

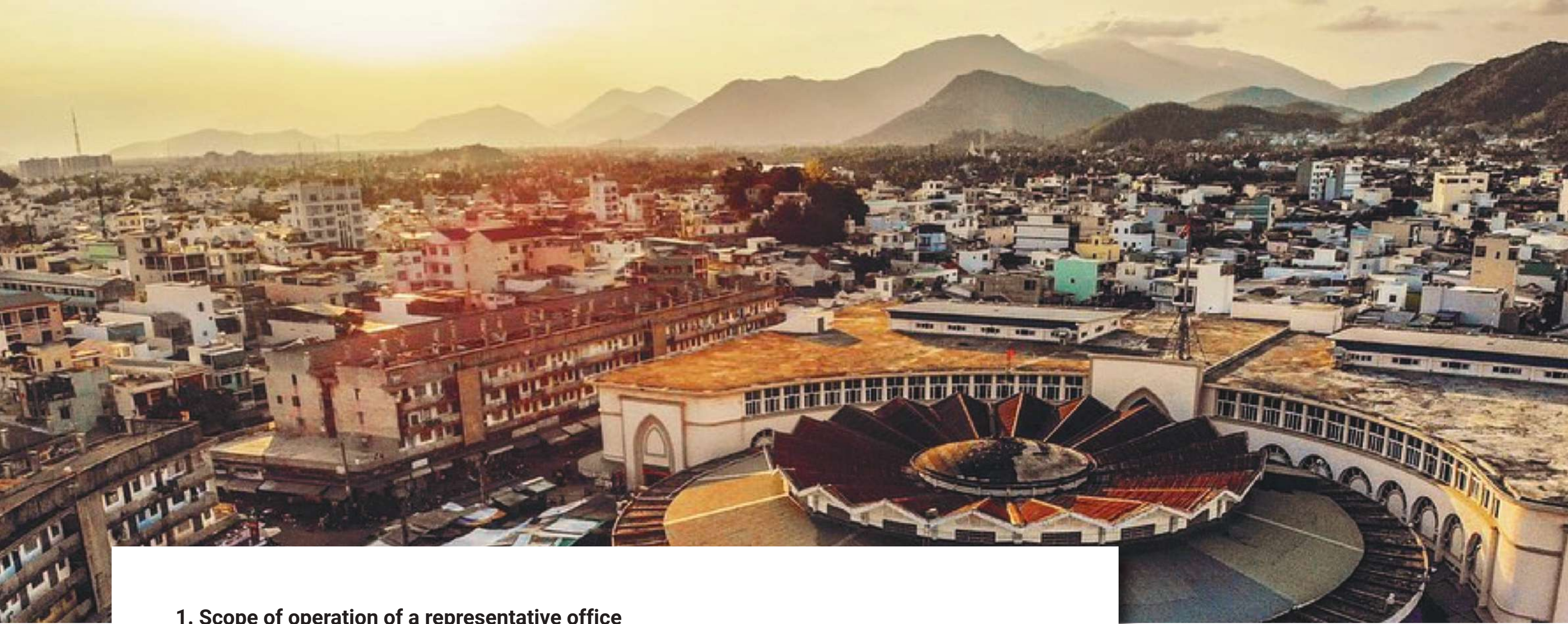
Q&A

REPRESENTATIVE OFFICE
OF FOREIGN TRADERS
IN VIET NAM



01

NOTABLE POINTS BEFORE ESTABLISHING REPRESENTATIVE OFFICE IN VIETNAM



1. Scope of operation of a representative office

A representative office of a foreign trader in Vietnam is a dependent unit of that trader, established in accordance with Vietnamese law to study the market and carry out several trade promotion activities permitted by Vietnamese law.

The scope of operation of a representative office is to perform the function of a liaison office, to study the market, to promote and advance business investment opportunities of the traders which it represents.

Legal basis:

- Clause 6, Article 3 of the Law on Commerce 2005;
- Article 30 of Decree 07/2016/ND-CP.





2. Conditions for establishment of a representative office

- a. The foreign trader must be established under the provisions of the laws of countries or territories participating in international treaties to which Vietnam is a signatory or recognized by the laws of these countries and territories;
- b. The foreign trader has been in operation for at least 01 year from the date of establishment or registration;
- c. In case the foreign trader's enterprise registration certificate or paper of equivalent validity stipulates the operation period, such time limit must be at least 01 year from the date of application submission;
- d. The operation of the representative office must be consistent with Vietnam's commitments in international treaties to which Vietnam is a signatory;
- e. In case the operation of a representative office is inconsistent with Vietnam's commitments, or the foreign trader is not from of a country or territory participating in an international treaty to which Vietnam is a signatory, the establishment of a representative office must be approved by ministers or heads of ministerial-level agencies in charge of specialized management (hereinafter referred to as the Minister of specialized management).

Legal basis:

- Article 7 Decree 07/2016/ND-CP.



3. Things to know when signing a contract to rent the head office of the representative office?

The head office of a representative office of a foreign trader must comply with certain requirements, including:

- a. The location of the head office of a representative office of a foreign trader must be located in an area with office functions and must comply with the provisions of Vietnamese law on security, order, occupational safety and health conditions. action and other conditions as prescribed by law.
- b. The representative office is not allowed to lend or sublease their headquarters.

Legal basis:

- Article 10 and 28 of Decree 07/2016/ND-CP .

4. What should the personnel appointed as the head of the representative office pay attention to?

The head of a representative office of a foreign trader may not concurrently hold the following positions:

- a. Head of a branch of the same foreign trader;
- b. Heads of a branch of other foreign traders;
- c. The legal representative of that foreign trader or other foreign traders;
- d. The legal representative of an economic organization established in accordance with the laws of Vietnam.

Legal basis:

- Article 33 Decree 07/2016/ND-CP.

5. Tax code of the representative office

The representative office of a foreign traders in Vietnam has no business activities and do not generate income from them. However, the representative office is an organization that pays taxable income, so it is required to register for tax to be issued a authorized tax code according to the provisions of law.

The representative office uses authorized tax code to deduct and pay personal income tax for individuals working at the representative office. In addition, the representative office can use the authorized tax code instead to deduct and pay tax on behalf of the foreign contractor or sub-contractor (if any).

Legal basis:

- Article 27 of Decree 65/2013/ND-CP;
- Article 25 Circular No. 111/2013/TT-BTC;
- Article 4 of Circular No. 105/2020/TT-BTC.

6. Seal of the representative office

The representative office of a foreign trader in Vietnam is entitled to have a seal bearing their name in accordance with Vietnamese law.

In order to be granted a seal, the representative office needs to carry out registration procedures at the Police Department of administrative management of social order and the Police Department of the province or the city under direct central authority where the representative office is located.

Legal basis:

- Article 17 of the Law on Commerce;
- Article 2, 10, 12, and 13 of Decree 99/2016/ND-CP.





7. Does the representative office need to open a bank account?

Due to not being a legal entity, the representative office cannot directly open a bank account. The opened bank account is essentially an account of the parent company opened in Vietnam and authorized for the representative office to use. Therefore, the procedure for opening a bank account for a representative office will be more complicated than opening an account of a company established in Vietnam.

Even so, it is necessary to open a bank account for the representative office to use. Because in the process of operation, the representative office will need to pay such items as salary, social insurance, personal income tax for employees, office rental costs, costs for vehicles and supplies necessary for the operation of the representative office, and other related expenses. Direct payment of expenses from abroad into Vietnam can be subject to many risks related to foreign exchange regulations. Therefore, having a bank account will be convenient for the representative office to pay the expenses incurred for its operations.

Legal basis:

- Article 17 of the Law on Commerce 2005;
- Circular 02/2019/TT-NHNN.

8. Can the representative office import goods?

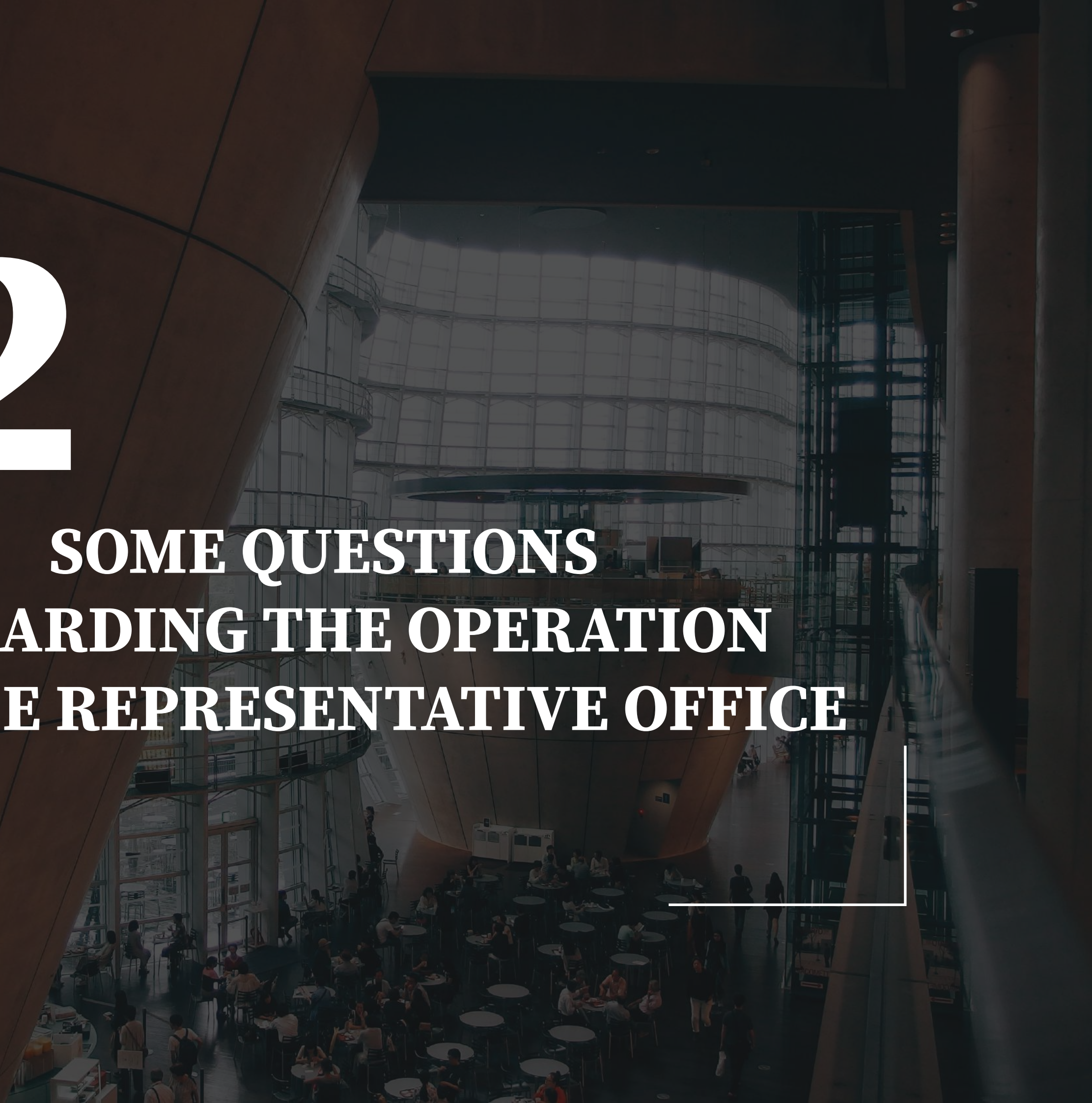
According to current regulations, the representative office is entitled to rent and purchase the necessary facilities and equipment for its operation. On the other hand, the representative office is only allowed to carry out trade promotion activities within the scope permitted by the Law on Commerce, not to conduct profit-making activities directly in Vietnam. Therefore, for the import of goods, the representative office may directly import if it serves the operational and organizational needs of the representative office.

Legal basis:

- Article 17, Article 18 of the Law on Commerce 2005.

02

SOME QUESTIONS REGARDING THE OPERATION OF THE REPRESENTATIVE OFFICE





1. In which case should the procedures for adjusting the representative office establishment license be carried out?

In the following cases, the representative office will need to adjust the Establishment License:

- Changing the name or address of the foreign trader's head office.
- Changing the head of the representative office.
- Changing the name of the representative office.
- Changing the operation content of the representative office
- Changing the address of a representative office in a province or in a geographical area under the management of a Management Board.

Legal basis:

- Article 15 of Decree 07/2016/ND-CP.

2. Procedures for re-issuance of a Representative Office Establishment License should be carried out in what cases?

The representative office will need to carry out procedures for re-issuance of the Representative Office Establishment License in the following cases:

- Relocating the head office of the Representative Office from a province or geographical area under the management of a Management Board to a province or geographical area under the management of another Management Board.
- The representative office establishment license is lost, destroyed, damaged, or destroyed in any way.

Legal basis:

- Article 18 of Decree 07/2016/ND-CP.

3.Thing to note when renewing the representative office establishment license?

Submit the application for renewal of the establishment license at least 30 days before the expiration date of the establishment license.

Legal basis:

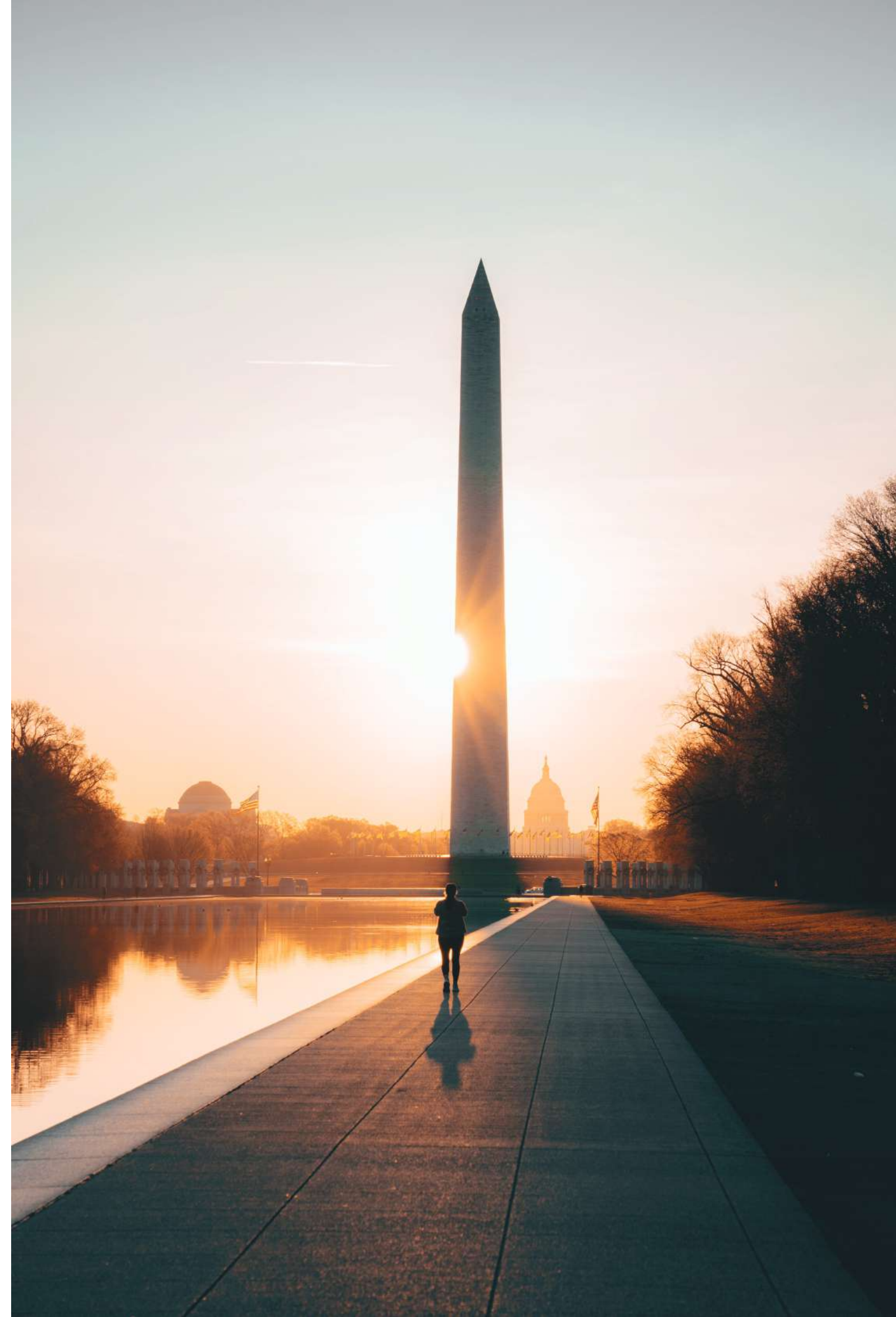
- Article 23 of Decree 07/2016/ND-CP.

4. Can the head of the representative office sign a commercial contract with a Vietnamese partner?

The head of the representative office may sign contracts under the authorization of the foreign trader. It should be noted that this authorization must be made in writing for each contract entry.

Legal basis:

- Clause 3, Article 18 of the Law on Commerce;
- Clause 7 Article 33 of Decree 07/2016/ND-CP.





5. Does the head of the representative office have to be present in Vietnam?

Vietnamese law does not require the head of the representative office to be present in Vietnam. However, if the head of a representative office is not present in the country, he / she must authorize another person to perform the rights and obligations of the head of the representative office.

In case the head of a representative office is not present in Vietnam for more than 30 days without authorizing another person to exercise his / her rights and obligations, the foreign trader must appoint another person to act as the head of the representative office.

Legal basis:

- Article 33 of Decree 07/2016/ND-CP.

6. What types of reports need to be followed periodically and required by state agencies?

Before January 30 of each year, the representative office is responsible for sending a report on its activities in the previous year by post to the Licensing Agency.

Legal basis:

- Clause 5, Article 18 of the Law on Commerce;
- Article 33 of Decree 07/2016/ND-CP;
- Articles 6 and 26 of Decree 152/2020/ND-CP.



03

THINGS TO KNOW REGARDING EMPLOYEES



1. Determining the need to employ foreign workers

When there is a need to employ foreign workers, the representative office must send a report explaining the need to employ foreign workers to the Department of Labor, War Invalids and Social Affairs where the head office is located before employing at least 30 days from the expected date of employment of foreign workers.

During the implementation process, if the demand for foreign workers changes, the representative office must report to the Department of Labor, War Invalids and Social Affairs where the head office is located at least 30 days in advance from the expected date of employing foreign workers.

Legal basis:

- Clause 1, Article 4 of Decree 152/2020/ND-CP.

2. Report on the employment of foreign workers

In case the representative office employs foreign workers, the following reports will need to be made:

Report on the employing foreign workers: Before July 5 and January 5 of the following year, the foreign employer shall report on the employment situation of foreign workers of the first 6 months of the year and the whole year respectively.

Report on the employment of Vietnamese workers: Before December 15 every year or unexpectedly upon request, foreign organizations and individuals when employing Vietnamese workers make annual reports on the recruitment and employment situation of Vietnamese workers working for foreign organizations and individuals.

Legal basis:

- Clause 1, Article 6 of Decree 152/2020/ND-CP.

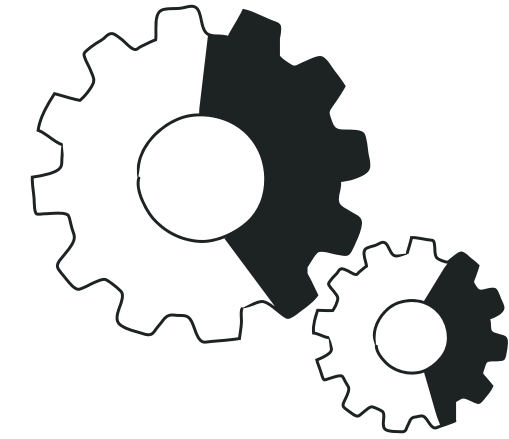
3. Work Permit

At least 15 days before the date the foreign worker is expected to work, the representative office shall apply for a work permit for the foreign worker at the local Department of Labor, War Invalids and Social Affairs where the head office of the Representative Office is located.

Duration of Work Permit: A work permit has a maximum duration of 2 years, renewable once. In case the work permit has been renewed once but has expired, for the foreign worker to continue working, the representative office will need to apply for a new work permit.

Legal basis:

- Articles 9 and 10 of Decree 152/2020/ND-CP.



4. Declaration of temporary residence of foreign workers

Foreigners temporarily residing in Vietnam must declare their temporary residence to the police station of the commune, ward or township or the police station or post where the accommodation facility is located.

Foreigners shall declare information about the his / her full name, gender, date of birth, nationality, passport number or a valid document in lieu of a passport, and expected time of temporary stay via the Portal of the Immigration Office of the Police Department of the province or city under direct central authority where the accommodation facility is located or via the temporary residence declaration form at the police station of the commune, ward or township or the police station or post where the accommodation facility is located.

Legal basis:

- Article 33 Law on entry, exit, transit and residence of foreigners in Vietnam 2014, revised in 2019.



5. Visa application

Foreign workers who come to work for a representative office must be granted a visa to be allowed to enter Vietnam. Representative offices invite and guarantee foreigners and send written requests for visas to foreign workers at the immigration management agency or competent authority of the Ministry of Foreign Affairs.

Visa application documents (except for NG1, NG2, NG3, NG4 visa):

The visa application form must be pasted with a photo and attached with a separate photo. In case there are children under 14 years old who are issued with the same passport as their parents or guardians, they do not have to make a separate declaration.

The foreigner's passport or international travel document is valid for more than 30 days compared to the approved visa period.

Visa duration:

- (i) Visa of Head of Representative Office (code NN2): valid for no more than 12 months.
- (ii) Worker's visa (code LD1, LD2): valid for no more than 02 years.

In case the visa expires, the foreigner is considered for a new visa. In addition, the visa duration is shorter than that of the passport or international travel document by at least 30 days.

Legal basis:

- Articles 8 and 14 Law on entry, exit, transit and residence of foreigners in Vietnam 2014, revised in 2019.
- Article 3 Circular 31/2013/TT-BCA.



6. Temporary residence card and its duration

Foreign workers of the representative office who need to move frequently, are granted NN2, LD1, LD2 visas at the Immigration Department or the Immigration Office of the Police Department of the province or city directly under the central authority where the representative office is located.

The duration of a temporary residence card:

- (i) NN2 temporary residence card is valid for not more than 03 years.
- (ii) LD1, LD2 temporary residence cards are valid for no more than 02 years.

Legal basis:

- Articles 36, 37, and 38 Law on entry, exit, transit and residence of foreigners in Vietnam 2014, revised in 2019.
- Clause 2, Article 4 of Circular 31/2015/TT-BCA.

7. Temporary residence cards for family members (spouse, children) of foreign employees

Working foreigners who have been granted a valid temporary residence card in Vietnam can make a document to guarantee and prove of relationship to carry out procedures to apply for a temporary residence card for their spouse or children under 18 years old to enter Vietnam to live with them. In order to be granted a temporary residence card, this relative must have a TT visa and have documents to prove the relationship such as household registration book, marriage certificate for husband and wife, birth certificate for children.

Temporary residence cards for relatives of foreign workers are issued according to the duration of the temporary residence cards of such workers.

Legal basis:

- Article 18, Article 36, Article 38 Law on entry, exit, transit and residence of foreigners in Vietnam 2014, revised in 2019.



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