

No. 11/2006/TT-BTM

Hanoi, September 28, 2006

## CIRCULAR

### GUIDING THE IMPLEMENTATION OF THE GOVERNMENT'S DECREE No. 72/2006/ND-CP OF JULY 25, 2006, WHICH DETAILS THE COMMERCIAL LAW REGARDING VIETNAM-BASED REPRESENTATIVE OFFICES AND BRANCHES OF FOREIGN TRADERS

*Pursuant to the Government's Decree No. 29/2004/ND-CP of January 16, 2004, on the functions, tasks, powers and organizational structure of the Ministry of Trade;*

*Pursuant to the Government's Decree No. 72/2006/ND-CP of July 25, 2006, detailing the Commercial Law regarding Vietnam-based representative offices and branches of foreign traders (below referred to as Decree No. 72/2006/ND-CP for short);*

*The Ministry of Trade guides the dossiers, order and procedures for the grant, re-grant, modification and extension of representative office or branch establishment permits; the notification, reporting and termination of operation of Vietnam-based representative offices and branches of foreign traders under the provisions of Decree No. 72/2006/ND-CP as follows:*

#### I. GENERAL PROVISIONS

1. Agencies that grant, re-grant, modify, extend or revoke permits for establishment of Vietnam-based representative offices and branches of foreign traders (below referred to as permit-granting agencies for short)

a/ The Ministry of Trade shall grant, re-grant, modify, extend and revoke permits for establishment of foreign traders' branches (below referred to as branches for short).

b/ Provincial/municipal Trade Services or provincial/municipal Trade-Tourism Services (below collectively referred to as provincial/municipal Trade Services) shall grant, re-grant, modify, extend and revoke permits for establishment of foreign traders' representative offices (below referred to as representative offices for short) within the management scope of localities.

2. Responsibilities of permit-granting agencies

a/ To grant, re-grant, modify, extend or revoke permits for establishment of foreign traders' representative offices or branches according to the provisions of Decree No. 72/2006/ND-CP.

b/ To consider the termination of operation of representative offices or branches according to the provisions of Decree No. 72/2006/ND-CP and the guidance in this Circular.

c/ To collect, manage and use the fee for grant, re-grant, modification or extension of representative office or branch establishment permits under the Finance Ministry's guidance.

d/ To fully observe the regime of archiving dossiers of grant, re-grant, modification, extension or revocation of representative office or branch establishment permits as provided for by the law on archive.

e/ To assume the prime responsibility for, and coordinate with competent state agencies in, inspecting and supervising the organization and operation of representative offices and branches; detect and handle according to their competence or propose competent agencies to handle according to law violations committed by representative offices or branches.

f/ The Ministry of Trade shall publicize information on Vietnam-based representative offices and branches of foreign traders on its website: <http://www/mot.gov.vn>; develop a software for management of representative offices and branches and guide the use of a software for management and updating of information on representative offices to provincial/municipal Trade Services.

g/ Once a month, provincial/municipal Trade Services shall update information on grant, re-grant, modification, extension or revocation of permits for establishment of foreign traders' representative offices in their respective localities based on the information management software developed by the Trade Ministry and send periodical sum-up reports thereon to the Trade Ministry according to the provisions of Clause 3, Article 26 of Decree No. 72/2006/ND-CP.

h/ Other responsibilities as provided for by law.

3. General conditions on dossiers of grant, re-grant, modification or extension of representative office or branch establishment permits

a/ Papers, granted or certified by competent foreign bodies, in dossiers of representative offices or branches under the provisions of Decree No. 72/2006/ND-CP and the guidance in this Circular must be legalized by consular offices according to the provisions of Vietnamese law and translated into Vietnamese; the translations and their copies must be notarized according to the provisions of Vietnamese law.

b/ Copies of papers, granted or certified by competent Vietnamese bodies, in dossiers of representative offices and branches under the provisions of Decree No. 72/2006/ND-CP and the guidance in this Circular must be notarized according to the provisions of Vietnamese law.

## **II. DOSSIERS OF APPLICATION FOR GRANT, RE-GRANT, MODIFICATION OR EXTENSION OF REPRESENTATIVE OFFICE OR BRANCH ESTABLISHMENT PERMITS**

1. Dossiers of application for grant of representative office or branch establishment permits

A dossier of application for a representative office or branch establishment permit comprises the papers specified in Article 5 of Decree No. 72/2006/ND-CP, of which:

a/ An application for a representative office or branch establishment permit shall be made according to Form MD-1, Appendix I to this Circular;

b/ Other documents of equivalent validity as specified at Point c, Clause 1 and Point d, Clause 2, Article 5 of Decree No. 72/2006/ND-CP include: a document certifying the fulfillment of tax or financial obligations in the latest fiscal year, issued by a competent body of the locality where the foreign trader is established, or other documents issued or certified by a competent independent organization, proving the actual existence and operation of the foreign trader in the latest fiscal year.

2. Dossiers of application for modification of representative office or branch establishment permits

A dossier of application for the modification of a representative office or branch establishment permit comprises the papers specified in Clause 2, Article 10 of Decree No. 72/2006/ND-CP, of which an application for permit modification shall be made according to Form MD-2, Appendix I to this Circular.

3. Dossiers of application for re-grant of representative office or branch establishment permits under the provisions of Article 11 of Decree No. 72/2006/ND-CP

A dossier of application for the re-grant of a representative office or branch establishment permit in the cases defined in Article 11 of Decree No. 72/2006/ND-CP comprises the papers specified in Article 12 of Decree No. 72/2006/ND-CP, of which an application for permit re-grant shall be made according to Form MD-3, Appendix I to this Circular.

4. Dossiers of application for re-grant of representative office or branch establishment permits under the provisions of Article 13 of Decree No. 72/2006/ND-CP

a/ A dossier of application for the re-grant of a representative office or branch establishment permit in the cases of application for the re-grant of representative office or branch establishment permits defined in Article 13 of Decree No. 72/2006/ND-CP comprises the papers specified in Clause 2, Article 12 of Decree No. 72/2006/ND-CP, of which an application for permit re-grant shall be made according to Form MD-3, Appendix I to this Circular.

b/ Except for the case guided at Point d of this Clause, the contents of operation of the representative office or branch to be written in the re-granted permit remain the same as those written in the granted permit.

c/ The term of the permit re-granted to the representative office or branch shall be as stipulated in Clause 3, Article 4 of Decree No. 72/2006/ND-CP.

d/ When a representative office or branch is engaged in the commercial or tourist activities under the representative office or branch establishment permit granted under the Government's Decree No. 45/2000/ND-CP of September 6, 2000, providing for Vietnam-based representative offices and branches of foreign traders and foreign tourist enterprises, the permit-granting agency defined in Clause 1, Section I of this Circular shall re-grant the representative office establishment permit in accordance with Article 16 of Decree No. 72/2006/ND-CP or re-grant the branch establishment permit in accordance with Clause 2, Article 2, and Article 17 of Decree No. 72/2006/ND-CP.

Contents of operation of the representative offices or branches in the tourism domain stated in the permits granted under Decree No. 45/2000/ND-CP remain effective; as soon as new legal documents on representative offices or branches engaged in the tourism domain are issued, those legal documents shall be applied.

#### 5. Dossiers of application for extension of representative office or branch establishment permits

A dossier of application for extension of a representative office or branch establishment permit comprises the papers specified in Clause 2, Article 14 of Decree No. 72/2006/ND-CP, of which:

a/ An application for permit extension shall be made according to Form MD-4, Appendix I to this Circular;

b/ Other documents of equivalent validity specified at Point b, Clause 2, Article 14 of Decree No. 72/2006/ND-CP include: a document certifying the fulfillment of tax or financial obligations in the latest fiscal year, issued by a competent body of the locality where the foreign trader is established, or other documents certified by a competent independent institution, proving the actual existence and operation of the foreign trader in the latest fiscal year.

#### 6. Dossiers of extension and modification of representative office or branch establishment permits

When a foreign trader concurrently applies for the extension and modification of the permit for the establishment of his/her representative office(s) or branch(es) in Vietnam, a dossier of application for permit extension and modification shall be compiled as in the case of extension. An application for permit extension and modification shall be made according to Form MD-5, Appendix I to this Circular.

### **III. ORDER AND PROCEDURES OF GRANT, RE-GRANT, MODIFICATION OR EXTENSION OF REPRESENTATIVE OFFICE OR BRANCH ESTABLISHMENT PERMITS**

#### 1. Receipt of dossiers

a/ Foreign traders shall submit dossiers of application for grant, re-grant, modification or extension of their representative office or branch establishment permits under the specific guidance in Section II of this Circular to permit-granting agencies defined in Clause 1 of Section I.

b/ Permit-granting agencies shall receive foreign traders' dossiers and issue dossier receipts. Such a receipt shall be made in three copies according to the form set in Appendix VI to this Circular: one of them to be handed to the foreign trader or his/her lawfully authorized person, another to be archived at the clerical section for receipt of dossiers, and the last one to be transferred to the dossier-processing section, enclosed with the trader's dossier.

c/ If the dossier is not yet valid, within 3 working days after receiving the dossier, the permit-granting agency shall notify in writing the foreign trader thereof for supplementation and completion of the dossier.

d/ The online submission, receipt and processing of dossiers shall be as stipulated by permit-granting agencies and must be conducted within the time limit specified in Decree No. 72/2006/ND-CP.

## 2. Evaluation of dossiers

a/ Permit-granting agencies shall evaluate dossiers which they receive within the time limit specified in Decree No. 72/2006/ND-CP according to the provisions of law. The time limit for evaluation of dossiers starts from the time the permit-granting agency receives a valid dossier as stipulated in Decree No. 72/2006/ND-CP and guided in Clause 1 of this Section.

b/ Permit-granting agencies shall decide to approve or disapprove the grant, re-grant, modification or extension of permits on the basis of the results of evaluation of traders' dossiers.

## 3. Forms and serial numbers of representative office or branch establishment permits

a/ A representative office establishment permit is made according to Form GP-1, Appendix II, while a branch establishment permit is made according to Form GP-2, Appendix II to this Circular. The mode of filling in a permit is guided in Appendix VIII to this Circular.

b/ The serial number of a representative office establishment permit consists of the provincial code and the representative office's ordinal number. The code and the number are separated by a hyphen, of which:

- The provincial code consists of 2 characters (as guided in Appendix VII to this Circular);
- The representative office's identification number consists of 6 digits, from 000001 to 999999.

Example: The serial number in the permit granted to the tenth representative office in Hanoi is written as: 01-000010

c/ The serial number of the branch establishment permit is the branch's identification number, consisting of 6 digits, from 000001 to 999999.

d/ The serial number of the modified, re-granted or extended representative office or branch establishment permit is that written of the previously granted permit.

## 4. Grant of representative office or branch establishment permits

a/ A representative office or branch establishment permit must be handed by the permit-granting agency directly to the head of the representative office or branch or the lawfully authorized representative of the foreign trader; the recipient of the permit shall sign the register as required by the permit-granting agency.

b/ In case of modification or re-grant (except the re-grant of permits in case of destroyed or lost permits as specified in Clause 2, Article 11 of Decree No. 72/2006/ND-CP), the permit-granting agency shall revoke the granted permit. The covers of the permit are kept unchanged, only the inside pages of the permit are revoked and changed.

c/ The permit-granting agency shall collect the fee for grant, re-grant, modification or extension of a permit under the Finance Ministry's guidance before granting it to the trader.

## **IV. NOTIFICATION OF AND PERIODICAL REPORTING ON OPERATION OF REPRESENTATIVE OFFICES AND BRANCHES**

### 1. Notification of operation of representative offices or branches to permit-granting agencies

a/ A notice about the operation of a representative office or branch to the permit-granting agency stipulated in Clauses 2 and 3, Article 8 of Decree No. 72/2006/ND-CP shall be made according to the form in Appendix III to this Circular.

b/ The permit-granting agency shall receive the foreign trader's notice guided at Point a of this Clause and issue a notice receipt. Such a receipt shall be made in 3 copies according to the form in Appendix IV to this Circular: one of them to be handed to the foreign trader or his/her lawfully

authorized person, another one to be archived at the paperwork section, and the last one to be transferred to the dossier-processing section, enclosed with the trader's dossier.

c/ When receiving the notice guided at Point b of this Clause, the permit-granting agency shall inspect the validity of that notice and enclosed papers within 3 working days and notify in writing the representative office or branch of its request for modification of the notice or enclosed papers which are not yet valid.

d/ When completing the procedures for re-grant of a representative office operation permit as stipulated at Point a, Clause 1, Article 11 of Decree No. 72/2006/ND-CP, the representative office shall carry out notification procedures guided at Points a, b and c of this Clause.

## 2. Regime of reporting on operation of representative offices or branches

a/ An annual report on the operation of a representative office shall be made according to Form BC-1, Appendix IV, while that on the operation of a branch shall be made according to Form BC-2, Appendix IV to this Circular. Such a report must contain full, accurate and truthful information and be submitted within the time limit set in Clause 1, Article 19 of Decree No. 72/2006/ND-CP.

b/ In the course of operation in Vietnam, in case of any changes in personnel recruited and employed in a representative office or branch, within 10 days after such changes are made, the representative office or branch shall send a report on the changes, enclosed with copies of relevant documents, to the permit-granting agency.

## **V. TERMINATION OF OPERATION OF REPRESENTATIVE OFFICES OR BRANCHES**

### 1. Termination of operation of representative offices or branches in cases specified at Points a, b and c, Clause 1, Article 22 of Decree No. 72/2006/ND-CP

a/ A notice on the planned termination of operation of a representative office or branch stipulated in Clause 2, Article 22 of Decree No. 72/2006/ND-CP shall be made according to Form TB-1, Appendix V to this Circular. The permit-granting agency shall certify in writing the planned termination of operation of the representative office or branch for use as a basis for the representative office or branch to fulfill related obligations.

b/ After fulfilling the obligations specified in Clause 3, Article 23 of Decree No. 72/2006/ND-CP, the representative office or branch shall send a notice about the fulfillment of obligations to the permit-granting agency, made according to Form TB-2, Appendix V to this Circular.

c/ The permit-granting agency shall receive the foreign trader's notice guided at Point b of this Clause and issue a notice receipt. Such a receipt shall be made in 3 copies according to the form in Appendix VI to this Circular: one of them to be handed to the foreign trader or his/her lawfully authorized person, another one to be archived at the clerical section, and the last one to be transferred to the dossier-processing section, enclosed with the trader's dossier.

d/ When receiving the notice guided at Point b of this Clause, the permit-granting agency shall inspect the validity of that notice and enclosed papers within 3 working days and notify in writing the representative office or branch of its request for modification of the notice or enclosed papers which are not yet valid. Within 10 working days after receiving the notice and valid papers, the permit-granting agency shall verify the fulfillment of obligations by the representative office or branch and carry out procedures for deletion of the name of the representative office or branch from the register according to the provisions of Clause 4, Article 22 of Decree No. 72/2006/ND-CP.

### 2. Termination of operation of representative offices or branches under the provisions of Points d and e, Clause 1, Article 22 of Decree No. 72/2006/ND-CP

a/ The decision on refusal to extend, or on revocation of, a representative office or branch establishment permit is also the decision on operation termination, which clearly states the reason for refusal to extend or for revocation and the time of operation termination.

b/ The permit-granting agency shall announce the termination of operation of a representative office or branch according to the provisions of Clause 3, Article 22 of Decree No. 72/2006/ND-CP.

c/ After fulfilling the obligations defined in Clause 4, Article 23 of Decree No. 72/2006/ND-CP, the representative office or branch shall send a notice about the fulfillment of obligations to the permit-granting agency, made according to Form TB-2, Appendix V to this Circular.

d/ The permit-granting agency shall receive the foreign trader's notice guided at Point b of this Clause and issue a notice receipt. Such a receipt shall be made in 3 copies according to the form in Appendix VI to this Circular: one of them to be handed to the foreign trader or his/her lawfully authorized person, another one to be archived at the clerical section, and the last one to be transferred to the dossier-processing section, enclosed with the trader's dossier.

## **VI. ORGANIZATION OF IMPLEMENTATION**

1. The Planning and Investment Department of the Trade Ministry shall grant, re-grant, modify, extend or revoke branch establishment permits according to the provisions of Clause 1, Article 3 of Decree No. 72/2006/ND-CP and the guidance of this Circular.

2. The E-Commerce Department of the Trade Ministry shall develop and apply a software for management of information on representative offices and branches and coordinate with the Planning and Investment Department in updating and publicizing relevant statistical data and information in the course of performing their function of state management of representative offices and branches on the Trade Ministry's website: <http://www.mot.gov.vn>; establish an information channel and provide guidance on the use of the software for management and updating of information on representative offices to provincial/municipal Trade Services.

3. Provincial/municipal Trade Services shall perform their assigned tasks according to their functions in accordance with the provisions of Clause 2, Article 3, and Article 26 of Decree No. 72/2006/ND-CP and the guidance of this Circular.

4. This Circular takes effect 15 days after its publication in "CONG BAO" and replaces the provisions on representative offices and branches of foreign traders (excluding foreign tourist enterprises) of Joint Circular No. 20/2000/TTLT/BTM-TCDL of October 20, 2000, of the Trade Ministry and the Vietnam National Administration of Tourism.

5. In the course of implementation of this Circular, concerned organizations and individuals should promptly report arising problems to the Trade Ministry for timely settlement.

**FOR THE MINISTER OF TRADE  
VICE MINISTER**

**Le Danh Vinh**

\* Note: All the forms are not printed in this Circular.-

**ATTACHED FILE**



Appendix VII-7