

## ESTABLISHING A REPRESENTATIVE OFFICE IN VIETNAM

June 2022

### 1. Introduction

A Representative Office in Vietnam (“**RO**”) is a liaison office established by a foreign company for the primary purpose of establishing economic and commercial relations with Vietnamese businesses. A RO is permitted to conduct market surveys and investigations but is not permitted to engage in any sales or other revenue-generating activities.

One condition for establishing a RO is that the parent company must have been operating for at least one year. In general, the Chief Representative Officer (“**CRO**”) may execute agreements under the name of the RO to serve its daily operations, such as employee recruitment, leasing office premises, installment of telephone, fax, and electrical systems, and purchasing stationery for the RO. The CRO may execute contracts on behalf of the RO’s parent entity with a special power of attorney.

### 2. Laws and Regulations

The establishment and operations of a RO are governed by:

- (a) The Commercial Law adopted by the National Assembly on 14 June 2005 (“**Commercial Law**”);
- (b) Government Decree No. 07/2016/ND-CP dated 25 January 2016 on representative offices and branch offices of foreign companies in Vietnam (“**Decree 07**”) which came into force on 10 March 2016 and replaces Decree No. 72/2006 dated 25 July 2006 (“**Decree 72**”);
- (c) Circular No. 11/2016/TT-BCT on forms prescribed in Decree No. 07/2016/ND-CP dated January 25, 2016, of the Government on guidelines for the Law on commerce in terms of representative offices and branches of foreign traders in Vietnam dated 5<sup>th</sup> July 2016 (“**Circular 11**”);
- (d) Government Decree No. 81/2018/ND-CP dated 22 May 2018 on implementation of the Commercial Law as amended from time to time regarding trade promotion (“**Decree 81**”);
- (e) Government Decree No. 98/2020/ND-CP dated 26 August 2020 providing provisions on administrative sanctions in the commercial sector, production and trade in counterfeit and prohibited goods, and protection of consumer rights, as amended on 31 January 2022 (“**Decree 98**”);
- (f) Government Decree No. 38/2021/ND-CP dated 29 March 2021 providing provisions on administrative sanctions pertaining to the culture and advertising sectors (“**Decree 38**”); and

(g) Circular 143/2016/TT-BTC of Ministry of Finance dated 26 September 2016 providing regulations on fees for processing of applications for the license to establish representative offices of foreign trade promotion organizations or foreign traders in Vietnam, and the collection and transfer thereof (“**Circular 143**”).

### 3. **Term of RO**

The operational term of a RO may be up to five years, provided that the term does not exceed the residual term of a business registration certificate of the parent company. This term may be extended multiple times.

### 4. **Permissible Activities and Obligations of ROs**

Under Decree 07, ROs of a foreign company may conduct the following activities:

- (a) Functioning as a liaison office;
- (b) Conducting market research activities; and
- (c) Promoting the business opportunities for the foreign business entity that it represents.<sup>1</sup>

Additionally, the Commercial Law states that ROs may not “directly engage in profit-making activity in Vietnam”<sup>2</sup> and that they may only “conduct commercial enhancement activity within the scope permitted by the [Commercial Law].”<sup>3</sup> While there is no clear definition of “profit-making activity,” the general understanding is that a RO may not enter into any contract for the sale of goods or services to Vietnamese distributors or customers, collect money from distributors or customers, or provide goods or services directly to Vietnamese distributors or customers. A RO may not lease more than one premise for each office.

#### 4.1 **Marketing Activity for ROs**

“Commercial enhancement” is the legal term of art which is defined in the Commercial Law as “activities of promoting and seeking opportunities for the purchase and sale of goods and for the provision of services, comprising: (i) sales promotion activities, (ii) commercial advertising, (iii) display and introduction of goods and services, and (iv) trade fairs and exhibitions.”<sup>4</sup> Essentially, commercial enhancement is what we colloquially refer to as “marketing.” The Commercial Law defines and provides detailed regulations on each of the four aforementioned types of commercial enhancement.<sup>5</sup> ROs are generally prohibited from engaging in most types of commercial enhancement activity but are allowed to sign contracts on behalf of their parent entities (with a power of attorney duly issued by the parent company) to hire

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<sup>1</sup> Article 30 of Decree 07.

<sup>2</sup> Article 18.1 of the Commercial Law.

<sup>3</sup> Article 18.2 of the Commercial Law.

<sup>4</sup> Article 3.10 of the Commercial Law.

<sup>5</sup> See Chapter 4 of the Commercial Law generally.

third-party marketing agencies, except for sales promotion activities for which even engaging third parties is directly prohibited for ROs.<sup>6</sup>

Specifically, the restrictions set out for each of the four activities for ROs are as follows:

(a) *Sales Promotion Activities*

Sales promotion is defined as “an act of commercial enhancement by a business entity aimed at enhancing the purchase and sale of goods and the provision of services by giving specified benefits to customers.”<sup>7</sup> Examples of sales promotion programs given in the Commercial Law include giving samples or trial goods, gifts or free services, discount programs, coupons, contests, lucky draws, customer loyalty programs, and sponsoring cultural, artistic, or entertainment programs.<sup>8</sup>

A RO is not “permitted to hold a sales promotion or to hire another business entity to hold a sales promotion in Vietnam for the business entity which such representative office represents.”<sup>9</sup> A monetary fine of up to VND 20,000,000 (approximately USD 870)<sup>10</sup> may be assessed for a violation.

(b) *Commercial Advertising*

Commercial advertising is defined as “activities of commercial enhancement conducted by a business entity aimed at introducing customers to the business activities in goods and services of such business entity.”<sup>11</sup> In particular, commercial advertising is the use of some form of media to introduce a product or service<sup>12</sup> including mass media; all kinds of publications; all kinds of boards, signs, banners, panels, posters, fixed objects, means of transportation, or other mobile objects; and other means<sup>13</sup>.

A RO is not “permitted to directly conduct commercial advertising. If a representative office is so authorized by [*its parent*] business entity, such representative office has the right to sign a contract with a business entity engaging in commercial advertising services to conduct commercial advertising for the business entity which such representative office represents.”<sup>14</sup>

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<sup>6</sup> Article 91 of the Commercial Law and Chapter 4 of the Commercial Law generally.

<sup>7</sup> Article 88.1 of the Commercial Law.

<sup>8</sup> Article 92 of the Commercial Law.

<sup>9</sup> Article 91.2 of the Commercial Law.

<sup>10</sup> Article 33.2(p) of Decree 98.

<sup>11</sup> Article 102 of the Commercial Law.

<sup>12</sup> Article 106.1 of the Commercial Law.

<sup>13</sup> Article 106.2 of the Commercial Law.

<sup>14</sup> Article 103.2 of the Commercial Law.

A fine of up to VND 50,000,000 (approximately USD 2,146) may be assessed when an offshore company conducts advertising activities for its goods or services without hiring licensed advertising companies in Vietnam<sup>15</sup>.

(c) *Display and Introduction of Goods and Services*

Display and introduction of goods and services are defined as “activities of commercial enhancement conducted by a business entity using goods and services and materials about goods and services in order to introduce such goods and services to customers.”<sup>16</sup> Examples of different forms of this type of marketing activity include opening showrooms displaying and introducing goods and services; displaying and introducing goods and services at commercial centers or during entertainment, sports, cultural or artistic activities; organizing seminars and conferences involving the display and introduction of goods and services; and displaying and introducing goods and services on the Internet and in other forms in accordance with the law.<sup>17</sup>

A RO is not “permitted to directly display and introduce the goods and services of the business entity which it represents, except for displays and introduction at the office of such representative office. If a representative office is so authorized by [its parent] business entity, such representative office has the right to sign a contract with a business entity engaging in commercial services of display and introduction of goods and services to display and introduce the goods and services of the business entity which such representative office represents.”<sup>18</sup> While the law on its face appears to restrict a RO’s ability to conduct display and introduction to the premises of the representative office, based on our interviews with Department of Industry and Trade (“DOIT”) officers in Hanoi and Ho Chi Minh City, the DOIT’s policy at the time of the publication of this primer appears to allow employees of ROs to conduct product/service display and introduction activities so long as they are directed only toward individual customers and not to the general public and/or a public forum such as at a shopping center, at a sporting event, conference, and other public venues.

A monetary fine of up to VND 30,000,000 (approximately USD 1,288) may be assessed for a violation of these regulations<sup>19</sup>.

(d) *Trade Fairs and Exhibitions*

A trade fair or exhibition is defined as “an activity of commercial enhancement conducted for a certain period of time and concentrated at a certain location in order for business entities to display and introduce their goods and services for

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<sup>15</sup> Article 37 of the Decree 38.

<sup>16</sup> Article 117 of the Commercial Law.

<sup>17</sup> Article 120 of the Commercial Law.

<sup>18</sup> Article 118.2 of the Commercial Law.

<sup>19</sup> Article 34.2 of Decree 98.

the purposes of marketing and seeking opportunities to sign contracts for purchase and sale of goods and to sign service contracts.”<sup>20</sup>

A RO is not “permitted to organize or participate directly in a trade fair or exhibition. If a representative office is so authorized by [*its parent*] business entity, such representative office has the right to sign a contract with a business entity providing trade fair and exhibition services to organize or participate in a trade fair or exhibition for the business entity which such representative office represents.”<sup>21</sup>

A fine of up to VND 30,000,000 (approximately USD 1,289) may be assessed to a RO if it violates these regulations<sup>22</sup>.

#### 4.2 Other Obligations of ROs

Aside from refraining from marketing activities discussed above, a RO must strictly comply with certain operational requirements such as the following: a RO must be in operation within six months after the issuance of its license, and a RO may not sublease its premises to another office or company, a RO may not represent any parent company other than its registered parent company, and a RO may not suspend its operations for six consecutive months without informing the licensing authority.

For these types of violations, administrative sanctions may be imposed ranging from VND 10,000,000 (approximately USD 429) up to VND 60,000,000 (approximately USD 2,576). In addition, the authorities may withdraw the RO license.

The license of a RO may be revoked on the following grounds:

- (a) Failure to commence operations within six months of being licensed;
- (b) Suspension of the RO’s operations for six consecutive months without reporting to the licensing authority;
- (c) Not regularly reporting on operations of the RO for two consecutive years;
- (d) Not reporting as required by competent agencies within six months from the date that the requirement was issued; and
- (e) Not operating within the scope of permissible activities of a RO in accordance with the law.

The Department of Industry and Trade (formerly the Department of Trade) is authorized to issue, revise, and revoke RO licenses.

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<sup>20</sup> Article 129 of the Commercial Law.

<sup>21</sup> Article 131.2 of the Commercial Law.

<sup>22</sup> Article 35.4(b) of Decree 98.

## **5. Procedures for Establishing a RO**

### **5.1 Process**

Setting up a RO includes the following steps:

- (a) The parent company must appoint a person to act as the CRO in Vietnam. This person can be either a foreigner or a Vietnamese citizen. The CRO will not be allowed to act concurrently as the legal representative of any company (onshore or offshore), including the parent company; or director of a branch office of any company, including the parent company; or CRO of the Rep. Office of any company other than the parent company in Vietnam.
- (b) The parent company must identify office premises in Vietnam, and enter into a lease agreement with the landlord for the to-be-established RO. A copy of the lease agreement must be included in the application dossier for the RO.
- (c) The parent company must prepare an application dossier for the RO license for submission to the licensing authority.
- (d) The parent company must submit and follow up on the application for the RO license with the authorities in Vietnam.
- (e) The RO must carry out various post-license administrative procedures such as registering an official office seal with the local police, opening a bank account, advertising the establishment of the RO, registering staff with the licensing authorities, and obtaining work permits for the expat staff.

### **5.2 Required Documents**

The following documents are required to set up a RO:

- (a) Application form.
- (b) Letter of appointment of the CRO.

Items (a) and (b) must be prepared in both English and Vietnamese, signed by the parent company's legal representative, and chopped with the company seal. If a company chop/common seal is not available, the signature must be legalized by the competent authority and authenticated by the Vietnamese Embassy/Consulate in the parent company's home jurisdiction, then translated into Vietnamese.

- (c) A copy of the parent company's certificate of incorporation and business registration certificate (or equivalent).
- (d) A copy of the parent company's audited financial statements for the latest fiscal year.
- (e) A copy of the parent company's corporate charter or Articles of Association.

The parent company must notarize the documents specified in Items (c), (d), and (e) in the parent company's home jurisdiction and have them legalized by the Vietnamese Embassy/Consulate there. These documents must then be translated into Vietnamese.

- (f) A copy of the lease agreement for the RO.
- (g) A legalized copy of the CRO's passport;
- (h) If the parent company's business registration certificate does not specify its legal representative, there must be a resolution/appointment by the Board of Directors/Members appointing the legal representative to sign all the application documents on behalf of the company.
- (i) A power of attorney to one of our attorneys, who will handle the RO application and follow up on the assigned work on the parent company's behalf. The power of attorney must be signed and chopped by the parent company's legal representative, notarized by a notary public, then legalized by the Vietnamese Embassy/Consulate in the parent company's home jurisdiction.

### 5.3 Estimated Time Frame

It should take us approximately three weeks to prepare, translate, notarize, and finalize the application dossier, commencing upon our receipt of the requested information/documents from the parent company. Normally it takes approximately two more weeks to obtain the RO license after submission of the complete application dossier.

Note that this discussion on setting up ROs applies to foreign companies operating in most sectors except banking, finance, insurance, international organizations, non-profits, and NGOs. These sectors are governed by specific regulations and procedures.

### 5.4 Qualifications of a CRO

The CRO can be either a Vietnamese citizen or an ex-pat. However, a CRO must not concurrently hold any of the following positions: (i) legal representative of any company (onshore or offshore), including the parent company; or (ii) head of a branch office of any company, including the parent company.<sup>23</sup> Under Vietnamese law, a "legal representative" of a company means an individual who has the statutory power to act on behalf of the company and is registered with the relevant authority.<sup>24</sup>

The CRO is not required to reside in Vietnam. However, the CRO is required to register and pay his/her personal income tax in Vietnam. Furthermore, the CRO is required to issue a power of attorney authorizing another person to perform the functions/duties/responsibilities of the CRO when the CRO is away from/out of Vietnam. This POA must be approved by the parent company. There is not yet any detailed guideline on the approval. However, in our opinion, the approval should be in writing, either by letter or e-mail, issued by the director/managing director of the parent company.

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<sup>23</sup> Article 33.6 of Decree 07.

<sup>24</sup> Articles 134 and 137.1(b) of Civil Law; Articles 12.1 and 28.3 of Enterprises Law.

If the CRO is an ex-pat, he/she is required to obtain a work permit. Depending on the nature of the CRO's employment, the CRO must meet certain requirements. To qualify for a work permit as a secondee, the candidate must have worked for the parent entity for at least 12 months prior to his/her appointment as CRO of the RO. A letter attesting to the candidate's work experience by the parent entity would normally suffice as proof.

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This summary is designed to provide general information only and is not offered as specific advice on any particular matter. Please contact us at [contact@dilinh.com](mailto:contact@dilinh.com) or by telephone (+84 (0)28 73000 864) if you have any questions or require specific professional advice on particular facts and circumstances.