



Establishment of Foreign Trader's Representative Office in Vietnam

February 2016

On 25 January 2016, the Government of Vietnam issued Decree No. 07/2016/NĐ-CP detailing the Commercial Law on the Representative Office and Branch of foreign trader in Vietnam ("Decree 07").

Decree 07 comes into effect from 10 March 2016, replacing Decree No. 72/2006/ NĐ-CP dated 25 July 2006 and repealing Article 2 of Decree No. 120/2011/ NĐ-CP dated 16 December 2011 issued by the Government amending and supplementing the administrative procedures in some Decrees of the issued by the Government detailing the Commercial Law.

In this Newsletter, Grant Thornton Vietnam would like to share with you:

1. Regulations on the establishment of Representative Office of foreign trader in Vietnam.
2. Some notes and practical recommendations of Grant Thornton Vietnam.

1. REGULATIONS ON THE ESTABLISHMENT OF REPRESENTATIVE OFFICE ("RO") OF FOREIGN TRADER IN VIETNAM.

a. In order to establish a RO in Vietnam, foreign trader must satisfy the following conditions:

- Being established and registered in accordance with the laws of nations and territories participating in international treaties in which Vietnam is a member or being recognised by the laws of these nations and territories.
- Having been operating for at least 01 year since the date of establishment or registration. The remaining operation duration must be valid for at least 01 more year since the submission date of the application dossiers for establishment of the RO.

b. Duration of License of the Foreign Trader's RO in Vietnam

- The duration of the RO's License is a maximum of 5 years but not exceeding the remaining duration of the foreign trader's business registration certificate in case that certificate has a validity limitation on duration.
- Extendable.

c. Scope of operation of the RO

- To function as a liaison office
- To undertake market research
- To promote trade and investment opportunity for whom the RO represents, but not including service sectors in which the establishment of a RO is regulated by specific legal regulations.

d. Application dossiers for the establishment of a RO include:

- Application letter for establishment of RO per the stipulated form by the Ministry of Industry and Trade;
- Photocopy of the Business Registration Certificate of foreign trader;
- Appointment letter of the Chief Representative;
- Photocopy of the audited financial statements or documents confirmed by foreign tax authorities proving real existence and operation of the foreign traders in the latest fiscal year;
- Photocopy of the passport of the Chief Representative; and
- Memorandum of understanding or lease agreement or photocopy of the documents proving the rights of foreign traders to exploit and use the place for locating the RO's head office.



2. SOME NOTES AND PRACTICAL RECOMMENDATIONS OF GRANT THORNTON VIETNAM

a. Regarding the scope of operation of RO:

Foreign traders should consider carefully the scope of operation of the RO in order to prepare an appropriate business plan, as Decree 07 has narrowed down the RO's operation activities, specifically repealing the following content: "To monitor and promote the performance of contracts signed with Vietnamese partners or those relating to Vietnamese market on behalf of its foreign trader" in Decree No. 72/2006/ND-CP.

b. Regarding the appointment of the Chief Representative:

Decree 07 stipulates that Chief Representative must authorise in writing for others to implement his rights and obligations upon repatriation from Vietnam. In the case that the Chief Representative will not be present in Vietnam for more than 30 days without authorizing others to implement his rights and obligations or has deceased, missing, detained, sentenced to prison, lost or has limited capacity for civil acts, the foreign trader must appoint another person to be the new Chief Representative.

Foreign traders should take into account that the Chief Representative **must not** concurrently hold the following positions:

- Head of a branch of the same foreign trader;
- Head of a branch of another foreign trader;
- Legal Representative of the same foreign trader or other foreign trader;
- Legal Representative of a business organisation established in accordance with the Laws of Vietnam

c. Regarding the work permit, Personal Income Tax liability, social insurance of the Chief Representative and recruitment of Vietnamese employee working for the RO:

- Foreigner appointed as the Chief Representative must obtain the work permit in Vietnam before commencing the work in Vietnam.
- The RO's Chief Representative and employees must declare the Personal Income Tax liabilities upon receiving income in Vietnam (regardless of whether is being paid by the RO). Depending on specific case, the Chief Representative may apply for the application of the Double Taxation Avoidance Agreement in Vietnam.
- Upon having the recruitment demand of Vietnamese employees, the RO must submit the request for recruiting Vietnamese employees to the competent authorities having the right to recruit and manage Vietnamese employees. The request must indicate clearly the job position, number of positions, technical level, professional skills, foreign languages, timeline; rights and obligations of Vietnamese employees and of foreign organisation and individual during the working period and upon the termination for each recruitment position.
 - Within 15 working days since the date of receiving the RO's request, the competent authorities are responsible for recruiting and recommending Vietnamese employees as per the RO's request.
 - After 15 working days, if the competent authorities fail to recruit and recommend Vietnamese employees as per the RO's request then the RO can directly recruit Vietnamese employees.

- Within 7 working days after the signing of labour contract, the RO must notify in writing and attached with the photocopy of the labour contract signed with the Vietnamese employees to the competent authorities.
- Foreigners and Vietnamese employees signing labour contracts with the RO must participate in the compulsory insurance scheme.

Please contact Grant Thornton Vietnam if you are considering to establish a RO in Vietnam or if you would like to review the compliance status with the regulations of Vietnamese Laws relating to the operations of your RO in Vietnam.





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Should you need to use information from this Newsletter or support from Grant Thornton Vietnam, please contact our professional consultants.

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