 of Decree 07/2016/ND-CP.

### **14. What are required documents for shutdown of representative office?**

**KENFOX**: The following documents are required for shutting down of a RO:

- (i) A notification of shutdown of the representative office using the form issued by the Ministry of Industry and Trade and signed by a competent representative of the foreign company, excluding cases the License for Establishment of the representative office is revoked.
- (ii) Copies of written refusals of grant of extension of the license or establishment of the representative office (*if the licensing agency refuses to grant an extension of the expired ROLicense or a copy of the decision on revocation of the license for establishment of the representative office released by the licensing agency (If the ROLicense is revoked)*);
- (iii) Lists of creditors and the amount of debts, including outstanding taxes and social insurance premiums;
- (iv) Lists of employees and their current benefits;
- (v) The original ROLicense.

Note:

- (a) The head of the closed representative office and their head office shall be responsible for the reliability and accuracy of their application for shutdown of the representative office.
- (b) Where the representative office shuts down to relocate to another province or territory within the administration of another Management Board, the application for shutdown shall only include two documents as: - A notification of shutdown of the RO; - The original ROLicense.

## 15. What are procedures for processing of applications for shutdown of representative office?

**KENFOX**: To shut down representative office, please the following procedures:

- (i) The foreign company will submit the applications for shutdown of their representative office to the licensing agency directly or by post or only (*where applicable*).
- (ii) Within 03 working days from the date of receipt of the application, the licensing agency shall examine such application and request the applicant to complete the application (*if the application is incomplete*). The request for supplementation to the application shall be made only once during the processing of the application.
- (iii) Within 05 working days from the date of receipt of the valid application, the licensing agency shall publish the decision on shutdown of the representative office on their portal.

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