

# Vietnam IP News Bulletin

Kenfox IP & Law Office

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## QUESTIONS ON BRANCH OFFICE IN VIETNAM

### 1. What are required conditions for a foreign entity to establish a branch in Vietnam?

**KENFOX:** A foreign company which has effectiveness business activities will be allowed to open branch in Vietnam if it has real demand to open the market in Vietnam and meet some conditions as below:

- Being a trader recognized by the law of the country where it has been lawfully established or made its business registration;
- Having been operating for at least five years after its lawful establishment or business registration.

### 2. What are rights of a branch under the laws of Vietnam?

**KENFOX:** Per Article 19 of Law on Commercial (2005), a branch in Vietnam is entitled to the followings:

- To rent offices and to lease or purchase the equipment and facilities necessary for the operation of the branch.
- To recruit Vietnamese and foreign employees to work for the branch in accordance with the law of Vietnam.
- To enter into contracts in Vietnam in accordance with the activities stated in the license for establishment of such branch and in accordance with the Vietnam Law.
- To open Vietnamese dong and foreign currency accounts at banks which are licensed to operate in Vietnam.
- To remit profits abroad in accordance with the law of Vietnam.
- To have a seal bearing the name of the branch in accordance with the law of Vietnam.
- To conduct activities being the purchase and sale of goods and other commercial activities consistent with its license for establishment in accordance with the law of Vietnam and any

international treaty to which the Socialist Republic of Vietnam is a member.

### **3. What are obligations of a branch under the laws of Vietnam?**

**KENFOX:** Per Article 20 of Law on Commercial (2005), a branch in Vietnam is entitled to the followings:

- To observe the accounting regime provided for by Vietnamese law; in cases where it is necessary to apply another commonly used accounting system, the approval by the Finance Ministry of the Socialist Republic of Vietnam is required.
- To report on their operations according to the provisions of Vietnamese law.
- To have other obligations provided for by law.

### **4. What are required documents for setting up a branch in Vietnam?**

**KENFOX:** Under Article 12 of Decree 07/2016/ND-CP date 25/01/2016, the foreign company must prepare the following documents upon the registration of a Vietnam branch office:

- a) A request for license for establishment of the branch (*per the form issued by the Ministry of Industry and Trade of Vietnam and signed by a competent representative of the foreign company*).
- b) Copies of the Certificate of Business Registration or equivalent documents of the foreign company;
- c) A letter of appointment of the head of the branch;
- d) 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 company is established;
- e) Copies of the branch charter;
- f) Copies of the passport or ID card (for Vietnamese) or copies of the passport (for foreigners) of the head of the branch;
- g) Documents on the expected location of the branch including:

- Copies of memorandum of understanding (MOU) or leasing agreements or documents as proof of the right to use a location as the branch;

- Copies of documents on the expected location of the branch under Article 28 hereof and provision of related laws.

Kindly note that documents in points b, c, d and e above shall be translated into Vietnamese and certified true in accordance with laws of Vietnam. Documents in point b shall be legalized.

### **5. Could you advise us on procedures for Licenses for Establishment of branch of foreign company?**

**KENFOX:** According to Article 13 of Decree 07/2016/ND-CP, KENFOX advises that:

1. The foreign companies will directly or by post or online submit their application to the licensing agency where the branch is expected to be located.

2. Within 03 working days from the date of receipt of the application, if the application is incomplete, the licensing agency will examine such application and request the applicant to complete their application. The request for supplementation to the application shall be made only once during the processing of such application. The request for supplementation to the application shall be made only once during the processing of such application.

3. Within 07 working days from the date of receipt of the valid application, the licensing agency shall send the applicant a written notification of whether the license for establishment of the branch is granted or not. Apart from those following specified:

- Where the businesses of the branch is inconsistent with Vietnam's Commitments or the foreign trader is not located in one of countries or territories being parties to treaties to which Vietnam is a signatory, the branch office can be established only if they obtain a prior consent of the relevant Minister for establishment of the branch.
- The establishment of branch that has not been prescribed 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 notification from the relevant Ministry, the licensing agency will send the applicant a written notice of whether the License for Establishment of the branch is granted. In case of rejection, the licensing agency shall send the applicant a written notice in which reasons for rejections shall be specified.

## **6. When must the foreign company adjust Licenses for Establishment of branch?**

**KENFOX:** The foreign companies will have to apply for adjustments to Licenses for Establishment of branch 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 branch in Vietnam.
- Replacement of the head of the branch.
- Changes in the name of the branch.
- Changes in the operations of branch.
- Changes in the location of the branch.

## **7. What are required documents for adjustments to Licenses for Establishment of branch in Vietnam?**

**KENFOX:** Per Article 16 of Decree 07/2016/ND-CP, documents for adjustments to Licenses for Establishment of branch in Vietnam are required as follows:

(i) An application form for adjustments to the License for Establishment of the branch (*standard form (form MD-7) in Appendix of Circular No. 11/2016/TT-BCT*).

(ii) Documents as proof of adjustments. To be specified in case:

- ✓ *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 company 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 branch:* a letter of appointment of the new head of the branch; copies of the passport or ID card (for Vietnamese) or copies of the passport (for foreigners) of the new head of the branch; proof of fulfillment of personal income tax liabilities of the former head of the branch at the time of changes.
- ✓ *Changes in the location of the branch:* copies of memorandum of understanding (MOU) or leasing agreements or documents as proof of the right to use a location as the branch; copies of documents on the expected locations of the branch.

(iii) The original License for Establishment of the branch.

Note: Documents as proof of changes in clauses 1, 2 and 3, Article 15 hereof (*if the letter of appointment of the new head of the branch and copies of the passport of the head being foreigner are made in foreign languages*) shall 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 in accordance with laws of Vietnam.

## **8. What are procedures for adjustments to Licenses for Establishment of branch?**

**KENFOX:** Per Article 16 of Decree 07/2016/ ND-CP, procedures for adjustments to Licenses for Establishment of branch are as follows:

- Within 60 days from the date of changes in items, the foreign company will apply for adjustments to the License for Establishment of their branch;
- The foreign company shall submit their application to the licensing agency where the branch 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 this Article, 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 license or establishment of the branch 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 branch resulting in the cases specified in clause 5, Article 8 hereof for branch respectively, and in case of adjustments to the operations of branch 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 branch.
  - 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 branch 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.

#### **9. Which case and required documents are Licenses for Establishment of branch re-granted?**

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

(1) Its branch relocates to another province or territory within the administration of another Management Board. Dossiers for re-grant of Licenses for Establishment of branch consist:

- An application form for re-grant of the License for Establishment of the branch 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 branch submitted to the licensing agency in which the branch 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 License for Establishment of the branch
- Copies of documents on the expected location of the branch include: + Copies of documents on the expected location of the branch; + Copies of memorandum of understanding (MOU) or leasing agreements or documents as proof of the right to use a location as the branch; + Copies of documents on the expected location of the branch in accordance with provisions of Article 28 hereof and related laws.)

(2) The Licenses for Establishment of the branch is lost, damaged or destroyed in any form or shape. An application for re-grant of the license of establishment of branch shall include: an application form for re-grant of the License for Establishment of the branch using the form promulgated by the Ministry of Industry and signed by a competent representative of the foreign company.

#### **10. Could you advise us on the procedures for re-grant of Licenses for Establishment of branch?**

**KENFOX:** The following procedures for re-grant of Licenses for Establishment of branch consist:

- In case the foreign company relocates to another province or territory within the administration of another Management Board, The foreign company shall apply for re-grant of the License for Establishment of their branch within 30 days from the date on which the notification of shutdown of the branch office is submitted. If the foreign company fails to apply for re-grant of the License for Establishment of the branch in the aforesaid time limit, such foreign trader shall apply for the license or establishment of their branch under Article 10 and Article 11 of Decree 07/2016/ND-CP.
- The foreign company shall submit their application to the licensing agency where the branch 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 re-grant the license or establishment of the branch 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.

## **11. How does branch usually name?**

**KENFOX:** Choice of the name of a branch is based the following criteria:

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

## **12. What are dossier for extension/renewal of Licenses for Establishment of branch?**

**KENFOX:** To renew Licenses establishment of branch, the foreign company will prepare the following documents:

- An application form for extension of the License for Establishment of the representative office or branch 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 overseas diplomatic missions or Consulates of Vietnam 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 License for Establishment of the branch.

### **13. What are procedures for extension of Licenses for Establishment of branch?**

**KENFOX:** The procedures for extension of Licenses for Establishment of branch include:

- At least 30 days prior to the expiry of the license, the applicant shall apply for extension of the License for Establishment of the branch.
- The foreign company shall submit their application to the licensing agency where the branch 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 branch 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 License for Establishment of branch 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 License for Establishment of the branch. 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.

### **14. Which case must the foreign company shut down branch?**

**KENFOX:** The foreign company must shut down its branch 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 trader is established or registered.
- The License for Establishment of the branch 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 branch.
- The License for Establishment of the branch is revoked as: (i) Fail to come into operation for 01 year and fail to enter into transactions with licensing agencies; (ii) Fail to submit reports on

the operation of the branch for 02 consecutive years; (iii) Fail to submit reports stipulated in clause 2, Article 32 of Decree 07/2016/ND-CP 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 branch no longer satisfies one of the requirements stipulated in Articles 7 and 8 of Decree 07/2016/ND-CP.

## **15. What are required documents for shutdown of branch?**

**KENFOX:** An application for shutdown of a branch shall include:

- A notification of shutdown of the branch 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 branch is revoked.
- Copies of written refusals of grant of extension of the license or establishment of the branch (*if the licensing agency refuses to grant an extension of the expired License for Establishment of the branch*) or a copy of the decision on revocation of the license for establishment of the branch released by the licensing agency (If the License for Establishment of the branch is revoked );
- Lists of creditors and the amount of debts, including outstanding taxes and social insurance premiums;
- Lists of employees and their current benefits;

The original License for Establishment of the branch.

Note:

- The head of the closed branch and their head office shall be responsible for the reliability and accuracy of their application for shutdown of the branch.
- Where the branch 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 branch; + The original License for Establishment of the branch.

## **16. What are procedures for processing of applications for shutdown of branch?**

**KENFOX:** To shutdown branch, please refer to the following procedures:

- (i) The foreign company will submit the applications for shutdown of their branch 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 branch on their portal.



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