

**NEW REGULATIONS ON FOREIGN REPRESENTATIVE OFFICES AND
BRANCH OFFICES IN VIETNAM**

Only seven months after the enactment of the new 2005 Commercial Law of Vietnam at the beginning of 2006, the Vietnamese Government has issued new regulations on foreign representative offices and branch offices in Vietnam under Government Decree No. 72/2006/ND-CP dated July 25, 2006. The new Decree was published in the Official Gazette on July 30, 2006 and became effective on August 14, 2006, superseding Decree No. 45/2000/ND-CP dated September 6, 2000 on the same subject.

Compared with the regulations under Government Decree No. 45/2000, Decree No. 72/2006 seems to be a step backward in terms of the requirements regarding opening a foreign representative or branch office in Vietnam. The setbacks are:

- Under the previous regulations, the only requirement for a foreign company to obtain a representative office license in Vietnam was a valid business registration certificate in accordance with the laws of the home country of the foreign company. In contrast, the new regulations require that the foreign company must have been in operation for at least 1 year from the date it was lawfully incorporated in the home country.
- The new regulations require a foreign company applying for a representative office or branch office license to submit a copy of its business registration certificate or the equivalent in accordance with the laws of the home country. If such documents have a validity period, the remaining validity period must be at least 1 year for a representative office application or 3 years for a branch office application. It is interesting to note that this requirement could effectively rule out the opening of representative offices in Vietnam by companies from China or Hong Kong or some countries where the laws provide for a validity period of only 1 year for business registration certificates, renewable upon payment of annual fees.
- Previously, a foreign company had to submit only two documents when applying for a license to open a representative or branch office in Vietnam: (1) an application, and (2) a copy of its business registration certificate. The new regulations require the following additional documents:
 - Copy of the applicant's audited annual report for the preceding year.
 - Copy of the applicant's Articles of Association (for a representative office license application) or a copy of the applicant's Charter/Operation Rules (for a branch office license application).

These documents must be notarized by a notary public in the home country and then legalized by the nearest Vietnamese embassy or consulate. Vietnamese translations of all foreign-made documents are also required, and the translations must be notarized by a Vietnamese State Notary or Vietnamese embassy or consulate.

- Under the new regulations, the duration of a representative office license in Vietnam is no longer perpetual. It is valid for only 5 years but renewable. License fees are to be paid on license renewal as well.

Notwithstanding the above, Decree No. 72/2006 has introduced certain improvements to the legal environment pertaining to foreign representative and branch offices.

- Decree No. 72/2006 specifically designates the provincial Department of Trade as the authority with the power to grant, revise, renew and withdraw representative office licenses, not the provincial People's Committee, which in turn authorized the Department of Trade under the old regulations and practices. The Ministry of Trade still retains the authority to grant, revise, renew and withdraw branch office licenses.
- Decree No. 72/2006 clearly defines the procedures, requirements and time schedules for licensing, revising, renewing and withdrawing representative and branch office licenses or closure of these offices.

With respect to foreign companies operating in Vietnam under branch office status, although the restrictions on the trading activities of a foreign branch office under the former regulations have been lifted, Decree No. 72/2006 simply repeats the provisions of the 2005 Commercial Law that foreign companies can open branch offices in Vietnam to carry out sale and purchase of goods and other activities directly related to the sale and purchase of goods in accordance with Vietnam's commitments under international treaties to which Vietnam is a member. Decree No. 72/2006 leaves the responsibility of publishing Vietnam's commitments and issuing guidelines regarding the activities of foreign branch offices to the Minister of Trade. Practically, the opening of foreign branch offices in Vietnam shall be possible only when the Minister of Trade has issued guidelines on what activities foreign branch offices can conduct in Vietnam. The time frame for issuance of the guidelines is unknown at this time.

It should be noted that Vietnam has made significant advances in its legal system and has completed almost all bilateral and multilateral negotiations, paving the way for the country to be admitted to the World Trade Organization (WTO). Nevertheless, as of the writing of this article, Vietnam has not yet published any of its WTO commitments, especially those commitments regarding access to the Vietnamese market of foreign distribution service providers. Internal and unofficial sources reveal that Vietnam may, subject to its becoming a member of the WTO at the end of 2006, allow foreign companies to open branch offices to conduct certain trading activities from January 1, 2007, while full access to Vietnamese markets for distribution service providers may commence on January 1, 2009 when foreign companies shall be allowed to operate 100% foreign-owned companies in Vietnam to

engage in the distribution of both imported and domestically produced goods. There are certain sectors to which Vietnam has not committed full access by foreign distribution services. For instance, foreign pharmaceutical firms may not be allowed to carry out retail distribution of foreign pharmaceutical products in Vietnam.

Finally, Decree No. 72/2006 grants all foreign representative or branch offices licensed before the effective date of this Decree a window of 6 months to complete applications for new licenses in accordance with the new regulations. This window will expire on February 14, 2007.

Ministerial circulars and decisions on implementing Decree No. 72/2006 are expected to be issued soon.

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